



SEEK WISDOM, ELEVATE YOUR INTELLECT AND SERVE HUMANITY !



Addis Ababa University
Graduate Studies
College of Law and Governance

**The Use of Force and Engagement by African Union Mission in
Somalia (AMISOM)**

By
Fekadu Mamo

Advisor
Takele Soboka (PhD)

Addis Ababa
April 2017

Addis Ababa University
Graduate Studies
College of Law and Governance

**The Use of Force and Engagement by African Union Mission in
Somalia (AMISOM)**

By
Fekadu Mamo

Advisor
Takele Soboka (PhD)

**Submitted to Addis Ababa University, College of Law and
Governance in partial fulfillment of the requirements of the degree
of LLM in Public International Law**

April 2017

Approval Sheet by the Board of Examiners

The Use of Force and Engagement by African Union Mission in Somalia (AMISOM)

Advisor: Takele Soboka (PhD)

Examiners:

Name	Signature	Date
1. <u>Takele Soboka (PhD)</u> Advisor		<u>13/06/2017</u>
2. <u>Dereje Zeleke (PhD)</u>		<u>13/06/2017</u>
3. <u>Biniyam Tafese (Lec.)</u>		<u>13/06/2017</u>

Addis Ababa

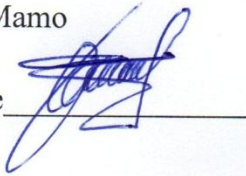
April, 2017

Declaration

I declare that this thesis is my original work, and it has not been presented to any other university or academic institution, and that all sources of materials used for the thesis have been acknowledged. Accordingly, I present this work in partial fulfillment of the requirement for the award of the LLM Degree in Public International Law at Addis Ababa University.

Fekadu Mamo

Signature



ACKNOWLEDGMENT

Above all, I thank God. I would also like to take this opportunity to recognize all those who, in one way or the other, contributed to make my study successful. I wish to express my most profound gratitude and appreciation to my advisor Takele Seboka (PhD) for his valuable feedback, comment and ample assistance.

My gratitude goes to my friends Dereje Hailu, Desalegn Yehouala ,Kirubeil Getachew and Desalegn Amsalu Who has been a valuable support and inspiration to me during the whole process and helping me with everything they can. I am also grateful to a number of outstanding individuals who gave up their precious part of their time to help me.

Finally I want to extend my heartfelt thanks to my friends who has played a part of providing constructive comments and material support during the study.

Fekadu Mamo

DEDICATION

To my daughter Tsion Fekadu.

Acronyms

ACIRC	African Capacity for Immediate Response to Crises
AMISOM	African Union Mission in Somalia
AU	African Union
AUPSC	African Union Peace and Security Council
CCTARC	Civilian Casualty Tracking and Response Cell
CIL	Customary International Law
CONOPS	Concept of Operations
DRC	Democratic Republic of Congo
ECOMOG	Economic Community of West African States Monitoring Group
ECOWAS	Economic Community of West African States
EU	European Union
FHQ	Force Headquarter
FPU s	Formed Police Unit
ICRC	International Committee of the Red Cross
IDPs	Internally Displaced Persons
IGAD	Inter-Governmental Authority on Development
IGASOM	Inter-Governmental Authority on Development Peace Support Mission to Somalia
IHL	International Humanitarian Law
IHRL	International Human Rights Law
INTERFET	International Force for East Timor
IPO s	Individual Police Officers
LOAC	The Laws of Armed Conflict
MHQ	Mission Headquarters
MOU	Memorandum of Understanding
NGOs	Non-Governmental Organizations
NSSP	National Security Stabilization Program
OAU	Organization of African Unity

ONUC	United Nations Operation in Congo
PCCs	Police- Contributing countries
PEO	Peace Enforcement Operations
PKF	Regional peacekeeping force
PKK	Kurdistan Workers' Party (Kurdish: Partiya Karkerên Kurdistanê)
POU	Plans and Operation Unit
PPSC	Protocol on the Peace and Security Council
PSD	Peace and Security Department
PSOD	Peace Support Operation Division
RECs	Regional Economic Communities
ROE	Rules of Engagement
SFPF	Somali Federal Police Force
SHQ	Sector Headquarter Structure
SLT	Senior Leadership Team
SNA	Somalia National Army
SNSF	Somali National Security Forces
SRCC	Special Representative of the Chairperson of the African Union Commission
SRSR	Special Representative of the Secretary-General
SSPF	Somalia State Police Force
TCCs	Troop Contributing Countries
TFG	Transitional Federal Government
TFIs	Transitional Federal Institutions
TOR	Terms of References
UIC	Union of Islamic Courts
UN	United Nations
UNAMID	United Nation Mission in Darfur
UNFIL	United Nations Force in Lebanon
UNITAF	United Task Force
UNOSOM	United Nations Operations in Somalia
UNPKO	United Nations Peace Keeping Operations

UNPROFOR	United Nations Protection Force in Yugoslavia
UNSC	United Nations Security Council
UNSC	United Nations Security Council
USA	United States of America
WWII	World War Second

Abstract

The use of force continued being as a sensitive issue in international arena. UN as well as AU increasingly engages in various peace enforcement operations that requires the use of military force as laid down in the UN Charter. In applying such force, it becomes a challenging task to strike a balance between the requirements and objectives of the mission and the relevant legal constraints of the use of force.

As such it is necessary to examine AMISOM's legal frame work, its mandate and rules of engagement that enable to protect others or civilians and to achieve the objectives of the Mission. AMISOM has made great sacrifices to stabilize Somalia yet its use of force could not generate a result as it was envisaged as nearly a decade ago. The nature of its mandate was to focus on supporting the Transitional Federal Institutions rather than protecting civilians which tends to prioritize the Transitional Federal government over human security. It causes the rise of negative local perceptions as well as questions on its impartiality, credibility and local legitimacy. This has made it impossible to build capable and inclusive national security forces to which the people of Somalia can trust and serves as AMISOM exit strategy. AMISOM also suffers from structural and operational limitations; fragmented command and control; failure to ensure effective coordination among TCCs use of force; asymmetric threat; the failure on application of International Humanitarian and International Human Rights Law and; lack of viable remedial mechanisms. The legal basis of AMISOM use of force is also affected by the tendency of TCCs as well as internal actors to pursue their strategic interests at the expense of the mission's mandate.

To sum up, addressing issues of civilian protection, violations of International Humanitarian and International Human Rights is crucial for AMISOM. It is also imperative to solve a lack of internal legitimacy of TFG and exert an effort to gain local ownership. It needs to deal with problems of structural and operational capability, system of command, control and coordination to harmonize operations among T/PCCs. It should also work out towards establishment of remedial mechanism to address the misuse or abuse of force.

Key words: AMISOM, Use of Force, Rules of Engagement

Contents

Acronyms	I
Abstract.....	IV
Chapter one.....	1
Introduction	1
1.1 Background	1
1.2 Statement of the Problem	3
1.3 Research Questions	5
1.4 Objective of the Study.....	5
1.4.1. General Objective.....	5
1.4.2. Specific Objective	5
1.5 Significance of the Study	6
1.6 Methodology	6
1.7 Limitation of the study	6
1.8 Scope of the Study	7
1.9 Organization of the Study	7
Chapter Two	8
Conceptual and Normative aspects of Use of Force.....	8
2.1. Introduction.....	8
2.2. Concepts of Use of Force	9
2.2.1. Definition	9
2.2.2. Paradigm	10
2.2.3. Classifications	11
2.3. Historical Development	13
2.3.1. Pre-UN Charter Use of Force Norms	13
2.3.2. Post-UN Charter Use of Force Norms.....	14
2.3.3. Post-Cold War Developments	15
2.4. Use of Force in UN Peace Operations.....	15
2.4.1. Source of Mandate	15
2.4.2. Command and Control of the Use of Force by UN Mission.....	17
2.4.3. UN Use of Force Rules	18
2.4.4. UN Doctrine, Policy and principles on the use of force	18
2.4.5. UN Rules of Engagement.....	19
2.4.6. Challenges of Peacekeeping	20

2.5. Use of Force in African Peacekeeping Mission	22
2.5.1. Legal Framework in African Context.....	22
2.5.2. The Development of Use of Force in African Peacekeeping Operation	23
2.5.3. Experience and Lessons of Peace Operations in Africa.....	24
2.5.4. Use of force by African Mission and UN.....	25
2.5.5. Challenges and Limitation of Use of Force in African Peacekeeping Operations	26
Conclusion	27
Chapter Three	29
The Use of force and engagement by African Union Mission in Somalia (AMISOM).....	29
3.1. Introduction.....	29
3.2. Institutional Framework of AMISOM.....	30
3.2.1. Mandate.....	30
3.2.2. Command and Control	33
3.2.3. Troop/police contributing Countries (T/PCCs)	37
3.2.4. Mission profile	38
3.3. Use of force in pre-AMISOM peacekeeping operations in Somalia.....	42
3.4. Use of force by AMISOM.....	44
3.5. Rules of engagement of AMISOM.....	48
3.6. AMISOM use force in line with the UN Mandate.....	49
3.7. AMISOM Use of force in light of International Humanitarian Laws	50
3.8. AMISOM Use of force in light of international human rights Laws	53
3.9. Gaps and challenges of use of force by AMISOM.....	55
3.10. Legal Mechanisms and remedies used by AMISOM	57
Conclusion	60
Chapter Four	61
Conclusion and recommendations	61
4.1. Conclusion	61
4.2. Recommendations	63
Bibliography	i
Books and Articles.....	i
Resolutions/ decisions/ Communiques.....	vi
Interviewees	viii
Cases.....	viii
Web Sources	viii
Annexes	xi

Chapter one

Introduction

1.1 Background

The use of force has remained a highly sensitive issue in international plane in whatever context it is used¹. In customary as well as treaty laws, there are internationally recognized legal basis for the use of force. A body of international law, *jus ad bellum*, establishes when a state may declare war or use force against another nation. A body of international law, *jus in Bello*, usually called “international humanitarian law”, regulates the conduct of war or how belligerents conduct war.² Firstly, *jus ad bellum* is reflected in the United Nations (UN) Charter (here after the UN Charter) in which it is provided for two bases for a State to resort to the use of force.³ These are provided under Chapter VII of the UN Charter in the form of peace enforcement actions by United Nations Security Council (UNSC) and as a right to individual and collective self-defence of states.⁴ Secondly, *jus in Bello*, principles set forth in The Geneva Convention and The Hague Convention regimes, which are often referred to as International Humanitarian Laws or the Laws of Armed Conflict (LOAC).⁵

However, the end of the Cold war brought about a proliferation of various conflicts in which non-state forces are involved in insurgencies with in a state rather than between states.⁶ These created a more complicated situation for the regular military personnel as to whether and how to use force in the face of actual threats to themselves or others. Besides, they faced difficult choices to differentiate between combatants and non-combatants as well. In addition, UN has

¹ Mark Drumbi, “International Law and Institution, International Law regarding the Conduct of War”, (2011) PP.1-3, available at <<http://www.eolss.net/sample-chapters/c14/e1-36-01-03.pdf>>; last visited Feb. 9, 2016, 12:15PM.

² Theodor Meron, “The Humanization of International Law”, The Hague Academy of International Law Monographs, Martinus Nijhoff Publishers, Volume 3, (2006), P.289

³ Trevor Findlay, “The Use of Force in UN Peace Operation”, SIPRI Oxford University Press, (2002), PP.3-8, available at <<http://www.sipri.org>>; last visited Feb. 9, 2016, 12:30 PM

⁴ Charter of The United Nations (here after UN Charter), Art.51 on self-defense and Chapter VII that authorize the UNSC, signed on June 1945, (came into force on 24 October 1945)

⁵ Gloria Gaggioli (ed) “The Use of Force in Armed Conflicts Interplay Between The Conduct of Hostilities and Law Enforcement Paradigm”, Report of International Committee of the Red Cross (2013), P.45

⁶ Dr. Annyssa Bellal and Dr. Stuart Casey-Maslen, “Rules of Engagement: Protecting Civilians Through Dialogue With Armed Non-State Actors”, Geneva Academy of International Humanitarian Law and Human Rights (2011)

increased the use of peace keeping operations in recent decades.⁷ As a result, the use of force has become one of the most important issues to be considered by the international community, because there is a need for peace keepers to have a legal basis when and under what conditions they can use force. Recent developments have shown that peacekeepers may be called upon to use force not only to defend themselves but also for the protection of the mission and civilians.⁸

The UN Charter recognizes the existence of regional arrangements⁹ or agencies for dealing with matters related to the maintenance of international peace and security appropriate for regional action. Sirte Declaration¹⁰ envisaged the transformation of the Organization of African Unity (OAU) into the African Union (AU)¹¹ which came into reality at Durban Summit that launched AU in 2002.¹²The AU Charter in this regard is more comprehensive in designing peacemaking, peace keeping and peace enforcement mechanisms that make it different from those of the OAU which failed to include such issues in its time. The mechanism is institutionalized within the framework of the AU Constitutive Act¹³ and its Protocol on the Peace and Security Council (PSC).

Nduwimana explained that Western countries exhibited unwillingness and reduced their involvement in peace initiatives on the continent, as evidenced by UN interventions in Somalia (1993) and Rwanda (1994), which were unsuccessful¹⁴. As a result, the AU has mandated a number of peacekeeping missions. Even though, the issue of approval by the UN is debatable, AU Mission in Somalia (AMISOM) is among the regional peacekeeping missions operated by

⁷ Mats Berdal and David Hucko, "The Use of Force in UN Peacekeeping Operations", RUSI Journal, available at <<http://www.tandfonline.com/action/journalInformation?journalCode=rusi20>>; last visited Feb. 11, 2016, 12:00PM

⁸ International Committee of the Red Cross, "Violence and The Use of Force reference", (2015), P. 45: see also UN General Assembly, Sixty-eighth session, Item 142 of the provisional agenda, Report on the activities of the Office of Internal Oversight Services, Evaluation of the implementation and results of protection of civilians mandates in United Nations peacekeeping operations, "Peacekeeping missions with protection of civilians mandates never used to protect civilians under attack", (7 Mar. 2014)

⁹ UN Charter, Supra note 4; Art. 52; recognizes the existence of regional mechanism or arrangements

¹⁰ Sirte Declaration, Fourth Extraordinary Session of The Assembly of Heads of State and Government, EAHG/Draft/Decl. (IV) Rev.1, (Adopted on September 1999)

¹¹ Constitutive Act of African union, adopted by the Thirty-Sixth ordinary session of the Assembly of Heads of state and governments, (Adopted July 2000)

¹² *Ibid.*

¹³ Protocol Relating to the Establishment of the Peace and Security Council of the African Union, 1st ordinary session of the Assembly of the African union, (Adopted July 2002)

¹⁴ Lt. Col. Donatien Nduwimana, "Amisom In Somalia: A Ray of Hope", Occasional Paper Series 4, No.4, The International Peace Support Training Centre, (2013), P.1

the African Union with the approval of the UN.¹⁵ It was created by the African Union's Peace and Security Council on 19th January 2007 for an initial period of six months and with the possibility of extension of its mandate.¹⁶ AMISOM replaced the Inter-Governmental Authority on Development (IGAD) Peace Support Mission to Somalia (IGASOM), which was approved by the AU in September 2006 and was also approved by the UNSC. Initially, the objectives of the AMISOM peacekeeping mission were to support national reconciliation process. Later on the UNSC council authorized the African Union mission to take all measures, as appropriate, to carry out support for dialogue and reconciliation by assisting with free movement, safe passage and protection of all those involved in a national reconciliation congress, all stakeholders, and etc.¹⁷ It also extended the mandate to incapacitate Al Shabab using the necessary force. It is comprised of a coalition of willing African Troop Contributing Countries (TCCs) which have exercised the operation in their respective sectors¹⁸. UN authorized the mission acting under Chapter VII of its Charter to take all necessary measures, in compliance with applicable international humanitarian and human rights law¹⁹. Hence, this study aims at examining the legal basis of the use of force and engagement as well as robustness²⁰ of its mandate in the AMISOM peace operation.

1.2 Statement of the Problem

As explained in the background above, the use of force in international law is a very sensitive issue in whatever context it is applied, especially; in a situation that is not perceived as self-defence. In the peace keeping or peace enforcement operation, it is only allowed when it is explicitly authorized by the set of Rules that provides restraints and legitimacy. In addition, it is

¹⁵ United Nations Security Council Resolution(here after UNSC), S/RES/1744 (2007),at its 5633rd meeting (Feb.2007)

¹⁶UNSC Resolution, S/RES/1831 (2008), at its 5957th meeting,(Adopted Aug.2008),*Welcoming* the communiqué of the African Union Peace and Security Council of 29 June 2008, which states that the African Union will extend from 17 July 2008 the mandate of its mission to Somalia (AMISOM) for an additional six months, In October, 2014, the Security Council (Resolution S/RES/2182 (2014) gave a green light to the African Union to continue its mission in Somalia until 30th November 2015.

¹⁷ UNSC Resolution, S/RES/2010 (2011), at its 6626th Meeting, (Adopted Sep.2011), to extend Mandate of AMISOM until 31 October 2012.

¹⁸UNSC Resolution, S/RES/ 2073 (2012), at its 6854th meeting,(Adopted Nov.2012) in *recalling* its previous resolutions on the situation in Somalia, in particular resolution, S/RES/1772 (2007).

¹⁹*Ibid.*; See also Patrice Sartre, "Making UN Peacekeeping More Robust: Protecting the Mission, Persuading the Actors", international peace Institute ,IPI Publications , (July 2011), P.14, criticize that UN Security Council, 'too often', uses a slogan "all necessary measures" Which is far too general to be suitable. P14

²⁰*Id.*, P.34

expected to accomplish its mission within the constraints of international Law as well. As such, the use of force in peace keeping context has different objectives than that of conventional armed conflict.

Recent developments have shown that it is becoming a challenging task to strike a balance between the requirements and objectives of the mission and the relevant legal constraints. For instance, since the deployed peace keeping forces were not allowed to use force, UN peacekeeping was criticized for its failures in Rwanda, Bosnia and Srebrenica Massacres.²¹ In the case of UN mission in the former Yugoslavia, lack of clear use of force rules have been considered as one of the reasons for the failure on the part of the Dutch peacekeepers to prevent the Srebrenica massacre on 6 July 1995.²²

Primarily, the very essence that triggers the mind of the researcher to focus on AMISOM relates to the unavailability of comprehensive study on the use of force and the overall mandate in general. Besides, among the existing peacekeeping operations in Africa, AMISOM is the only African borne mission and fully controlled by AU. As it function and exercise its operations using a number of TCCs, it is necessary to assess whether there exist a legal frame work on its use of force and rules of engagement²³ that enables these forces to protect others or civilians and to achieve the objectives of the Mission. In addition, there was a debate on the inclusion of the mandate of protection of civilians to AMISOM's mandate.

Further, as pure African mission, it is worth mentioning to highlight whether the mandates of AMISOM are designed taking in to consideration the experiences from previous UN missions. In addition, addressing whether AMISOM use of force fulfils the requirements of international rules of humanitarian and human rights is crucial. Apart from this, in relation with the protection of the force and its units, there is an issue of exemption of the service person's from criminal liability when applying military rules which directly have an impact on the life of individual members and civilians as well as the accomplishment of the mission's objectives.

²¹Mats Berdal & David Hucko ,”The United Nations and the Use of Force: Between Promise and Peril”, *Journal of Strategic Studies*, Vol. 37, No. 5 (2014), P. 667, available at<<http://dx.doi.org/10.1080/01402390.2014.937803>> , last visited Mar. 21, 2017. 5:35 PM

²²Martin Faix, “Rules of Engagement: Some Basic Questions and Current Issues” *Czech Yearbook of International Law*, Vol. 1 (2010), PP.133-145

²³ Malcolm N. Shaw, “International Law”, *Cambridge University press*, (5th ed. 2005), P.1118

Therefore, AMISOM, which is the subject of this study, is not immune from the aforementioned issues. This kind of Mission is even more complex because the legal issue should address the impact of international, TCCs, and domestic laws. In general, this Study tries to examine the complex issues of AMISOM's legal framework on the use force and engagements.

1.3 Research Questions

1. Does AMISOM have established a defined, robust and comprehensive legal framework and set of rules that govern its use of force?
2. Are there any legal gaps and challenges in relation to the use of force that hinders the effectiveness of accomplishing its mission objectives?
3. Is there a harmonization process that addresses the impact of international, foreign (TCC) and domestic laws in relation with the use of force?
4. How does AMISOM cope and manage the various challenges with regard to use of force?

1.4 Objective of the Study

1.4.1. General Objective

The general objective of this study is to examine the legal basis of use of force and engagement by AMISOM and highlight lessons learned from this mission and develop a better understanding of many of the key consideration during peace keeping operations in this regard.

1.4.2. Specific Objective

To realize the above stated general objective, the study, specifically, seeks to:

1. Explore and identify the legal framework and set of rules that governs the use of force and engagements of AMISOM operations.
2. Examine the legal framework regarding use of force and rules of engagement and show the reasons for the effectiveness or otherwise of AMISOM's operations.
3. Identify and investigate the legal gaps and challenges of the use of force and to show their impact on the operation of AMISOM.
4. Identify and analyse the process of harmonizing international, foreign and domestic laws concerning the use of force.

5. Study the cope up legal mechanisms used by AMISOM to address challenges with regard to the use of force.

1.5 Significance of the Study

This study provides a background and serves as a source of information for academics and other researchers interested to conduct further study in this area. Moreover, it also gives an insight to policy makers and legal experts dealing with the peace operation in particular within AMISOM and AU, especially PSOD.

1.6 Methodology

Data Collection

To obtain the necessary data, combinations of methods were employed.

I. Interviews

Semi-structured interviews were used with purposively selected experts of the study field in the African Union Commission (AUC), Peace and Security Department (PSD) and especially, peace support operation division (PSOD). Unstructured interviews were also be used to gather information from key experts in the subject matter.

II. Legal instruments

In addition legal instruments such as, treaties, resolutions, agreements, decisions, communiqués, reports and etc..., were assessed and reviewed.

III. Secondary Data

Furthermore to strengthen the information obtained through primary sources, secondary sources such as; literatures, researches, etc., were also examined.

1.7 Limitation of the study

One of the limitations of the study was some information of the subject under study was considered as classified and confidential. As a result it took an elongated time to collect data and comprehensive information. On top of this as the study is confined with the information collected from headquarters of AUC, it was cumbersome to find experts working in the actual

mission area of AMISOM. The other serious limitation relates to the business of the interviewees that made difficult to accomplish the interview as per the schedule.

1.8 Scope of the Study

The study primarily focuses on the legal spheres around the issue of the use of force and engagement by AMISOM. It addresses the legal basis that guides this mission in the determination when and how it employs the use of force. It is often difficult to disaggregate the various elements associated with the use of force, this study does not try to cover the entire activities of the mission specially those elements related to non-legal spheres. It confines itself to those legal issues as only they relate to the use of force and attention is devoted only to AMISOM. Of course, to give the study a solid foundation, it draws its considerable attention to the rules of international law in relation with the use of force.

1.9 Organization of the Study

The study comprises four Chapters. The first Chapter consists of an introduction of the research. This comprises the statement of the problem, the research question, and objective of the study, significance, methodology, limitation and scope of the study. Chapter two focuses on the legal norms and concepts, overview on the historical developments and discusses about the overall experience of UN and African peace keeping operations. It addresses the normative framework of the concept of use of force at international level. The third chapter entirely is devoted to the legal framework and rules of use of force by AMISOM. . In this regard, the status of resolutions adopted by the UN Security Council and African union, and the legal standings of AMISOM is examined. It analyses AMISOM's use of force in line with UN and its consistency with international humanitarian and human rights law. In addition, it explores challenges and the efforts that have been made by AMISOM to overcome them. Under the Fourth Chapter, the conclusions and recommendations are provided.

Chapter Two

Conceptual and Normative aspects of Use of Force

2.1. Introduction

There is an argument among scholars of the area not only in the interpretation of use of force or armed attack but also in its scope: limited to territory or extended to abroad. Brownlie discussed about the existence of a “cascading”²⁴ relationship among the terms “force”, ‘aggression” and ‘armed attack’²⁵. He finds that a lethal response by the territorial state against the intruders amounts to use of force within the meaning of article 2(4) of the UN Charter and in his writing, question whether such forcible action have cross boarder effect²⁶. He also discusses the issue of use of force in peacekeeping operation has often been misunderstood as though peacekeepers do not use force²⁷. However, the realities of peace operations necessitate an interpretation of the use of force and hence, to take a look at some issues that have been discussed by literatures in this regard.

There was a realization that the end of the WWII would necessitate the creation of a new world body that resulted in the establishment of UN with the aim of maintenance of international peace and security²⁸. The main organ with primary responsibility to maintain international peace and security is the Security Council²⁹. Hurd argued that Article 2(4) takes away from states the legal right to use force, and Articles 24, 39, 42, and others then deliver this power to the Security Council³⁰. These articles grant the UN Security Council the power to determine the existence of an illegal threat or use of force, and discretion in mandating or authorizing a response to such a threat. The UN Charter also provides exceptions to this prohibition: One is Article 51 on collective and individual self-defense, and the other is United Nations Security Council authorization under Chapter VII of the Charter. Hence, before we look at AMISOM’s use of

²⁴ James Crawford & Catherine Redgwell, “Armed Attack and Article 51 of the UN Charter, Evolutions in Customary Law and Practice”, The British yearbook of international Law, Vol. 83, Issue 1, Oxford University Press, (2012),p.160

²⁵ Ian Brownlie, , “International law and the use of force by states”, Oxford University Press, Clarendon Press publication, (1963), P.361

²⁶*Id.*, P.362

²⁷ E.A.Erskine, Lt-Gen, “Peacekeeping Techniques for Africa’s conflict Management”, Afram publication, ,(2000),P.55

²⁸ UN Charter, Supra note 4, Art.1 (1)

²⁹*Id.*, Art. 24

³⁰Ian Hurd, “Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World”, Carnegie Council for Ethics and International Affairs, Vol. 25 No. 3,(2011), P.301

force in detail, it is necessary to review some aspects of international norms, principles and concept of the use of force, its historical development, UN experience and use of force in peace operations, its challenges and African experience as well.

2.2. Concepts of Use of Force

2.2.1. Definition

The terms of use of force or resort to force, have been found in article 2 sub article 4 of the United Nations Charter. The use of force was not initially expressed directly in the same manner but has been used in the terms “war of aggression”, invasion”, “attack”, and “aggression” until 1945.³¹ It is commonly understood that the concept of use of force is implied as a military attack, or an armed attack by the organized military but the concept can have a wider significance to which it includes government’s act through militia, security forces, and police forces.³² In Hurd’s writing, this article forbids both the use of force and the threat of its use that confirms the domain of illegality is broader than cross border military attacks.³³ Furthermore, Chapter VII of the UN Charter refers only to “measures” and International Law Commission suggested this may have implication for broader interpretation that encompasses a very wide range of acts, including the use of armed force as well as economic measures.³⁴

Furthermore, it is appropriate to look at the concept of Rules of Engagement (ROE) because the term is usually raised in relation with the use of force by military forces. As stated in NATO legal Desk Book, “*ROE emanates from competent authorities and assist in the delineation of the circumstances and limitations within which military forces may be employed to achieve their objectives*”³⁵. Sartre defines the ROE is an essential document that describes the conditions

³¹Brownlie, Supra note 25, P.361,Par.1,

³²Nicaragua V. United States of America), International court of Justice(ICJ), Case Concerning Military and Paramilitary Activities in and Against Nicaragua, (1986)

³³Hurd, Supra note 30, p. 298

³⁴ United Nations, Report of the Commission to the General Assembly on the work of its fifty-third session, Yearbook of The International Law Commission, Volume II, Part Two, (2001), P.128; see also Articles 39, 41 and 42 of the UN Charter; some assume that it can applies to force other than armed force include economic measures of a coercive nature

³⁵ Sherrod Lewis Bumgardener(ed.), NATO Legal Desk book, 2nd., ed, (2010), P.258, para.4,

under which force will be used, and who will have the authority to take those decisions.³⁶ In national military doctrines, ROE may appear in different forms, whatever their form is, it serve as a legal basis for and limits the use of force. ROE have the status of guidance to military forces in some states whereas; it is a lawful command in others.³⁷ Therefore, this study presents both terms to be seen in the above context throughout this paper.

2.2.2. Paradigm

In international law, the legal regimes that regulate the use of force are also found in International Humanitarian Law (IHL) and International Human Rights Law (IHRL).³⁸ They serve as an international legal basis for paradigms of the conduct of hostilities and law enforcement. In IHRL, the legal regime governing the use of force against individuals emanates from the right to life, which is stipulated in human rights covenants³⁹. In IHL, same rules can be found in the 1907 Hague Regulations, the Additional Protocols to the Geneva Conventions and customary IHL.⁴⁰ Among these rules the principle of distinction that require parties to an armed conflict to distinguish between civilians and military objectives, is of a paramount importance.⁴¹ That means acts of such nature that targets civilians or civilian objects are unlawful⁴². Prohibiting the illegal use of armed force is fundamental to the world order, and it protects the military as well as civilian victims, as Ferencz argues, *Universal declarations of human rights and humanitarian proclamations have multiplied over the years but enforcement of these noble goals has been very slow.*⁴³ The main purposes of IHL are to protect noncombatants from the

³⁶ Sartre, Supra note 19, P. 27

³⁷ Commander Alan Cole, Et al. (ed.), Sanremo-Hand Book on Rules of Engagement, International Institute of Humanitarian law, (2009), P.1,Para.3

³⁸ Siret Hürsoy Nesrin Ada,(ed), “Challenges to Peace Operations in the 21st Century, Proceedings of the 2nd International Conference on Security”, Izmir University of Economics Press, (2007). P 115; in this conference, two categories of control to use of force were referred, These are the circumstances in which force may be used and the manner in which hostilities are conducted (general international law, UN Charter, or international humanitarian law and human rights law)

³⁹ International Covenant on Civil and Political Rights (here after ICCPR), General Assembly resolution 2200A (XXI), (Adopted Sep.1966), Art 6

⁴⁰ Jean-Marie Henckaerts and Louise Doswald-Beck, “Customary International Humanitarian Law”, ICRC, Cambridge university press, (2005)Vol. I. Rule 1

⁴¹ *Id.*, PP.3-8; See also Benjamin B Ferencz, “The Illegal Use of Armed Force as a Crime Against Humanity”, Journal on the Use of Force and International Law, Vol. 2, No. 2, (2015), P. 188

⁴² Gloria Gaggioli (ed.), “The Use of Force in Armed Conflicts, Interplay Between The Conduct of Hostilities and Law Enforcement Paradigms”, ICRC, Expert Meeting (2013)pp.4-9, available at<<https://shop.icrc.org/e-books/the-use-of-force-in-armed-conflicts-expert-meeting.htm>>; last visited on Feb. 9, 2016, 12:28

⁴³ Ferencz, supra note 41, PP. 189-190

effects of hostilities. Other set of rules, such as, necessity, proportionality and precautions in attack are also the main part of the conduct of hostilities paradigm⁴⁴ On top of this, Human Rights Law conceived to protect individuals from abuse by their State and to provide rules and guidance on the use of force used by State agents in the name of public security, law and order as a last resort⁴⁵.

In 2003, the Israeli Supreme Court adopted a different approach, Mixed-model, that combine concepts borrowed from both IHL and Human Rights Law.⁴⁶ The court applied the rationale which is found in both a conduct of hostilities and law enforcement paradigm. In the late 1990s, the European Court of Human Rights systematically applied the law enforcement paradigm when dealing with cases where force was used against members of the PKK⁴⁷. The approach followed by some human rights bodies which is different from IHL reasoning led legal scholars to have different views about which paradigm should apply when dealing with legitimate targets in non-international armed conflicts and situations of occupation.⁴⁸

2.2.3. Classifications

Even though the UN Charter provides legal prohibitions against the use of force, there are exceptions to justify the use of force or armed intervention.⁴⁹ The concept of Self-defense, to begin with, is an action that constitutes a legitimate act of individual or collective self-defense pursuant to Article 51 of the UN Charter and customary international law (CIL).⁵⁰ The conception of individual and collective self-defense is found in customary international law and

⁴⁴Elizabeth Wilmshurst (ed.), "International Law and the Classification of Conflict", The British yearbook of International Law, Vol., 83, Issue 1, Oxford University Press, (2012), PP.145-160.

⁴⁵*Ibid.*

⁴⁶*Id.*, P.162.

⁴⁷Meron, supra note 2, P.471 ; The Court emphasizing the principles of necessity, proportionality, and the duty to take sufficient precautions, it held Turkey responsible for a violation of Article 2 ECHR

⁴⁸Richard P. DiMaggio LTC Et al., "Law of Armed Conflict" Desk Book, (2012), PP.19-40, available at https://www.loc.gov/rr/frd/Military_Law/pdf/LOAC-Deskbook-2012.pdf last visited on Feb 9,2016, 12:40PM

⁴⁹ UN Charter, Supra note 5, Art.2 (4), art. 51

⁵⁰ Claus Krieb, Major Post-Westphalia Shifts And Some Important Neo-Westphalia Hesitations In The State Practice On The International Law On The Use Of Force, Journal on the Use of Force and International Law Vol. 1 No. 1, p 13; See also ICJ, supra note 34; the court held that CIL prohibition of the use of forces exists alongside Art 2(4) of the UN Charter

state practice.⁵¹ Self-defense is the inherent right of a state and fundamental legal basis for an operation involving the use of force, for instance, Sir Franklin Burman states that the law of self-defense is well understood but regulated by necessity and proportionality.⁵² Secondly, there is UN Enforcement Actions authorized by the UN Security Council under Chapter VII of the UN Charter. The UN Charter gives the UN Security Council a wide discretion in mandating or authorizing a response to a threat or use of force.⁵³ Thirdly, the use of force or armed intervention based on Consent or invitation by host nation that seeks assistance is another type. Kreb argued that UN Charter's prohibition of the use of force does not apply internally and it does not affect the power by a state to invite other states to use force on its territory because it is a matter of international relations.⁵⁴ Furthermore, Max Byrne has described Consent is a manifestation of the sovereign equality of states, the underlying principle of UN as provided in its Article 2(7) and also, continued his argument, the product of an international system that seeks to preserve the autonomy of states.⁵⁵

Fourthly, Kenkel sub divides peace operations into five generations based on three main factors; such as, the level of force used by operations 'military pillar'; the type and depth of tasks, 'civilian pillar'; and UN burden sharing with regional organizations.⁵⁶ Finally, though Humanitarian Intervention is also not expressly mentioned in the UN Charter, the Charter states Humanitarian Intervention as a means to protect a nation's population in whole or in part from denial of their most basic human rights and principally their right to life.⁵⁷ In Yuki Abe's writings of, what he called, "Norm Dilemmas", whilst cessation of violence occurring in a foreign

⁵¹ Caroline case, Correspondences of US state secretary Vs UK, (1838); See also UN Report , Supra note 34, P.81; The "*Caroline*" incident frequently referred to as an instance of self-defense , it was not closed until 1842, with an exchange of letters

⁵² Sir Franklin Berman, "The UN Charter and the Use of Force", Singapore Year Book of International Law, (2006), P.12; see also UN Charter, Supra note 5, Art.51

⁵³ *Ibid*, Berman emphasized on articles 24 and 25 which lays down the binding nature of Council decisions and under which the Members agree that in carrying out its duties the Security Council acts on their behalf ; see also UN Charter, Art. 39

⁵⁴ Kreb , supra not 50, P. 14

⁵⁵ Max Byrne , "Consent and the use of force: an examination of 'intervention by invitation' as a basis for US drone strikes in Pakistan, Somalia and Yemen", Journal on the Use of Force and International Law, Vol. 3, No. 1, (2016), P. 99

⁵⁶ Kai Michael Kenkel, "Five generations of peace operations: from the 'thin blue line' to 'painting a country blue', (2013), PP. 124-136; See also Findlay, Supra note 3, PP.3-7

⁵⁷ Yuki Abe "Japan Norm dilemmas and international organizational development: humanitarian intervention in the crisis of Bosnia and the reorganization of North Atlantic Treaty Organization", Contemporary Security Policy, Faculty of Law, Kumamoto University, Vol. 37, No. 1, (2016), P. 65; See also UN Charter, Supra note 4, preamble Para. 1. Art. 1 (3); See also ICCPR, Supra note 39, Art 6

country is desirable, but armed intervention would breach principles of sovereign integrity and non-use of force, if it also brings about casualties among local civilians and soldiers of intervening states, then, the legitimacy of the action become debatable.⁵⁸ As Claus Kreb put forward the view that a new “unwritten exception” to the prohibition of the use of force when force is used to avert humanitarian catastrophe.⁵⁹

2.3. Historical Development

2.3.1. Pre-UN Charter Use of Force Norms

The just war concept was brought about in the Christian world by theologians in which the religious doctrine contained guidance on lawful reasons for resort to war by its adherents.⁶⁰ The concept of independent princes with political capacity and the development of a system of sovereign national states had gone through the significant stages in the period between the 1494 and 1648 which marked the end of violent religious wars.⁶¹ The period 1648 to 1815 is characterized by the needs to advance reasons for declaring war and became an era within which the European states reached a general settlement in the treaty of Westphalia.⁶² The right of self-preservation, as a form of a doctrine of necessity, was appeared in the nineteenth century after the “Caroline incident” of December 1838.⁶³

Since the Westphalia peace treaty of 1648 the concept of international security has ignored the internal affairs of state. Examination of state practice on the humanitarian intervention in nineteenth century was only characterized by the presence of selfish motives.⁶⁴ Furthermore, the Hague peace conference of 1899 and 1907 had been concentrated on the rules of warfare in

⁵⁸ *Id.*, P. 63; Abi argued the action can collide with other norms, for instances, Respect for the integrity of sovereignty, Non-use of force and Zero casualties

⁵⁹ Kreb, supra note 50, P. 19

⁶⁰ Brownlie, supra note 25, P.3 Para. 1

⁶¹ Derek Croxton, “The Peace of Westphalia of 1648 and the Origins of Sovereignty”, *The International History Review*, Ohio State University, (1999), P. 591; Croxton describes as the peace of Westphalia was not a multilateral treaty, but two bilateral treaties, one signed between Sweden and the Emperor, and between France and the Emperor

⁶² Brownlie, supra note 25, P.14

⁶³ Hurd, supra note 30; P. 296 Hurd discusses that the Caroline affair, which arose from skirmishes between the United States and Britain provides a case in which a state’s justification for its behaviour of lawful and unlawful uses of force; see also the discussion by Crawford & Redgwell, supra note 24, P.163

⁶⁴ Brownlie, Supra note 25, PP.338-342

general. In the later period, restrictions towards resort to war were agreed on in the Bryan Treaties concluded from 1913 onward between the United States and several states.⁶⁵ Then, the covenant of the League of Nations made any war between states a matter of international concern and introduced a new concept into international law: a distinction between legal and illegal wars.⁶⁶ The Briand Kellogg Pact of 1928 outlawed for the first time the notion of the right to wage war and this pact became one of the legal instruments that established the illegality of aggressive war and used by the international military tribunal at Nuremburg and Tokyo along with international customary law.⁶⁷

2.3.2. Post-UN Charter Use of Force Norms

The period since 1945 is characterized, as Sebastian Heselhaus illustrates, firstly, by the basic norm of the illegality of force as a means of self-help which has affected the jurisprudence of both international and municipal courts and, Secondly, the covenant, non-aggression pact and some pre-war non-aggression treaties are no longer prominent in international relations.⁶⁸ The creation of the United Nations (UN) is come up with provisions to prevent war by a system of collective security and to avoid old deficiency.⁶⁹ The UN charter established a prohibition on the threat or use of force against the territorial integrity or independence of any state, or in any manner inconsistent with the purpose of the UN.⁷⁰ Now a day, nearly all states have become UN members; the prohibition on the use of force is regarded as general rule of international law but still subject to the inherent right of self-defense. The UN charter still maintains the tradition of the Westphalia peace treaty in which it is blind to a state's internal affairs.⁷¹ This is reflected by its article 2 sub articles 7 which make UN subject to the principle of non-intervention.

⁶⁵ Sebastian Heselhaus , "International law and the use of force", (2017) available at <http://WWW.eolss.net/Eolss-Allchapter.aspx>, last visited on Feb.9, 2016, 12:30.

⁶⁶ Covenant of the League of Nations, (Adopted April 1919), Art 11

⁶⁷ Briand Kellogg Pact, Treaty between the United States and Et al, Powers providing for the renunciation of war as an instrument of national policy, (Signed Aug. 1928), Art 1; see also Ferencz, supra note 41, P.190 Ferencz discusses the Nuremberg principles' intention to replace the horrors of armed conflict by a rule of enforceable humanitarian law and the new idea that individuals were criminally liable for violations of jus congess, a principles no derogation would be permissible, as it became a new set of international legal norms.

⁶⁸ Heselhaus, Supra note 65

⁶⁹ Sir Berman, supra note 52, p. 17

⁷⁰ UN Charter, Supra note 4, Art.2(4)

⁷¹ Heselhaus, Supra note 65; see also Kreb , supra not 50, p. 14

2.3.3. Post-Cold War Developments

In Cold War era, UN missions were dominated by what has been known as traditional peacekeeping with a mandate under Chapter VI of the UN Charter and limiting rules of engagement after a truce or ceasefire agreement.⁷² Firstly, the UN use of force norm grounded in the concept of self-defense and, later, in that of the defense of the mission.⁷³ However, the end of the Cold War has been exhibited, in Kaldor term, the shift in the nature of conflict from “old wars” towards “new wars” which are characterized by internal conflicts, in former Yugoslavia or Africa.⁷⁴ As Herro describes the norms of Westphalia of non-intervention and sovereignty has shifted to a “post-Westphalia” conception which put human rights issues at the centre.⁷⁵ By early 1992, it was recognized that UN operations developed beyond the conventional types of traditional peacekeeping.⁷⁶ This has been culminated in the shift from peacekeeping to peace operations or enforcements, as new responsibilities of international organizations mainly the UN.⁷⁷ As a result, the UN began a series of reforms on its peacekeeping operations in response to the expectations and demands, problems in the field and widespread criticism.⁷⁸

2.4. Use of Force in UN Peace Operations

2.4.1. Source of Mandate

The use of force by a UN peace operation is authorized in the mandate given to the Mission by the Security Council. Peacekeeping operation established under Chapter VI of the UN Charter which is normally deployed with the consent of the parties involved in the conflict and the authorization to use force, is limited to self-defense.⁷⁹ The lack of focus and clarity regarding the

⁷²Kenkel, supra note 56, P. 125

⁷³Mateje Peter (ed.), “United Nations Peace Operations aligning principles and practice Report”, The Norwegian Institute of International Affairs, NUPI, Rep. No. 2, (2015), P.19

⁷⁴Nesrin, Supra note 38, PP 113-114; see also the discussions by Kenkel, supra note 56, p. 127

⁷⁵Annie Herro, “The responsibility to protect, the use of force and a permanent United Nations peace service”, The International Journal of Human Rights, Centre for Peace and Conflict Studies, University of Sydney, Vol. 19, No. 8, (2015), PP. 1152-1155

⁷⁶Findlay, Supra note 3, PP.3-7

⁷⁷Nesrin, supra note 38, P. 6

⁷⁸United Nations, Report of the Panel on United Nations Peace Operations(Brahimi Report), General Assembly, Security Council, Fifty-fifth session,(Nov. 2000),Comprehensive review of the whole question of peacekeeping operations in all their aspects. The Security Council welcomed the report of the Panel on United Nations Peace Operations "Brahimi Report" and unanimously adopted a wide-ranging resolution containing recommendations and decisions on peacekeeping operations proposed by its Working Group.

⁷⁹Berdal & Hucko, Supra note 7

legal framework towards the protection of civilians mandate has been a challenge of these operations and later on the focus returned to the protection of civilians' mandate.⁸⁰ As compared to peacekeeping, the use of military force by the UN for enforcement purposes derives its legality from Chapter VII of the UN Charter, action with respect to threats to the peace, breaches of the peace, and acts of aggression. A Mission established under Chapter VII, unlike to a Chapter VI Mission, may therefore be authorized to use force beyond self-defense for enforcement objectives. Usually it provide with a mission simply to use 'all necessary means'⁸¹ to accomplish its mandate. Security Council has the monopoly on the authorization of the use of force and it may use regional forces as envisaged under Chapter VIII.⁸²

Nevertheless, a number of interventions have been carried out without prior Security Council authorization by regional forces, such as, the NATO action against FRY, or the Kosovo war of 1999, ECOWAS in Liberia in 1990.⁸³ In this connection, Meron critically discussed that the inability of the UNSC to agree on intervention resulted in enforcement actions without its authorization which threaten the essence of the international security system founded on UN Charter. Mandate in UN resolution, provides the first top international legal authority for the operation and the duties, responsibilities, privileges and immunities determined by host agreement and other legal documents.⁸⁴ Nesrin, describes, SC authorization can be granted in three different forms, the authorization is generally addressed to Member States; explicitly mandate to a single member state; and prior authorization or ex post facto endorsement of regional arrangements.⁸⁵ As Karlsrud put forward as, today's new mandate and peace operations are oriented towards stabilization with a high level of robust use of force, as rephrased it as 'muscular' peacekeeping.⁸⁶

⁸⁰ Willmot and Sheeran, *Supra* note 22, PP. 123-137

⁸¹ Many recent UNPSC Resolutions use this phrase to mandate peace enforcement operations.

⁸² Kent J. Kille and Ryan C. Hendrickson, "Explaining International Organizations, NATO and the United Nations": Debates and Trends in Institutional Coordination", *College of Wooster, Eastern Illinois University*, P.33

⁸³ Meron, *Supra* note 2, PP. 518-520; See also *Nicaragua V. United States of America*, *supra* note 32; ICJ rejected other(even human rights) legal justification for the use of force and Security Council only has special responsibilities under Chapter VII of the Charter,

⁸⁴ Nesrin, *supra* note 38, PP. 138-140; for instance, SOMA, directives and regulations by SG and details of regulations and operating procedures by force commander

⁸⁵ *Ibid*, it illustrates, the prior authorization (Somalia, Bosnia, Rwanda, Albania, East-Timor) or the ex post facto approval (Liberia, Central African Republic, Sierra Leone, Kosovo)

⁸⁶ John Karlsrud, "The UN at war: examining the consequences of peace-enforcement mandates for the UN peacekeeping operations in the CAR, the DRC and Mali", *Third World Quarterly*, Peace Operations Group,

2.4.2. Command and Control of the Use of Force by UN Mission

The chain of command for UN Peace Operations runs from the UN Security Council through the UN Secretary-General and his representatives in the field to the military contingents supplied by UN member states.⁸⁷ In theory, the Security Council is responsible for the command and control of military forces. Article 47 of the UN Charter provides for the establishment of a Military Staff Committee, comprising the chiefs of staff of the five permanent members of the Security Council to assist the Security Council in deploying and managing such military forces.

First, the Secretary-General is the commander-in-chief of UN Peace Operations involved in command decisions, especially when force has been used. For each mission he/she appoints a head of mission, called the Special Representative of the Secretary-General (SRSG), and a force commander to lead the military component or both posts may be occupied by a single individual, at the middle and lower level headed by the respective contingent commanders.⁸⁸

Second, for enforcement operations which have demanded the sustained and massive use of force to implement, the Security Council has the power to entrust the command and control of the operation, either to a single member state or to a coalition, For instance, the operation in Korea in the early 1950s operation under the UN flag and the United Task Force (UNITAF) in Somalia, led by the USA; and the International Force for East Timor (INTERFET), led by Australia.⁸⁹

But, for instance, Patrice Sartre argued that the structure of the UN command system is debated and cited as a cause of weakness as well as he further emphasized that they are currently not commanded in the true military sense of the term because often by passing the SRSG, the true head of the mission on the field.⁹⁰ Evaluation Report of UN peacekeeping operations before the General Assembly suggests that a de facto dual line of command exercised by troop contributing countries

Norwegian Institute of International Affairs (NUPI), Vol. 36, No. 1, (2015), P. 44; See also Berdal & Huckom supra not 21, P. 667

⁸⁷ Findlay, Supra note 3, PP.9-13

⁸⁸ *Ibid*; see also a discussion by Sartre, Supra not 19, P. 27

⁸⁹ *Ibid*

⁹⁰ Sartre, supra not 19, P. 27

and written and unwritten national caveats on their contingents has an impact on the use of force of the mission.⁹¹

2.4.3. UN Use of Force Rules

The rules of international law underpin the existence of three interrelated cardinal principles to the prohibition of the use of force in international relations. The UN Charter clearly prohibits the threat or use of force.⁹² It also preserves a state's inherent rights of self defense during an armed attack which makes it a part of a definition of the obligations to refrain from the use of force or threat of it as stipulated in article 2 sub article 4.⁹³ Hence a state which exercises self defense is not in the breach of article 2 paragraph 4 of UN charter and does not constitutes wrongful act⁹⁴ albeit controlled by parameters of necessity and proportionality.⁹⁵ Thirdly, UNSC authorization, Measures of forcible actions sanctioned pursuant to Chapters VII or VIII of the UN Charter is lawful under modern international laws and use of force to avert humanitarian catastrophe⁹⁶ can be taken as an extension of this later rule.

Furthermore, the issue whether the existing rules is adequate to meet current threats, especially from non-State actors? However, the broader interpretation of the roles of the UN Security Council in the maintenance of international peace and security might be taken as a sufficient justification to address the issue of non-state actors and humanitarian crisis.⁹⁷

2.4.4. UN Doctrine, Policy and principles on the use of force

Patrice Sartre defined the term “doctrine” as a group of concepts that enables planning of a coherent program of action by international players, for global opinion in terms to be understood universally and to evaluate the legal responsibilities of the various actors, in terms of their

⁹¹ UN General Assembly Report, Supra note 8, PP. 13-14

⁹² UN Charter, Supra note 5, Art.2(4): see also Michael Wood, “International law and use of force: What Happens in Practice”, vol. 53, (2013), PP.332-355

⁹³*Id.*, Art.51

⁹⁴ United Nations, supra not 34, P. 74, 84

⁹⁵*Id.*, Chapter VII, Art. 39-41

⁹⁶ Martin Ortega, “Military intervention and European Union”, Institute for security studies Western European, Chaillot Paper 45, (2001), PP.5-10

⁹⁷ ICISS Report, International Commission on Intervention and State Sovereignty, The Responsibility to Protect, The International Development Research Centre,(2001), pp.1-3; See also Michael Wood, Supra note 80, P.366, Para. 2

understanding of the mission.⁹⁸ Three basic inter-related and mutually reinforcing principles have traditionally set United Nations peacekeeping operations; Consent of the parties, Impartiality, Non-use of force except in self-defense and defense of the mandate.⁹⁹ The concepts known as capstone doctrine introduce and highlight three success factors: legitimacy, credibility and local ownership.¹⁰⁰ The legitimacy and credibility are seen as key assets and comparative advantages of UN peacekeeping operations and it can lose legitimacy if it serves national or regional interests and fails to secure local ownership.¹⁰¹

In the 1990s the Brahimi report came up with a new term Peace Operations and emphasized the need for robust doctrine and realistic mandate. The Panel agrees that the above three principles should remain the “bedrock” and, forwarded the idea that Impartiality for UN operations must also mean adherence to the principles of the Charter rather than providing equal treatment of all parties where one party to a peace agreement is violating its terms. It further stress that it can result in ineffectiveness and may amount to complicity with evil party. This damaged the standing and credibility of United Nations peacekeeping in the 1990s, Moreover, the panel recommended that the United Nations peacekeepers, particularly, troops or police who witness violence against civilians should be given a broad and explicit mandate for civilian protection as well as the specific resources needed to carry out that mandate.¹⁰²

2.4.5. UN Rules of Engagement

The rules of engagement (ROE) are legally binding instructions on when, where, and how soldiers may use force. In peacekeeping operation, it define the degrees of force that can be used in various situations, how each level of force should be used and any authorizations that may need to be obtained from commanders.¹⁰³ UN guidance has defined ROE as directives issued by

⁹⁸ Sartre, supra not 19, P.12

⁹⁹ United Nations, “United Nations Peacekeeping Operations Principles and Guidelines”, Department of Peacekeeping Operations Department of Field Support, Part I, Chap. 3, (2010) P.31

¹⁰⁰ Cedric de Coning, Et al., “Report of the TFP Oslo Doctrine Seminar”, UN Peacekeeping Operations Capstone Doctrine, (2008), P.2 Para 3

¹⁰¹ United Nations, Supra note 62, P.37; See also United Nations Report, Supra note 78, P. IX Para. 4, P. 9, Para 48

¹⁰² *Id.*, Para. 50; P.11, Para 62

¹⁰³ UN, Department of Peacekeeping Operations, “Glossary of UN Peacekeeping Terms”, Department of peace Keeping Operations(here after DPKO Training Unit, (1998), *available at* www.un.org/Depts/dpko/glossary/r.htm), last visited on Feb 9,2016, 12:30

Department of Peace Keeping Operations (DPKO) that specify the way how units in peacekeeping operations have to act with hostile parties.¹⁰⁴

The United Nations, on May 2002, in its provisionally provided Master List encompasses five sets of rules. These are: Use of Force, Use of Weapon Systems, and authority to carry Weapons, Authority to Detain, Search and Disarm, and Reaction to Civil Action or Unrest.¹⁰⁵ Selection among these rules require the observance of the principle of minimum necessary force; for instance, it allowed Use of force including deadly force on self-defense, to defend UN personnel, other international personnel, to protect United Nations' installations, to defend any civilian person who is in need of protection, against a hostile act or hostile intent.¹⁰⁶

Hence, ROE were issued in different ways and names by different peacekeeping operations, such as; United Nations Operation in Congo (ONUC) operations directives of 17 August 1960, Use-of-force instructions for United Nations Force in Lebanon (UNFIL), Rules of engagement for United Nations Protection Force in Yugoslavia (UNPROFOR) Issued 24 March 1992, Rules of engagement for United Nations Task Force in Somalia (UNITAF): ROE card for Operation Restore Hope Reproduced December 1994, Rules of engagement for United Nations Operations in Somalia (UNOSOM) II of May 1993.¹⁰⁷

2.4.6. Challenges of Peacekeeping

Trevor Findlay states, despite having engaged in peacekeeping for more than 3 decades, the UN at the time when the cold war ended in 1989 had no use of force doctrine. There were no rules of engagement developed and Security Council resolutions unable to offer guidance on the use of Force as well as concepts of operations on which missions could draw, resulted in successive force commanders were left to use their own.¹⁰⁸ The operations mandated immediately after the end of the cold war could not be prepared properly. The overrule of a strict interpretation consent

¹⁰⁴*Ibid*

¹⁰⁵UN, DPKO, "Provisional, master list of numbered rules of engagement", UN doc. MD/FGS/0220.0001, Attachment 1, Rules 1-5, (2002), Guidelines for the development of ROE for UNPKO

¹⁰⁶*Id.*, Rule 1.8

¹⁰⁷ Commander Alan Cole. *Supra* note 12, P.6; See also United Nations, *Supra* note 91, Attachment 1

¹⁰⁸Findlay, *Supra* note 3, P.119

of parties to the conflict, by the Security Council brought the traditional peacekeeping norms of consent, impartiality and the use of force in self-defense under increasing strain.¹⁰⁹

Moreover, different positions on the use of force and the fact that each international intervention is unique pose challenges to the formulation of concrete policy. The increasing deployment of peacekeepers in conditions of civil or internal conflicts, in most cases difficult to attain consent, brought a challenge in maintaining impartiality and self-defense norms.¹¹⁰ In such circumstances, parties are less likely to comply with the agreements they sign and more likely they tend to see peacekeepers as obstacles standing on their ways.¹¹¹

Ratner emphasized that a weak UN military forces being dragged into armed conflict with one or other belligerent party. It was also experienced a pressure to respond with military force in such situations which came not only from international opinion and some governments, but also from local parties, especially, from those who abide by the peace agreement.¹¹²

Another peacekeeping challenge is that the expanded multidimensional missions usually have large civilian components whose security and safety was the responsibility of the military component as well as the need to have a robust mandate and use more force than traditional peacekeeping.¹¹³ Furthermore, the policies of the states towards UN's use of force resulted in an increased tendency of all national contingents to seek instructions from home and less coherency among troop contributing countries.¹¹⁴

¹⁰⁹*Id.*, P.148

¹¹⁰Berdal and Hucko, *Supra* note 7, P.9

¹¹¹Findlay, *Supra* note 3, P.119

¹¹² Ratner S., "The New UN Peacekeeping", *Macmillan Publishers*, (1995) P. 50

¹¹³ United Nations Report, *Supra* note 78, Para. 48

¹¹⁴ For instance, British, Spain and Norwegian contingents in UNPROFOR interpreted their mandate differently one supporting the protection of civilians, others interpreted their mandates very narrowly as excluding response to human rights violations or threats to civilians; see also Findlay, *Supra* note 3, PP. 226-227

2.5. Use of Force in African Peacekeeping Mission

2.5.1. Legal Framework in African Context

Collective security among member states of the organization of African unity (OAU) was not originally envisaged as function of the continental body.¹¹⁵ Before 2002, Africa's conflict management were undertaken in ad hoc manner and the Organization of African Unity's (OAU) decision not to involve in peacekeeping operations let it to focus on a preventive diplomacy as well as its Charter was dominated by the principles of non-interference in the internal affairs of member states but the atrocity in Burundi and Rwanda alarmed the OAU.¹¹⁶ It has moved away from non-interference or non-intervention which is a cardinal principle in both the United Nations Charter and the Charter of OAU to non-indifference.¹¹⁷ As Kuwali discussions, Article 4(h) of the Constitutive Act of the African Union provides formulation termed 'intervention against mass atrocities' and article 4(j) provides a formulation of 'intervention by invitation'.¹¹⁸ In D. Williams words, this period of normative evolution involved a shift from the guiding principle associated with the OAU to the new norm which is a positive development for those interested in effective conflict management.¹¹⁹

Moreover, the AU Peace and Security Council established, based on article 5(2) of the constitutive act, to carry out the primary responsibility for the maintenance of international peace and security in Africa.¹²⁰ The AUPSC is supported by the AU Commission, the Panel of the Wise, the Continental Early Warning System, an African Standby Force and the Peace Fund.¹²¹ The PSC Protocol provides for the establishment of an African Standby Force (ASF), composed of multidisciplinary contingents with civilian and military components, to carry out

¹¹⁵ N.D Waite, "The Law of International Organizations", Manchester University Press, (1996), PP. 214-221

¹¹⁶ Maria Raquel Freire, et.al. "Responsibility to protect and the African Union: Assessing the AU's capacity to respond to regional complex humanitarian and political emergencies", African Security Review, Vol. 25, No. 3, (2016), P. 234

¹¹⁷ Ben Kioko, B., "The right of intervention under the African Union's Constitutive Act: From non-interference to non-intervention", International Review of the Red Cross, (2003), PP.852, 807-825

¹¹⁸ Dan Kuwali, "From stopping to preventing atrocities, Actualisation of Article 4(h) African Security Review", Institute for Security Studies. (2015) , P. 149

¹¹⁹ Paul D. Williams, "Reflections on the Evolving African Peace and Security Architecture", African Security, Elliott School of International Affairs, George Washington University, (2014), P. 149

¹²⁰ Protocol, Supra note 13, Art 16

¹²¹ *Id.*, Art. 2(2)

peace support operations.¹²²The ASF is a sub-regional standby force established by the five sub-regions, namely the eastern, western, northern, central and southern sub regions of Africa.¹²³The power to pass the final decision on the AU's right of intervention lies with the AU Assembly. Therefore, AU has become an international organization to have enshrined a right to use force in one of its member states on humanitarian and human rights grounds.¹²⁴

2.5.2. The Development of Use of Force in African Peacekeeping Operation

In 1990, ECOWAS, without authorization of the UN Security Council, used force to end mass atrocities occurring in Liberia civil war which makes it the first precedent operated without UNSC authorization.¹²⁵ African states conducted peace operations under the cover of the RECs, such as; ECOWAS Liberia, Sierra Leone, and Guinea-Bissau and; the SADC in Lesotho and the DRC.¹²⁶ The UN has been the predominant peacekeeper on the continent so far. However, The AU has authorized to deploy a significant number of peacekeepers, such as; in Burundi, the Comoros, Darfur, Somalia, Central Africa, and Mali.¹²⁷ Apart from this an important trend that involve collaboration among two or more international institutions, most notably the UN, EU and various bilateral partners increased number of operations.¹²⁸ Hence, the involvement of Africa's RECs in peace operations, the establishment of the AU's Peace and Security Council, regional standby forces and the new African Capacity for Immediate Response to Crises (ACIRC), all seem to be the outcome of those developments.¹²⁹

In 2000, As de Coning forwards, African countries contributed only 10,000 troops to UN peacekeeping but by early 2017, African countries contribute approximately 48,000

¹²²*Id.*, Art 13

¹²³African Union Policy Framework for the Establishment of The African Standby Force and The Military Staff Committee, Exp/ASF-MS/2 (1), adopted at the 3rd Meeting of African Chiefs of Defense Staff, (May 2003),Part I

¹²⁴Ludwig Gelot-Cedric de Coning, "Supporting African Peace Operations", Policy dialogue No 8, The Nordic Africa Institute,(2012), P.25 ; See also Freire, et.al., Supra note 117, P.234

¹²⁵Claus Krieb, supra note P. 22: See also E.A.Erskine, Lt-Gen, Supra note 27, P.96; See also Willmot and Sheeran, supra note 22

¹²⁶Freire, et.al., Supra note 117, P.234 See also Meron, Supra not 2, PP. 518-519;

¹²⁷Progress Report of the Chairperson of the Commission on the Development of Guidelines for the Protection of Civilians in African Union Peace Support Operations, Peace and Security Council ,279th Meeting ,(2011), P.1 Para.3

¹²⁸Linnea Gelot, "Legitimacy, Peace Operations and Global- Regional Security", The African Union- United Nations Partnership in Darfur, Routledge Taylor and Francis Group,(2012), P.21

¹²⁹Paul D. Williams, "Peace Operations in Africa: Lessons Learned Since 2000", African Center for Strategic Studies, Africa Security Brief, (2 0 1 3),P.3 para.4

peacekeepers to the UN, which amounts to about 50% of all UN peacekeepers and AU has deployed eight peace support operations of its own.¹³⁰

2.5.3 Experience and Lessons of Peace Operations in Africa

This section tries to review the major lessons learned from some of the peace operations deployed in Africa so far. There are many mission-specific lessons can be drawn. As Adebayo suggested, for example, the lesson gained in the case of the DRC was negative to which it is necessary to avoid repeating the same strategy because this mission was intended to assist successive Congolese governments and their security forces as well as protecting civilians in situations where the former were often a major threat to the latter.¹³¹

The discrepancy between the authorized force levels and the actual numbers of personnel on the ground has been experienced during UNAMID's first year in Sudan so; large vacancy rates and personnel gaps have damaged the performance of the operations.¹³² Adebayo also states the need to have a defined and robust mandate since the Past practices showed that numerous peace operations have been unable to deter spoilers and protect civilians.¹³³ Hence, clarity is also required over the obligations of peacekeepers to protect civilians and when and how to use military force against armed non-state actors. In this regard, African union expanded its efforts to incorporate protection of civilians into their missions.¹³⁴ Fourthly, another lesson to be mentioned in here is the need to generate specific mission capabilities not just numbers of personnel. Force generation has been observed to be a crucial component of peace operations in Africa.¹³⁵

As Gelot emphasized, since success of a mission depends upon the perception of other actors, maintaining legitimacy in the eyes of the relevant parties, local civilians, International NGOs, and foreign governments is also an important part of lessons to be considered concerning peace

¹³⁰ Cedric de Coning "Peace enforcement in Africa: Doctrinal distinctions between the African Union and United Nations", Contemporary Security Policy, (2017), PP. 1-2

¹³¹ Adekeye Adebajo, "UN Peace Keeping in Africa , from the Suez Crisis to the Sudan Conflicts", (2011), P.67

¹³² Cedric de Coning, Supra note 124, PP.38-39

¹³³ Adebajo, Supra note 131 , pp.69-74

¹³⁴ AU, Aide memoire for the consideration of issues pertaining to the protection of civilians in Africa (2013), P. 9 This document makes reference to approved African Union (AU), United Nations and Regional Economic Communities/Regional Mechanisms (RECs/RMs) legal instruments relating to the protection of civilians. Thus, key elements of the approach to a comprehensive strategy of PoC are consistent with International Humanitarian Law, International Human Rights Law and International Refugee law as well as with other AU relevant instrument.

¹³⁵ E.A.Erskine, Supra note 27, P. 97

operations. Legitimacy of peace operation can be overshadowed by various forms of behavior, for example, accusation of peacekeepers of war crimes, failing to protect civilians from violence and abuses.¹³⁶

2.5.4 Use of force by African Mission and UN

African peace operations that entail the use of force require UN Security Council mandates under Chapter VII and VIII of the UN Charter and their deployment also call for the authorization of the AU Peace and Security Council.¹³⁷ Chapter VIII, Article 53 of the UN Charter requires regional arrangements of enforcement action to be authorized by UNSC and to keep updated all the actions to the council as per article 54.¹³⁸ As Karlsrud's reasoning, past two decades UN practice has undergone to which peace enforcement has been delegated to regional organizations and This has helped UN to maintain its impartial role and its ability to provide its "so-called" good offices as mediator between the parties.¹³⁹

Franke and Ganzle describes about the dichotomy on "African solutions to African problems", how Africans as well as non- Africans think about it. They explained, Western actors; such as , US, France, including UN and EU involved in the continent's security affairs and the selective application of their financial muscle have shaped African security as they use "African solution "if it fulfils their criteria, for example, if *they do not have any immediate interest in it, if they do have an immediate interest but do not want to engage directly or alone, or if it requires a long-term and sustained approach to which they are unwilling to commit.*¹⁴⁰

Some characteristics of AU model of peace operations are described by de Coning and his colleagues, they illustrate that AU undertakes mostly stability operations; All AU operations to date have been deployed amidst ongoing conflict. They are also 'offensive'; In contrast, UN peacekeeping operations have been characterized by monitoring ceasefire agreements and

¹³⁶ Linnea Gelot, Supra note 128, PP.70-90

¹³⁷ Cedric de Coning, Et al., "Strategic Options for the Future of African Peace Operations 2015–2025", Rep. No. 1, Norwegian Institute of International Affairs,(2015), PP.8-10

¹³⁸ Kille and Hendrickson, supra note 82; see also Meron, supra note 2

¹³⁹ Karlsrud, supra note 86, PP. 41

¹⁴⁰ Benedikt Franke & Stefan Gänzle, 'How "African" Is the African Peace and Security Architecture?', Conceptual and Practical Constraints of Regional Security Cooperation in Africa, African Security.IGlobal Governance Institute, Brussels, Belgium and University of Agder, Kristiansand, Norway, (2012) , pp. 95-96

helping to implement peace agreements. AU missions have differed from UN peacekeeping practice on its guiding principles: consent, impartiality and non-use of force.¹⁴¹

On top of the above mentioned characteristic, AU peace operations are predominantly short term missions that would be handed over to UN missions when basic stability has been restored. All these African peace operations have subsequently been taken over by UN peace operations with six to 18 months, except for the AU operation in Somalia, AMISOM.¹⁴²

2.5.5. Challenges and Limitation of Use of Force in African Peacekeeping Operations

African's experience in various UN operations and Western-led multinational missions is vast, but a number of challenges encountered when the continent undertakes missions on its own. Williams highlights the AU seem far too ambitious to take over peace operations in some extremely difficult circumstances in present architecture because it has suffered from a large capabilities-expectations gap. He further critically discusses the difficulty of agreeing on mandates for peace operations, the country in which the mission takes place is a member states and has friends to support its position. Article 4h of the AU Constitutive Act allows intervention without consent in grave circumstances but all of AU's peace operations, so far, have been undertaken at the invitation of the de jure authorities which prioritize the regime over human security.¹⁴³ The absence of clearly defined mandates has constituted a problem for OAU sponsored African force in Chad and ECOWAS sponsored ECOMOG in Liberia, In the case of OAU, Erskine describes, its charter does not embody provisions for intervention and consequently, there was no formalized institution to mandate the establishment and operation of peace keeping mission. The role of the OAU/ECOWAS, in the context of Chad and Liberia peace keeping operations were ambiguous.¹⁴⁴

Secondly, the unwillingness of some AU member states to contribute to the AU Peace Fund or to contribute troops for different reasons and the absence of financial and logistical support affects the ability of those troops to function effectively.¹⁴⁵ African countries contributing uniformed

¹⁴¹Cedric de Coning, et al, .supra note 137

¹⁴² the case of AMISOM exceptional in this regard since its mandates extended several times from 2007 up to now

¹⁴³ Paul D. Williams "The African Union's Peace Operations: A Comparative Analysis", African Security, George Washington University, (2009),

¹⁴⁴ E.A.Erskine, Supra note 27, P.30-31

¹⁴⁵Cedric de Coning, Supra note 137,P.26 Para.3

units to these missions have tended to provide infantry battalion and the difficulties related to the military capabilities of participating states Even; African countries whose militaries do possess better skills and Capacity are hardly allowing them available for extended periods which become obstacle for the ability to sustain a sizeable force.¹⁴⁶

The peacekeepers operated in situations where the political process is weak. In addition, African troops had experienced shortcomings on well-equipped logistic units as well as intelligence. Furthermore, the command structure of the force would also be a delicate issue, which would be addressed prior to the force's deployment.¹⁴⁷

Conclusion

The discussions presented in this Chapter are intended to assess the overall development of the norms related to the notion of use of force in the international plane as well as African context. In international law the notion of use of force has always been concerned with the relationship between states. In earlier times, there was an attempt to restrict the resort to war. In the Westphalia peace Treaty of 1648, European states agreed to end a long war waged on religious and territorial boundaries. Another approach that was intended to restrict the resort to war was agreed on in the Bryan treaties concluded from 1913 onwards between the United States and several other states.

Immediately, after World War I, the League of Nations Covenant of 1919 was the first attempt to create a collective security system whose main intention was to ensure peace, but in practice it couldn't achieve its objectives. In 1928, The Briand-Kellogg Pact was come up with a prohibition to a right to wage war but it lacked a mechanism of sanctions. The end of World War II was culminated with the creation of the UN entrusted to prevent war by a system of collective security. In the regional level, the general prohibition of the use of force has been confirmed in a number of treaties including the charter of the organization of African unity that affirmed the principles of state sovereignty and non-interference.

¹⁴⁶*Id.*, PP. 60-61

¹⁴⁷*Id.*, P.101

The end of the Cold War has witnessed the involvement of United Nations Peacekeeping Operations in the vast majority of today's internal conflicts. These operations are guided by the three basic principles, such as; Consent of the parties, Impartiality, Non-use of force except in self-defense. In addition, capstone doctrine came up with other three success factors of peace operations. These are legitimacy, credibility and local ownership. In 2000, Brahimi Report made the initiatives to improve the capability of UN peace operations to use force if and when required. The Panel concluded that consent of the local parties, impartiality and the use of force only in self-defense should remain the "bedrock". It recommended that United Nations military units must be capable of defending themselves, other mission components and the mission's mandate. ROE should be sufficiently robust and not force United Nations contingents to cede the initiative to their attackers. This report has been one of the revolutionary initiatives that were brought before UN general assembly for its consideration.

Recent trends have shown that African Peace Operations have also developed considerably. Hence, African Union has engaged itself in several peace operations by abandoning the principle of non-interference which was hold by its predecessor OAU. As such, it has some unique characteristics of an AU model. AU undertakes mostly stability operations. AU missions differed from those UN peacekeeping practice and its guiding principles. UN peacekeeping expected to be non-confrontational. But, AU stability operations are offensive in that a peace needs to be enforced by suppressing the capability of spoilers'. Based on the conceptual and normative assessments in this chapter, the next section will examine legal basis of the use of force and engagement by AMISOM.

Chapter Three

The Use of force and engagement by African Union Mission in Somalia (AMISOM)

3.1. Introduction

Africa has shown its effort to reduce the number and intensity of violent conflict on the continent, yet currently it provides over 50 percent of peacekeepers stationed in conflict ridden countries which show an increased capacity and development of African involvement in peace keeping operations.¹ However, the task of resolving prolonged conflicts and sustaining transitions from war to peace remained a priority for the AU. As such, the AMISOM is one of the peacekeeping operations by the African force, created by the AUPSC in January 2007² and authorized by the UN Security Council in February 2007.³

Initially, it was given a six month mandate to support Transitional Federal Government of Somalia (TFG) and transitional federal institutions (TFIs). But subsequent UNSC resolutions⁴ have given it to continue its mission in Somalia so far. AMISOM has grown from an initial deployment of about 1,500 Ugandan troops in 2007 and become the largest AU multidimensional peace operation comprising over 22,000 troops and police from seven African countries. This also includes a civilian component that consists of political, gender, civil, and humanitarian affairs units.⁵ Therefore, this part will focus on the legal norms that regulate or govern the use of force of this mission.

¹ E.A.Erskine, Lt-Gen, "Peacekeeping Techniques for Africa's conflict Management", Afram publication, ,(2000), P.12; see also Cedric de Coning "Peace enforcement in Africa: Doctrinal distinctions between the African Union and United Nations", Contemporary Security Policy, (2017), PP. 1-2

² Communiqué of the African Union Peace and Security Council, PSC/PR/Comm.(LXIX) 2007, at 69th Meeting, (Jan. 2007)

³ UNSC Resolution, S/RES/1744 (2007),at its 5633rd meeting (Feb.2007)

⁴ UNSC Resolution, S/RES/1831 (2008), at its 5957th meeting, (Adopted Aug.2008), Para 1

⁵ Report of The African Union Commission on The Strategic Review of The African Union Mission in Somalia (AMISM), African Union Peace and Security Council(here after AUPSC), at 356th Meeting, (2013),Para 20

3.2. Institutional Framework of AMISOM

3.2.1. Mandate

The initial 2007 mandate of AMISOM was aimed at conducting peace support operations in Somalia, as well as stabilizing the situation in the country in order to create conditions for the conduct of humanitarian activities and an immediate takeover by the UN.⁶ In 2012, the new features of the conflict and the emergence of Al Shabaab urge UN to come up with an updated mandate.⁷ Thus, the current mandate has changed its operation into peace enforcement, to support transitional federal institutions in the efforts towards dialogue and reconciliation in Somalia, facilitate humanitarian assistance and conditions conducive for long term stabilization, reconstruction and development.⁸ On 7 July 2016, UNSC extended its mandate until 31 May 2017 by resolution 2297.⁹

Mwangi states that AMISOM mandate focused on supporting the transitional federal institutions and it is an authorized extension of the Federal Government of Somalia (FGS) and its SNSF. AMISOM's mandate was to protect very important persons involved in the political reconciliation process, fight Al-Shabaab and other armed non-state actors¹⁰ which characterize it as the offensive use of force.¹¹

Furthermore, AMISOM, as a multidimensional Peace Support Operation, is mandated to enable the gradual handing over of security responsibilities from AMISOM to the Somali security forces and assist in consolidating and expanding the control of the FGS over its national territory.¹² AMISOM's exit strategy is connected with the establishment, development and effective functioning of these institutions responsible to provide security services.¹³ Finally, the

⁶ UNSC Resolution, Supra note 4; see also Communiqué of the AUPSC, Supra note 3

⁷ Paul D. Williams, "AMISOM in Transition: The Future of the AU Mission in Somalia", (2013), P.1

⁸ UNSC Resolution, S/RES/ 2073 (2012), at its 6854th meeting, (Adopted Nov.2012), Para-1(a).; see also UNSC Resolution, S/RES/1863 (2009), at its 6068th meeting, (Adopted Jan. 2009), Para-6(b)

⁹ Africa union commission, hand book, a guide for those working with and within the African union, jointly published by Africa union commission and new Zealand ministry of foreign affairs and trade, 4th ed, (2017), p. 68

¹⁰ Oscar Gakuo Mwangi , "State collapse, peace enforcement and the responsibility to protect in Somalia", The International Journal of Human Rights, Vol. 19, No. 8,(2015), PP. 1231, 1235-1236

¹¹ Asha-kin F. Duale and Jibril Ali Aw Mohammed, "Somalia: Time to review AMISOM mandate", (2015), P3, available at<<http://ssrn.com/abstract=2670383>>, last visited on, Jan. 04, 2017, 09:30 AM

¹² United Nations Security Council Resolution, S/RES/ 2182 (2014), at its 7286th meeting, (Adopted Dec. 2014)

¹³ Neus Ramis Seguí, "The role of the African Union in Somalia: Where to go from here with the AMISOM peace operation?", International Catalan Institute for Peace, Policy paper, No.08, (2013), P.1

timelines for AMISOM exit are of two phases. Phase One: Territorial Recovery and Consolidation from 2016 to October 2018. Phase Two will be handover and Drawdown from October 2018 to 2020.¹⁴

AMISOM has a robust peace enforcement mandate which covers many aspects. For instance, it has a robust peace enforcement capacity to support the Federal Government of Somalia in its efforts to fight Al Shabaab and recover areas.¹⁵ Interviewee from AU commission¹⁶ described the spectrum or range of the mandate of AMISOM extends to peace keeping, peace enforcement, fighting terrorism and peace building which involves in discussions with communities members especially with elders. Regarding civilian protection, he explained that it is not explicitly mentioned before 2013 but several steps have been taken to include the issue of civilian protection in the revised Concept of Operations (CONOPS) from 2013 onwards.¹⁷ Having this in mind, on the other hand, there are allegations of commission of considerable atrocities by AMISOM forces that shows its mandate has been exceeded or gone beyond and above the intended limit.¹⁸

It is worth to emphasize that AMISOM is allowed to employ an offensive use of force because it has a mandate to take all necessary actions to reduce the threat posed by Al Shabaab and other armed opposition groups.¹⁹ Besides, the issue of compliance of applicable international humanitarian and human rights law were not, specifically, mentioned in the initial mandate but included in the current one.²⁰ Moreover, the focus of the international community on strengthening the undeveloped TFG to reduce Al-Shabaab capacities resulted in the neglect of civilian protection from its mandate.²¹ In consequence, as many UN peacekeeping missions of the

¹⁴ Report of the Chairperson of the African Union Commission to The Peace and Security Council on Somalia, PSC/PR/RPT.(DCXXII), at its 622nd Meeting,(2016), Para.11: See also Paul D. Williams, “‘UN Support To Regional Peace Operations’: Lessons From UNSOA”, (2017), P. 2-4

¹⁵ Report of the African Union Commission, Supra note 6, Para. 43- 46

¹⁶ Interview with Major General Okello Francis, Head of plans and operations, AUC/PSOD, African Union Commission HQs, Dec 23, 2016, 08:30 AM

¹⁷ *Ibid*

¹⁸ Alexander William Beadle, “Protecting Civilians While Fighting a War in Somalia: Drawing Lessons from Afghanistan”, Policy Brief,(2012), P.2

¹⁹ Duale and Mohammed, Supra note 11, P.3

²⁰ Segui, Supra note 13, P.1

²¹ Beadle, Supra note 18, P.3

past, AMISOM's UN mandate does not expressly mention about the civilian protection.²² Willmot and Sheeran argued that *in the absence of an express mandate by the UNSC, all peacekeepers have the authority to use force to protect civilians under imminent threat of physical violence as an implied power normatively connected to the UN Charter's purposes and principles.*²³

Chataing explains, AMISOM operated with expanded mandate which targets a specific armed group and characterized by the use of force, along-side a governmental ally, against an explicitly named enemy.²⁴ He mentioned AMISOM as the typical example of an expanded type with no protection of civilians. In his study, he came to the conclusion that as soon as the mandate was expanded, violence from National Forces increased by two-thirds when PK troops operate alongside state forces due to indiscriminate attacks as one of the factors.²⁵

Hussein argue , the existence of multiple mandating authorities issuing several mandating instruments exacerbate the mandate-related confusion due to an obvious problem related to the content and legal status of these separate instruments issued by different bodies towards a single mission.²⁶ In addition, He states that the UNSC gives authorization under Chapter VII of the UN Charter makes the mission an enforcement mission rather than a peacekeeping mission. he justify his position by that it is not clear whether the UNSC is authorizing regional force, as provided under Chapter VIII of the UN Charter, or a coalition force under Chapter VII, as such; If the UNSC considers the AU force to be a regional organization force, its decisions should be in accordance with Chapter VIII, and not Chapter VII. UNSC's resolution in this case say " *acting under Chapter VII of the Charter of the UN decides to authorize 'Member States' of the AU*", not the AU itself. He recapped his discussions by emphasizing for a need of Clarity as to whether this authorizes the AU as a regional organization or its individual member states.²⁷

²² Maria Raquel Freire, et.al. "Responsibility to protect and the African Union: Assessing the AU's capacity to respond to regional complex humanitarian and political emergencies", *African Security Review*, Vol. 25, No. 3, (2016), P. 231

²³ Haidi Willmot and Scott Sheeran, "The protection of civilians mandate in UN peace keeping operations"; reconciling protection concepts and practices, *international review of the red cross*, multinational operations and the law, (2014), pp. 524, 537

²⁴ Paul-Antoine Chataing, "Peacekeeping and Civilian Protection, Armed Conflict Location and Event Data Project", *Working Paper* No. 9, (2015), P.2 -3

²⁵ *Id.*, P.10

²⁶ Mohammad A Hussein, "From AMIB to AMISOM, The Need for Institutional And Mandate Clarity in APSA", *Institute for Security Studies*, (2012), P.10

²⁷ *Ibid*

Williams discusses about two different understandings of civilian protection ; the argument that more proactive Protection of Civilians (PoC) tasks should be an explicit part of AMISOM's mandate which holds a broader approach that requires AMISOM to engage in proactive tasks to reduce threats to civilian and; On the other hand, the narrow approach, that saw it as synonymous with enhancing AMISOM's compliance with IHL²⁸ Lotze and Williams have also a notion that a peace operation mandated to extend state authority in a situations where the state is not widely accepted as legitimate will not always be considered as an impartial force, as a result, they believe that extending state authority is likely to generate conflict.²⁹

Williams, Specifically, express his doubt by stating that *“it remained unclear whether the AU agreed with the 2000 “Brahimi Report” on UN peace operations which concluded that regardless of whether they have an explicit PoC mandate, “peacekeepers troops or police who witness violence against civilians should be presumed to be authorized to stop it, within their means, in support of basic United Nations principles”.*³⁰

3.2.2. Command and Control

The protocol that establishes the AUPSC provides the appropriate authority to mandate and serve as the highest authority for operation of the peacekeeping mission of Africa.³¹ Theoretically, The AU Commission Chairperson directs the functioning of all peacekeeping operations through his/her special representative and the overall command and control are vested in him/her under the authority of the AUPSC.³² AMISOM operations led under the authority of the Special Representative of the Chairperson of the AU Commission and its Force Commander.³³ The force commander is appointed by the chairperson with the consent of AUPSC. Currently, AMISOM is headed by SRCC AUC, Francisco Caetano Jose Madeira, from Mozambique, the Force

²⁸ Paul D. Williams “The African Union Mission in Somalia and Civilian Protection Challenges” *Stability International Journal of Security & Development*, (2013), P.6

²⁹ Walter Lotze and Paul D. Williams, “The Surge to Stabilize: Lessons for the UN from the AU's Experience in Somalia”, *International Peace Institute*, (2016), P.17

³⁰ Paul D. Williams, Supra note 28, P.3; See also Matthias Dembinski & Berenike Schott, “Converging around Global Norms? Protection of Civilians in African Union and European Union Peacekeeping in Africa”, *African Security*, (2013),PP. 287-288

³¹ Report by the Chairperson, Supra note 14, Para V

³² Protocol relating to the Establishment of the Peace and Security Council of the African Union, 1st ordinary session of the Assembly of the African union, (Adopted July 2002), Art 10

³³ *Id.*, art.13

Commander, Lieutenant Gen. Osman Nure Soubagleh, from Djibouti, since July 2016.³⁴ Contingent or unit commanders are appointed by troop contributing authorities but they are directly responsible and answerable to the force or field commander. The force commander has civilian advisory and supporting staff to assist him in the field.³⁵ In addition, the police component is also headed by Police Commissioner, Anand Pillay, from republic of South Africa, appointed in May 2014.

Interviewee from the commission highlighted,³⁶ there is Mission Headquarter structure (MHQ), the Force Headquarter Structure (FHQ) and the Sector Headquarter Structure (SHQ) which define the chain of command and subordination of each component of the mission. Terms of references (TOR) and tasks explain the role and responsibility of each individual or group in the mission. Interviewee³⁷ described that AMISOM has a unity of command but troop sending countries retained the absolute command and control of their force, either to withdraw or to continue the mission because peacekeeping by its nature is an extension of political will, and as such, armed force is also a tool of that extension.

In this connection, there have been observations of several interrelated problems in AMISOM's command and control structures. Unity of Command and Control has been one of the issues to be considered regarding AMISOM command architecture. For instance, PSC underlined the need to streamline AMISOM command and control under the overall direction of the Special Representative of the Chairperson of the Commission and Head of Mission.³⁸ In addition, the AU has tried to undertake a structured and targeted reconfiguration of the Mission to enable efficiency, through strengthening command and control structures, to ensure all force enablers and multipliers operate under the authority of the Special Representative of the Chairperson of

³⁴ African union, Press Release, Appointment of Francisco Madeira as the new Special Representative of the African Union for Somalia and Head of the AU Mission in Somalia, (Oct. 2015); *available at* <<http://www.peaceau.org/uploads/auc-com-somalia-07-10-2015.pdf>,> last visited Jan 23, 2017, 8:30 AM

³⁵ Communiqué, African Union Peace and Security Council, , PSC/PR/COMM. (DXXI), at its 521st Meeting, (Adopted June 2015)

³⁶ Interview with Colonel Khalifa Ndione , plans and operation unit AUC / PSOD/ POU , African Union Commission HQs, Dec 23, 2016

³⁷ Okello, supra note 16

³⁸ Communiqué, supra not 35

the Commission.³⁹ In order to prepare for the revision of the AMISOM CONOPS, the Commission established an *ad hoc* Committee of Experts comprising its own representatives, AMISOM, Somalia and TCCs/PCCs. One of the issues to be looked by this Committee was command and control particularly, military command, police organization and sector headquarters.⁴⁰

There are different explanations on these issues; For instance, in Albrecht discussions, with regard to autonomy in the field, there is a conception that AMISOM operations on the ground have been successful, in part, because it has minimal management from Headquarters. This means the Special Representative of the Chairperson of the AU Commission (SRCC), provided political cover to Addis Ababa, but not involved in directing day-to-day operations. *AMISOM's head quarter is considered as a weak headquarters the reason lies in the disconnection between AMISOM headquarters in Mogadishu and the sectors where the troop-contributing countries operate.*⁴¹ From this explanation, one can understand and conclude that AMISOM operations and contingents of TCCs further needs to undertake harmonization process and measures.

In relation to TFG's command and control structure, Bruton and Williams explained that, initially, the TFG had not a cohesive fighting force but it had a "conglomerate" of militias under warlords who had affiliations with TFG⁴² and in 2012 the serious problems were clan loyalties.⁴³ These, in Bakonyi terms, "fragmentation dynamics" were influenced by the clan structure and used by the militias to embed themselves in the local settings and recruitment is along genealogical line.⁴⁴ They further argue, AMISOM's military sector was also suffered by the inadequate coordination between its military and other forces and the absence of guidance from

³⁹ Report of the Chairperson of the Commission on the follow-up of the relevant provisions of communiqué PSC/PR/COMM. (DXXI) on the situation in Somalia, PSC/PR/2(DXLIV), Peace and Security Council 544th Meeting, (2015), paras.5-18

⁴⁰ *Id.*, Para. 8 and 20

⁴¹ P Albrecht, "Fragmented peace keeping regional interest before the Africa Union Mission in Somalia", (2015), Danish Institute for International Studies policy Brief, PP. 2-3

⁴² Bronwyn E. Bruton and Paul D. Williams, "Counterinsurgency in Somalia: Lessons Learned from the African Union Mission in Somalia, 2007-2013", Joint Special Operations University Report 14-5, (2014), PP.16-27

⁴³ *Id.*, p.19

⁴⁴ Jutta Bakonyi, "Authority and administration beyond the state: local governance in southern Somalia, 1995–2006", Journal of Eastern African Studies, School of Government and International Affairs, University of Durham, (2013), p.286

headquarter. They stressed that the campaign of Operation *Linda Nchi* by Kenyan forces⁴⁵ and followed by Ethiopian troops entered Somali territory in 2011 as well as the FGS accusation of Kenyan forces supporting Jubbaland State in violation of AMISOM's mandate raised big questions about the limits of its central command and control structures and its ability to function as a coherent force.⁴⁶

Furthermore, Lotze and Williams states that one of AMISOM's major challenges was a "fragmented" system of command and control in which Force Headquarters would not exercise real operational control over the TCCs and have limited influence on the actions of the TCCs in their respective sectors. AMISOM's military leadership in Mogadishu only have a coordinating role rather than commanding over the operation after it expanded beyond Mogadishu, Accordingly, the nature of the operations and the actions of the individual TCCs within their respective sectors was challenging to coordinate, stay away from control.⁴⁷ As such, in 2014 operations, for example, when a sector commander has been instructed to attack a specific location, it has been override in favor of another important location of national interest to the concerned neighboring TCCs.⁴⁸ There have also been incidents where fighting had still continued in the sectors while an operation was formally concluded by the force commander. The practical experience of the Headquarter showed that it usually issues a general direction rather than setting specific tasks, as a result, TCCs have autonomy in this regard.⁴⁹

These inabilities of AMISOM's different TCCs to coordinate their operations have been exploited by Al- Shabaab.⁵⁰ AMISOM operations have often slowed down when the SNA could not match the pace due to the SNA's weaknesses which emanated from problems related to command and control, clan dynamics, and political leadership, among others, which in turn limits AMISOM's effectiveness.⁵¹

⁴⁵ *Id.*, P .61; see also Malte Brosig, "Rentier peacekeeping in neo-patrimonial systems: the examples of Burundi and Kenya", Contemporary Security Policy, Department of International Relations, University of the Witwatersrand, Johannesburg, (2017), p13

⁴⁶ Bruton and Williams, supra note 40, pp. 69-71

⁴⁷ Lotze And Williams, supra note 29, P.3

⁴⁸ Albrecht, supra note 41

⁴⁹ Cedric de Coning, "Peace enforcement in Africa: Doctrinal distinctions between the African Union and United Nations", Contemporary Security Policy, (2017), PP. 8-9

⁵⁰ Lotze And. Williams, supra note 29, P.3

⁵¹ *Id.*, p.13

3.2.3. Troop/police contributing Countries (T/PCCs)

Currently the military component is comprised of troops drawn from Uganda, Burundi, Djibouti, Kenya and Ethiopia and area of operation covers six sectors: Banadir, Lower Shebelle, middle and lower Juba regions east of river Juba; middle Juba and lower Juba west of river Juba; Gedo, Bay, and Bakool Regions; Hiraan region and Galmudug IRA; Middle Shebelle regions and; Kismayo.⁵²In addition, the police component is contributed by the Ghana, Kenya, Nigeria, and Uganda.⁵³

The study conducted by David Mastro that examined the impact on AMISOM operations if any of the current TCCs might remove its troops in the near future, reminding as instance, leaving the mission of Sierra Leonean troops in 2014 in response to an Ebola outbreak in West Africa.⁵⁴The case of Burundi, in his study, reflected uncertainty about the future of its participation given the ongoing crisis, on the one hand and; the financial, training, and diplomatic benefits Burundi receives from its participation, on the other hand. The impact would be “high” since Burundian troops account for approximately 25 percent of AMISOM’s total forces. His study shows that it is unlikely that Ethiopia would withdraw troops from AMISOM before 2018 because of geopolitical and military interests, if it happens, it would make the operation more difficult since no other actor willing and able to replace Ethiopia’s effectiveness as a fighting force. On the contrary, Ethiopian troops withdraw from Muqakoori, Ceel Cali and Halgen, Hiraan region, on 15 September and 11 and 23 October and Tayeeglow, Bakool region, on 26 October 2016. As Mastro predicts the impact is high because Al Shaabab has immediately taken control of those regions.⁵⁵

In addition, Djiboutian withdrawal would have “limited” impact and easily replaceable due to the least number of troops, 2000, but her troops have established good relations with local populations and serve as power brokers. Thus, Mastro recommend that the international

⁵² Africa union commission , supra note 9

⁵³ PSC Report of the Chairperson of the Commission on the Situation on Somalia IV, PSC/PR/2 (CDLXII), Peace and Security Council 462nd Meeting, Addis Ababa, V Para,20,(2014); See also Walter Lotze and Paul D. Williams, supra note 29, P.3

⁵⁴ David Mastro, “ Expert Opinion On AMISOM Contributing Countries Continued Provision Of Troops”, Center for 21st Century Security and Intelligence, (Oct 2016), p. 4-8

⁵⁵ United NationsSecurity Council, Report of the Secretary-General on Somalia,(9 Jan 2017), P. 3, Para 9

community should give more attention on improving Somali governance and building, legitimate, and inclusive national security forces for successful AMISOM exit strategy.⁵⁶

In a different approach, Brosig describes what he called “Rentier peacekeeping”, The motivations for providing troops for peacekeeping vary among countries and has a mixed reasons.⁵⁷ These are direct security concerns, humanitarian reasons, and “regime-boosting effects”. Based on the empirical analysis, he argued that African peacekeeping missions are financed by external players and TCCs can use it not only to overcome security threats in the neighborhood but also to finance their army budget; such as, Burundi, Ethiopia, Ghana, Kenya, Rwanda, Senegal, and Uganda. In his conclusion, if that is the case, it is difficult to fulfill the mandate and prolong the conflict. He showed, empirically, The Kenyan case as complicit in illicit economic activities and Burundian case as regime survival. As Mwangi noted, *AMISOM TCCs have the leeway to pursue their strategic interests in Somalia at the expense of the mission’s mandate.*⁵⁸

3.2.4. Mission profile

I. Military component

The AUPSC authorized the Member States of the African Union to maintain the deployment of AMISOM, as set out in paragraph 1 of resolution 2093 /2013 until 30 November 2015, in line with the Security Council’s request to the African Union for a maximum level of 22,126 troops but now, 21461.⁵⁹ The Military Component is the biggest of the three components of the AU Mission in Somali. First, it has been deployed in March 2007 with initial 1,500 Ugandan troops.⁶⁰ Furthermore, the maritime unit is supposed to ensure security along the Mogadishu coastline, and provide security to humanitarian ships at the Mogadishu and Kismaayo seaports. AMISOM Combined Maritime Force, Task Force 151 was established in January 2009,

⁵⁶ *Ibid*, see also Coning, supra note 49

⁵⁷ Malte Brosig: supra not 45

⁵⁸ Oscar Gakuo Mwangi, supra note 10, p. 1231

⁵⁹ Communiqué, supra note 3, Para. 8; see also Africa union commission, supra note 9

⁶⁰ PSC Report, supra note 5, Para.6

particularly, with fighting piracy mandate, in order to build on the then existing maritime security mission of Task Force 150.⁶¹

In line with the 2016 revised CONOPs, the deployment and conduct of AMISOM operations are to undertake joint coordinated operations with Somali National Security Forces (SNSF) including Somalia National Army (SNA), and extend its area of operations into all the South Central Somalia States. The focus of AMISOM operations are reducing the threats posed by Al Shaabab and strengthening the capacity of the 10,900 SNA forces as part of the Mission's exit strategy in October 2018.⁶² It is aimed at ensuring the capacitating of SNSF to undertake Joint Operations alongside AMISOM, as well as to enhance their capacity to hold on to the recovered territory and provide security to these areas.⁶³

The Military Component of AMISOM is mandated to defeat Al-Shabaab, to secure liberated areas, and to provide support as well as institutionalize Somalia's National Security and Stabilization Plan (NSSP). Since early 2012, AMISOM military expanded its areas of operation going beyond Mogadishu and as Dersso states there is a shift in the military balance of power towards AMISOM backed TFG as well as military pressure on al-Shabaab by Kenyan, Ethiopian forces, and by American drones.⁶⁴

II. Police component

The AMISOM Police Component has the mandate to guarantee the rule of law in the city of Mogadishu and to elevate the Somali Police Force to the international standards so that it can be a credible body to provide security to the public.⁶⁵ The police component has the mandate to build the individual and institutional capacity of the Somali Federal Police Force (SFPF) and Somalia state police force (SSPF) as well as provide operational support to the SFPF and SSPF.⁶⁶ Its tasks include training, mentoring, advising and providing on the job trainings and operational

⁶¹ Ulf Engel, "The African Union, the African Peace and Security Architecture, and Maritime Security", African Security, Institute of African Studies, (2014), P. 218

⁶² Laurie R. Blank, "Rules of Engagement and Legal Frameworks for Multinational Counter-Piracy Operations", Case Western Reserve University, Journal of International Law, (2015), Volume 46, issue 1, P. 398

⁶³ *Id.*, Para. 11

⁶⁴ Solomon A. Dersso, "A retrospective look at peace and security in Africa in 2012", African Security Review, (2013) . P. 75

⁶⁵ SEGUI, supra note 13, PP. 2-3

⁶⁶ PSC report, supra note 14, Para. 10

support to the Somali police force, with the aim of transforming it into a credible and effective organization adhering to strict international standards.⁶⁷ The component currently has 540 police officers and is comprised of 97 Individual Police Officers (IPOs) from Uganda, Nigeria, Ghana, Sierra Leone, and Niger. It also has Two Formed Police Unit (FPU) are, one from Nigeria with 140 officers and the other from Uganda with 139 officers, as well as 4 Senior Leadership Team (SLT) officers from South Africa, Uganda and Nigeria.⁶⁸ Currently, the component is headed by Police Commissioner, Anand Pillay.⁶⁹

The 2016 AMISOM Police CONOPS provides the strategic direction and tactical guidance to enable AMISOM Police Component implement its tasks under its mandate.⁷⁰ The CONOPS outlines the objectives and the intervention strategy that AMISOM Police will employ to respond and support the capacity, security and operational needs of the Somali Police Forces to respond to incidences of crime, lawlessness and to manage its resources and internal administrative system effectively and efficiently.⁷¹

Caparini and Livingstone explained that there was an attempt to bring strategic police representation to the level as that of the Military Staff Council to ensure that the police equally participate in all aspects of PSO decisions, planning, execution, and monitoring and evaluation.⁷² In their writing they emphasize that the protocol explicitly sets out the role of the military chiefs, but the police is not mentioned and police advisers within the PSOD are structurally, subordinate to the military.⁷³ They further argue that there is little documentation and absence of evidence-based research about the challenges and effectiveness of police component and command structures available by the AU and the UN which hamper the closer examination and an informed discussion that can improve the effectiveness of AMISOM operations.⁷⁴

⁶⁷ AMISOM Mission profile ,<<http://amisom-au.org/mission-profile/amisom-police/>> retrieved 9/2/2016, 12:30

⁶⁸ *Ibid*

⁶⁹ Africa union commission , supra note 9

⁷⁰ PSC report, supra note 14, Para 9

⁷¹ *Id.*, Para. 11

⁷² Marina Caparini and Ann Livingstone, “ African perspectives on challenges of police command in peace support operations”, Institute for Security Studies, ISS Paper 276,(2014), P.5

⁷³ *Id.*, P.10

⁷⁴ *Id.*, P.17

However, AMISOM still needs more staff and equipment for the Formed Police Units to be able to provide more successful responses to public disorder, to effectively assist the Somali Police Force in improving the quality and increasing the number of professional police officers in the country.⁷⁵ There is a mismatch between the aims to be achieved and the limited number of officers as mentioned above which can hinder its effectiveness. For instance, Lotze and Williams explained about police component that based on the 2014 CONOPS, AMISOM's military strength would rise to 21,586 personnel but the police component would remain at 540 personnel.⁷⁶

III. Civilian component

The civilian component, led by the Special Representative of the Chairperson of the African Union Commission (SRCC) who is also the head of the mission, is charged with the task of assisting the Federal Government of Somalia in re-establishing functioning state institutions and delivering services to the Somali people. It is mandated to assist the process of building of Somalia's legitimate and effective political institutions. It is working to bring about civil reconciliation initiatives to ensure political inclusiveness and representativeness.⁷⁷ The Civilian Component is made up of six units which includes; Political, Humanitarian, Gender, Civil Affairs, Security and Safety, Public information and Administration Units.⁷⁸

The AMISOM civilian component current strength is 115 personnel comprising of AU recruited and seconded personnel from partners.⁷⁹ These civilian personnel are mostly deployed in Mogadishu but with some administrative and finance staff based in the AMISOM Rear Support Office in Nairobi, Kenya.⁸⁰ However, similar to the Military and Police Components, the Civilian Component is understaffed and therefore facing difficulties in achieving the objectives envisaged.⁸¹

⁷⁵ AMISOM in Somalia: A Ray of Hope?, Occasional Paper, Series 4, No4, International Peace Support Training Centre Nairobi, Kenya, (2013), P.15

⁷⁶ Walter Lotze and Paul D. Williams, *supra* note 29, P.12

⁷⁷ Albrecht, *supra* note 40, P.6

⁷⁸ AMISOM in Somalia, *supra* note 75, P.15

⁷⁹ PSC Report, *supra* note 14, Para. 10; see also Africa union commission, *supra* note 9

⁸⁰ *Ibid*

⁸¹ Alexander William Beadle, *supra* note 18, P. 3

3.3. Use of force in pre-AMISOM peacekeeping operations in Somalia

This part is a brief discussion just as a reflection so that it can help for comparison. In January 1992, the UN deployed a small observer mission, UN operations in Somalia (UNOSOM-I), and its protection detachment to monitor a ceasefire agreement between the competing factions in Somalia's civil war. However, the ceasefire was collapsed and circumstances on the ground altered. This small mission confined to its barracks and can't cope up with the situations.⁸²

In December 1992, Unified Task Force (UNITAF), the US-led task force deployed in Somalia with a UN Security Council mandate to use all necessary means to establish a secure environment for humanitarian relief operations in Somalia. It comprised approximately 37,000 mainly American troops and operated across South-Central Somalia.⁸³ After disagreements with the UN Secretary-General, UNITAF took action in a phased withdrawal through transition of some of its forces into a new UN peacekeeping operation, UNOSOM II, in March 1993.⁸⁴

In 1993 the UN deployed a multidimensional peacekeeping operation, UNOSOM II, of about 28,000 uniformed personnel. UNOSOM II had a mandate to disarm armed elements in Somalia's conflict and prevent any violence across South-Central Somalia. In the subsequent battle 18 US soldiers, a UN peacekeeper and as many as 1,000 Somalis are thought to have been killed. This event led USA to withdraw its forces from Somalia.⁸⁵

As a response to a request from Abdullahi Yusuf, the then time president of the TFG, in January 2005, the Intergovernmental Authority on Development (IGAD) proposed the deployment of 10,500 Peace Support Mission in Somalia (IGASOM).⁸⁶ The mandate was to facilitate the TFG's entry into Somalia's capital city, Mogadishu. In May 2005, the AUPSC endorsed IGASOM and

⁸² Ashley Elliot & Georg-Sebastian Holzer, "The invention of 'terrorism' in Somalia: paradigms and policy in US foreign relations", South African Journal of International Affairs, (2009), P .217; See also Zekarias Beshah, "African Union Peace And Security Council: To Compete or Complement the UN Security Council?", Addis Ababa University, (2010), P. 65

⁸³ Trevor Findlay, The Use of Force in UN Peace Operations, Stockholm International Peace Research Institute, (2002), P.167; see also Kenneth Allard, "'Somalia Operations': Lessons Learned Kenneth", U.S. National Defense University, CCRP publication series, (1994), P. 11-17

⁸⁴ Dustin Dehéz & Belachew Gebrewold, "'When Things Fall Apart' Conflict Dynamics And An Order Beside The State In Post collapse Somalia", African Security, (2010), PP .8-9

⁸⁵ Kenneth Allard, Somalia Operations: Lessons Learned, CCRP Publication Series, (2007), P.12-17

⁸⁶ Tim Murithi, Inter-governmental Authority on Development on the Ground: Comparing Interventions in Sudan and Somalia, African Security, (2009), P .149

it was agreed that an AU peace operation would eventually take over in July the same year.⁸⁷ However, the IGASOM proposal couldn't pull together sufficient political support from different stakeholders and as a result, it did not deploy.

As Findlay has discussed, UNOSOM II's and UNITAF's experience raised issues about the use of force which include whether and how far it had lost its impartiality and to what extent the use of force had been appropriate and proportionate.⁸⁸ To Elliot and Holzer, these missions had gradually increased the scale and type of its activities beyond its original mission in relation to the use of force. It experienced two major types of problem. First, the operations of allied military forces were outside UN command structure.⁸⁹ Hessen has described, US forces acted outside the UN chain of command in several of their operations and used force that were said to be inappropriate and disproportionate, particularly in terms of UN peacekeeping practice.⁹⁰ As Fanlen stated, the impartiality of this mission was lost with the hunt for one of the faction leaders, Mohamed Farah Aideed.⁹¹ Therefore, it can be said that the UN force was drawn into armed conflict with one of the parties to a civil war, abandoning its impartiality and damaging consent to its presence.

Furthermore, there were other observations of insubordination in this regard. Although all national contingents were in theory under the operational control of the force commander, the reality, said to be different. In Findlay findings, on several times, national contingents sent operational and tactical orders issued by the force commander to their governments for approval and in some instances they were revoked.⁹² For instance, Indian and Pakistani troops would not serve under each other's control. Another example, in August 1993 Saudi troops were ordered to protect a certain perimeter, but replied that this was outside their understanding of the mandate and participating country, to UNOSOM II, came up with restrictions on the way in which its

⁸⁷ *Ibid*; See also Zekarias Beshah, supra at note 82, P. 66

⁸⁸ Trevor Findlay, supra note 83, pp. 204, 213

⁸⁹ Ashley Elliot and Georg-Sebastian Holzer, "The invention of 'terrorism' in Somalia: paradigms and policy in US foreign relations", *South African Journal of International Affairs*, 2009, Vol. 16, No. 2, p. 217

⁹⁰ Brian J. Hesse, "Introduction: The myth of 'Somalia'", *Journal of Contemporary African Studies*, (2010), Vol. 28, No. 3, p. 248

⁹¹ Marika Fanlen, "The African Union Mission in Somalia" Towards new vision of regional peace keeping"; in Peter Wallensteen and Anders Bjurner (eds), *published by Rutledge*, (2015), PP. 180-188 ; See also Trevor Findlay Supra note 83 , P. 206

⁹² Trevor Findlay, supra note 83, P. 213

forces could use force. This was reflected either in their own ROE or in how they interpreted the supposedly common ROE.⁹³

Based on this discussion, it can be concluded that all the missions, which are deployed before AMISOM, were frustrated by the challenge and survived for a shorter time span in Somalia without attaining their intended goal.

3.4. Use of force by AMISOM

AMISOM use of force is based on a number of legal instruments. Firstly, AUPSC by its communiqué, on 19 January 2007, states that the African Union shall deploy its force for a period of six months to stabilize Somalia with the assumption that the mission will evolve into a United Nations operation in the long-run.⁹⁴ Acting under Chapter VII of the UN Charter, the UNSC decide that the situation in Somalia constitute a threat to international peace and security in the region and authorized member states of AU to take all necessary measures .⁹⁵ The CONOPS were endorsed by the AU PSC and the UNSC on January 5, and February 22, 2012, respectively. The new revised CONOPS was adopted by AUPSC during its 608th meeting held on 29 June 2016.⁹⁶

AU has six Conflict and mission scenarios⁹⁷: Scenario 1, AU/Regional military advice to a political mission; Scenario 2, AU/Regional observer mission co-deployed with a UN mission; Scenario 3, Stand-alone AU/Regional observer mission; Scenario 4, AU/Regional peacekeeping force(PKF) for Chapter VI and preventive deployment missions; Scenario 5, AU Peacekeeping force for complex, multidimensional peacekeeping missions, including those involving low-level spoilers and; Scenario 6,AU intervention, in case of genocide or humanitarian crisis situations where the international community does not act promptly.⁹⁸

⁹³ *Id.*, 214, See also Cecilia Hull, Emma Svensson, “ ‘ African Union Mission in Somalia(AMISOM)’ , Exemplifying African Union Challenges”, Swedish Defense research Agency, (2008), P. 2-50

⁹⁴ Communiqué of the AUPSC, Supra note 3,

⁹⁵ UNSC Resolutions, Supra note 4; See also UNSC Resolutions note 8, Para. 1

⁹⁶ Communiqué of Peace and Security Council ,PSC/PR/COMM(DCXXII),622nd Meeting, Addis Ababa, ,(2016), Para.6

⁹⁷ African Union Policy Framework for the Establishment of the African Standby Force and the Military Staff Committee, Assembly/AU/Dec.16 (II), Adopted by AU Heads Of States And Government, Third AU Summit, Addis Ababa, (2004)

⁹⁸ African Union Mandating Process for Peace Support Operations, (2013), Aide Memoire, the African Union’s Planning And Decision-Making Process, PP. 4-5

Interviewee⁹⁹ explained that, in the case of AMISOM, the AU is engaged based on scenario 5 which refers to a complex multi-dimensional peacekeeping mission including the involvement of low level spoiler (Al Shahabab). The mandate gives AMISOM objectives and tasks that imply the use of force against the existing threats to achieve its goal. A CONOPS which decline how to implement the mandate, and is annexed ROEs. To the question about the justification by AMISOM to align with TFG, he discussed that the TFG or initially the TFI was the legitimate government institution, and it had found an agreement with the Union of Islamic Courts (UIC) to unite behind and continue a process of dialogue, to recommit to the principles of the 22nd June 2006 Khartoum Declaration and the agreement which was made between 2-4 of September 2006 Khartoum meeting, and to establish a stable security situation inside Somalia. So, there is a consent given by the host institution, the TFI having rank of authority and the main party in the crisis. With the principles of consent YES, the FGS being a sovereign government, the principles of impartiality is observed in the mandates tasks where applicable.

Furthermore, in response to the question about who has a primary monopoly of legitimate use of force, he stated that, no one has a monopoly of legitimate use of force. The use of force is governed again by international laws and ROEs for AMISOM troops and those international laws are binding laws over all SNSF. The other respective interviewee,¹⁰⁰ in response of the same question, explained that TFG has a monopoly of force in a sense as a Government of sovereign state of Somalia but AMISOM has only a legitimate use of force.

On the contrary, as Plaut states, The Somali government certainly has no monopoly of legitimate force, no effective control over the territory and provides few services for the public.¹⁰¹ In addition, AMISOM has been deployed without consent of the main conflicting parties and fighting a war in support of the Somalia TFG which make its operations partial. Dembinski and Schott described that AMISOM troops not only unable to protect civilians from violence but were also accused of using force indiscriminately, such as by reacting with the heavy shelling of populated area and operating “heavy-handedly”.¹⁰² Some of TCCs engaged in

⁹⁹ Interview, supra note 36.

¹⁰⁰ Interview, supra note 16

¹⁰¹ Martin Plaut, “How unstable is the Horn of Africa?, Review of African Political Economy”, Institute of Commonwealth Studies, University of London, (2013), Vol. 40, No. 136,

¹⁰² Dembinski & Schott, Supra note 30 P. 289

Somalia, initially, in a form of self-defense, for instance, Kenya unilaterally entered the war in Somalia in October 2011 to “protect the country”¹⁰³ which shows conflict of interest between genuine stabilization missions and protecting oneself.

Regarding indiscriminate use of force by AMISOM, interviewees’ opinions are, AMISOM has taken a number of steps to reduce the number of civilian casualties caused by its operations.¹⁰⁴ When it employs force, it introduces and implements an Indirect Fire Policy (IDF) and consideration for the establishment of a Civilian Casualty Tracking Analysis and Response Cell (CCTARC). AMISOM personnel will only use indirect fire as an exceptional measures of last resort in extreme circumstances in depopulated areas and in strict accordance with the AMISOM indirect fire policy, target must be specifically and positively identified.¹⁰⁵

AMISOM’s use of force has found itself between two fundamental challenges regarding civilian protection. Either, it should come up with UN-like guidelines with broad definition to mainstream into its operations with what kind of protection it is going to provide. Or, it should maintain the current steps taken by it on the ground that resembles NATO’s principle of “how not to kill civilians ourselves”.¹⁰⁶ It needs to answer the questions which one of the two approaches will be the most appropriate in Somalia.

In its *aide-memoire*, AU provides the possibility of integrating protection of civilians into mission mandates in four broad areas, such as; protection as part of the political process, protection from physical violence, rights-based protection and the establishment of protective environment.¹⁰⁷ Thus, AMISOM use of force clearly chooses and focuses on the protection of the political process and establishment of protective environments rather than providing protection from physical violence. This position is strengthened by Weir who states that AMISOM forces became ‘entangled in the fighting’ and have engaged offensive peace enforcement which

¹⁰³ Malte Brosig, supra note 45

¹⁰⁴ Interview, supra note 36; see also Alexander William Beadle, supra note 18, P.2-3

¹⁰⁵ *Ibid*; Interview, supra note 16

¹⁰⁶ Malte Brosig, supra note 45

¹⁰⁷ African Union, supra note 98, P.14

illustrates the view of protection as a by-product of stabilization, of winning the war and establishing, peaceful environment.¹⁰⁸

The UN position , which is reflected in AMISOM mandate, is clear in that it considered the Somalia situation as a threat to international peace and security as well as destabilizing factor in that particular region.¹⁰⁹ Another factor that complicates the use of force of AMISOM is a strong position held by TCCs in that they labeled the main armed group of Somalia as destabilizing agents to their national security in particular and the region in general.¹¹⁰ Therefore, based on the above factors, it is difficult to conclude that AMISOM's military operations and its use of force have been harmonized. Evidently, it can be concluded that they hinder the effectiveness of the mission.

Stupart discusses in his writing that the Proponents of AMISOM may suggest that the AU's current effort in peacekeeping is the one major intervention which has achieved some measure of success, on the contrary, it has been facing resistance from Al-Shabaab, suffering considerable casualties and this in turn put the probability of its success into serious doubt.¹¹¹

It is known that UN peacekeeping is guided by three key principles: consent, impartiality, and the non use of force. Peter writes, consent is missing in the case of Somalia because comprehensive peace agreements are lacking and AMISOM is deployed to empower TFG and help it defeat one or the other parties to the conflict which focuses on "expansion of state authority".¹¹² Peter argued that the targeted parties possess enough political and military power that government is unable to defeat them by itself. For instance, Peter continues the discussion, Al-Shabaab is not considered legitimate participants to the conflict; therefore, their consent is not sought and find itself on terrorist lists of Northern states which makes UNSC unwilling to allow them any legitimate claims.¹¹³

¹⁰⁸ Erin A. Weir, "Policies That Protect: The African Union and the Protection of Civilians", Policy Brief, Norwegian Institute of International Affairs,(2013), p.3

¹⁰⁹ Albrecht, supra note 44, PP 3-4

¹¹⁰ *Ibid*

¹¹¹ JohnStupart, "*Jus Ad Bellum* and Intervention In Somalia: Why a Military Response Can Still Work, *Scientia Militaria*", South African Journal of Military Studies,(2011), Vol. 39, No. 2, P.62

¹¹² Mateja Peter, "Between Doctrine And Practice: The UN Peacekeeping Dilemma, *Global Governance*",(2015), P.358

¹¹³ *Ibid*

Peter further argued that this mission is, in principle, mandated to be partial from the beginning and aims to acquire a sufficient number of personnel, thus, it is not clear whether troops participating in these missions are deployed to achieve the peacekeeping mandate or to protect their immediate interests and their impartiality is suspected.¹¹⁴ According to Peter, the three key principles, specially, the principle of non-use of force except in self-defense, are the cornerstone and UNSC is the least comfortable “abrogating” them, as a result, UNSC is more comfortable in relying on AMISOM to perform these tasks, and UN mission is directly supporting it.¹¹⁵

Regarding legitimacy, Bruton and Williams emphasize that the TFG lacks domestic support and *viewed as a worse alternative to the al-Shabaab*.¹¹⁶ The armed groups against which the new UN peacekeeping mandates is directed, hold little legitimacy in the outside world but it either enjoy popular support of wide segments of the local population or raise real concerns and grievances that the local population has against the Government.¹¹⁷ Now, the major urban centers are in the hands of TFG with AMISOM but much of rural Somalia remains in the hands of al-Shabaab but not yet clear effective military operations possible in those rural areas.¹¹⁸

3.5. Rules of engagement of AMISOM

With regard to the ROEs, interviewee,¹¹⁹ as expert for drafting process, forwards further explanations that the ROEs are directions to operational commanders that delineate the parameters within which force may be used by AMISOM personnel during the conduct of their operations in Somalia. Where issued as prohibition, they are orders not to take specific actions. Where issued as permission, they are authority for commanders to take certain specific actions, if they judged necessary to achieve the aim of the mission. While remaining predominantly defensive in nature, the ROEs allow for the potential need for offensive action if necessary, in order to ensure implementation of the tasks assigned to the mission’s military component.

¹¹⁴ *Id.*, p.359

¹¹⁵ *Id.*, p.360

¹¹⁶ Bronwyn E. Bruton and Paul D. Williams, *Supra* note 46, P.19

¹¹⁷ Mateja Peter, *supra* note 112, P.365

¹¹⁸ Laura Hammond, Somalia rising: things are starting to change for the world's longest failed state, *Journal of Eastern African Studies*, Development Studies, School of Oriental and African Studies, University of London, Vol. 7, No., (2013), p. 189

¹¹⁹ Interview, *supra* note 36

For the use of force, he continues, the mission's ROEs provide directions to commanders at all levels and govern the use of force within the mission area. The ROE define the degree and the manner in which force may be applied and are designed to ensure that the application of force is controlled and legal. The ROE also inform commanders of the constraints imposed and the degree of freedom they have in the course of carrying out their mission. All issues related to the use of force in conflict environment are controlled through a proper definition of the ROEs. Besides the military training they receive in their respective countries during their military carrier, before any deployment, all troops go through a redeployment training where all those rules and regulations are taught. In addition, AMISOM ROEs pockets cards translated into all contingent languages and dialects are issued to each military before deployment.

Mwangi discusses that AMISOM's ROE have been affected due to the mission's structural and operational limitations, consequently it compromises the fulfillment of its tasks. In addition, Somali's prevalent situation makes difficult for AMISOM's military operations to apply the mission's ROE in a consistent manner at all times in compliance with IHL obligations.¹²⁰

3.6. AMISOM use force in line with the UN Mandate

The AMISOM experience showed that the authorization by the UN Security Council and the AU Peace and Security Council would be required. From this, the authority to use force thus resides with the UN Security Council.¹²¹In the case of AMISOM, the AUPSC's legal status is based upon Chapter VIII of the UN Charter and it often forwards its communiqués to the UNSC to be endorsed in the form of UNSC resolutions. It can be seen as a Chapter VIII Partner with complementary capabilities, with its own sources of legitimacy.¹²² It also forwards not only the mandate but also the CONOPs to the UN Security Council for endorsement and support.¹²³ The notion of transitions is clearly foresighted in the decision of AUPSC, in that the mission transfer would takes place once the benchmarks, related to stabilization, have been met.¹²⁴

¹²⁰ Oscar Gakuo Mwangi, *supra* note 10

¹²¹ Strategic Options for the Future of African Peace Operations 2015–2025), NUPI Report No.1/ 2015, [Norwegian Institute of International Affairs](#), (2015), PP.16-17

¹²² Mulugeta Gebrehiwot Berhe and Alex de Waal), Preliminary Report to the African Union, Peace Missions in Africa: Constraints, Challenges, and Opportunities, World Peace Foundation,, (2015) P.7

¹²³ Report of the Chairperson, *supra* note 39, para12

¹²⁴ Common African Position on The UN Review of Peace Operations PSC/PR/2(DII), Peace and Security Council 502nd Meeting, Addis Ababa, (2015), Para. 26; See also Williams *Supra* note 14

The African Union relations with the United Nations, in the area of peace and security should be viewed as a strategic partnership, based on consultative decision-making, division of labor and burden sharing.¹²⁵ For instance, Article 17(1) of the PSC Protocol cites Chapter VIII as links of its relationship with the UN. The PSC Protocol directs the PSC to cooperate with the UNSC to which the primary responsibility for the maintenance of international peace and security vested upon.¹²⁶ The UN Charter reserves the right to authorize enforcement action for the UNSC.¹²⁷ Regional organizations have a comparative advantage in promoting peace and security in their neighborhoods and are in a better position to serve as first responders due to their proximity to conflict areas.¹²⁸ Hence, AU underscores when it deploys AMISOM in conflict and crisis in Somalia if it is taken in that sense and doing so on behalf of the UNSC.¹²⁹

However, the intention of UNSC resolution is not clear whether the UNSC is authorizing AU as regional force, as provided under Chapter VIII of the UN Charter, or a coalition force under Chapter VII, as such; If the UNSC considers AMISOM to be a regional organization's force, its decisions should be in accordance with Chapter VIII, and not Chapter VII.¹³⁰ Hence, the mandate clearly applied for individual TCCs and not AU as regional organization but, the practice shows unclear and a mixed kind of relationship between AU and UN in the AMISOM case.

3.7. AMISOM Use of force in light of International Humanitarian Laws

Like any other Missions, AMISOM is also expected to comply with the rules of IHL while applying force in conducting its military operation. The case of Somalia in general is of a non-international nature and the Geneva Conventions and the Additional Protocol II of the Conventions can be applied to govern the acts of parties to the conflict, especially, common article three can be referred.¹³¹

¹²⁵ *Id.*, para.4; see also Suyash Paliwal, “The Primacy of Regional Organizations in International Peacekeeping’: The African Example”, Virginia Journal Of International Law, Volume 51 Issue 1, (2010), PP. 185- 230

¹²⁶ *Id.*, para.5

¹²⁷ UN Charter, San Francisco, (1945), Article 53(1)

¹²⁸ Common African Position, Supra note 124, Para 23

¹²⁹ *Id.*, Para 6

¹³⁰ See discussions by Mohammad A Hussein, supra note 26; see also his idea in the mandate section above

¹³¹ Richard J. Wilson, and Emily Singer Hurvitz, “Human Rights Violations by Peacekeeping Forces in Somalia “Human Rights Brief, Vol.21, No. 2, issue 1, (2014), Art 1, P.3,<<http://hrbrief.org/2014/10/human-rights-violations-peacekeepers-somalia/>>, retrieved 03/01/17, 09:20 AM

UNSC has authorized AMISOM to take all necessary measures in compliance with applicable international humanitarian law.¹³² AMISOM, in cognizant of its obligations is expected to exert considerable efforts to ensure that its operations are conducted in compliance with applicable IHL.

Interviewee¹³³ in this regard explains that, throughout the conduct of military operations, where armed force is to be used, the missions' military personnel must comply with the international legal principles of proportionality, the minimum use of force and the requirement to minimize the potential for collateral damage. Then he continued, we fall into a sort of peace enforcement mission where the use of force is permitted but is controlled by the provisions of international laws including the LOAC or Law of war or International Humanitarian Law. In the case of civilian, AMISOM does not target civilians, if there is a risk of doing so we abort operation based on the ROEs.

Though it is explained in the interview, AMISOM's use of force is in line with the international legal principles of Humanitarian Law, on the contrary; there are accusations by different group against AMISOM's use of force. Reports show that AMISOM conducted numerous indiscriminate attacks against armed groups in densely populated areas without taking in to consideration the civilian population and causing a high loss of civilian life and property.¹³⁴ In support of this claim, Amnesty International in its annual world report shows the AMISOM violated international humanitarian law by conducting indiscriminate attack, direct targeting of civilians.¹³⁵

With regard to its failure to protect civilians, reports put AMISOM under responsibility for attacks that have killed and injured civilians, as a result of violations of IHL.¹³⁶ To mention few scenarios of direct attack against civilians, AMISOM's Ugandan army troops alleged for killing

¹³² UNSC Resolution, Supra note 9, Para. 1

¹³³ Interview, supra note 36

¹³⁴ Nikolaus Grubeck , "Civilian Harm In Somalia: Creating an Appropriate Response", UNHCR, Civilian in armed conflict series, (2011), PP. 8-23; See also Human Rights watch, "Harsh War, Harsh Peace Abuses by al-Shabaab, the Transitional Federal Government, and AMISOM in Somalia" ,(2010), P. 37

¹³⁵ Amnesty International, The State of world's Human Right report 2014/15, (2015), P. 329; See also Human Rights Watch, report, " human rights priorities for Somalia's new Government, (2 may 2017)

¹³⁶ Amnesty International Public statement, AFR 52/008/2013, " Returns to South and Central Somalia: A Violation of International Law", (2013), P.2

of at least 11 civilians, including woman, teenagers, and elders.¹³⁷ In separate incident, which was later admitted by the AU envoy and Head of AMISOM, Human Rights Watch also reported the alleged killing of six men by the same AMISOM troops at a wedding ceremony.¹³⁸ However, it is only mentioned two cases by the same troops; the remaining troops are not also immune from allegation of such kind.¹³⁹ For instance, the Ethiopian National Defense were also charged with harming civilians both directly through their indiscriminate fire which targeted of civilians and indirectly by failing to protect civilians from al-Shabaab attacks.¹⁴⁰

Indirectly admitting these problems, significant developments have been made within the UN and AU with regard to policies, procedures and guiding principles in respect to the conduct of peacekeeping forces.¹⁴¹ The UN established country presence, the United Nations Assistance Mission in Somalia (UNSOM), which includes a human rights monitoring and reporting mandate.¹⁴² Regarding the Civilian Casualty Tracking and Response Cell (CCTARC), AMISOM and United Nations Support Office for AMISOM (UNSOA) have established focal points to the CCTARC, which has begun its operations, is complemented by the development of a Civilian Casualty Matrix.¹⁴³

In terms of training, AMISOM, with the support of UNSOA and UNSOM, continued to conduct AU-UN mandatory Pre-Deployment Training (PDT) in IHL. The pre-deployment training is reinforced with additional mission-specific training on key principles of IHL for senior AMISOM officers. In addition, since 2012, AMISOM conducts training courses in IHL for junior and senior officers of the SNA.¹⁴⁴ As per UN Security Council resolution 2124, 2013, the three institutions, UNSOM, UNSOA and AMISOM have established a Joint Working Group on

¹³⁷ Country Reports on Human Rights Practices, United States Department of State, Bureau of Democracy, Human Rights and Labour, (2015), P. 23

¹³⁸ Mali and Africa guardian newspaper, “African Union apologizes, admits to Ugandan troops killing 7 Somali civilians at wedding”,(2015):<<http://mgafrica.com/article/2015-08-21-african-union-force-admits-to-killing-seven-somali-civilians-at-wedding> Retrieved 03/01/17>, 09:35 AM

¹³⁹ Paul D. Williams, “The African Union Mission in Somalia and Civilian Protection Challenges, Stability: International Journal of Security & Development”, (2013), PP. 9-10

¹⁴⁰ *Ibid*

¹⁴¹ Olivia Victoria Davies, “Reclaiming protection of civilians under international humanitarian law Reflections from the Oslo global conference”, (2015)

¹⁴² Human Right Watch, World Report, Somalia, (2016), <<https://www.hrw.org/world-report/2014/country-chapters/somalia>>, retrieved 03/01/2017, 10:30 AM

¹⁴³ Report of the Chairperson, Supra note 39, Para. 37

¹⁴⁴ *Id.*, Para 34

Human Rights Due Diligence Policy (HRDDP). It developed a report on existing AMISOM, SNA and UNSOM mechanisms, highlighting gaps and making recommendations on further measures to ensure better compliance with the HRDDP.¹⁴⁵

Chataing highlights, based on the study on violence against civilians, in a case of mass killings, he suggested that a pro-government intervention might foster higher level of violence from government and/or allies forces on a long-term.¹⁴⁶ For instance, he described that, based on figures of location and event analyses, *during the robust mandate period, levels of VAC were on average 2.5 events per month from January 2010 to January 2012; and increased to 10.5 per month since the expansion of the mandate and the naming of Al Shabaab as a specific threat, including the period from May 2013 onwards.*¹⁴⁷

AMISOM's military operations, in Mwangi statements, have harmed civilians both directly through their indiscriminate fire policies and indirectly through failing to protect Somalis from Al-Shabaab attacks, even, he stresses that AMISOM becomes itself an impediment.¹⁴⁸ Dembinski and Schott were also emphasize AMISOM is accused of using force indiscriminately and it still remains a major concern.¹⁴⁹

3.8. AMISOM Use of force in light of international human rights Laws

In relation to human rights, the UNSC also authorized AMISOM to take all necessary measures with a pre-condition to comply with applicable International Human Rights Law.¹⁵⁰ Based on this, the report by the AUC commission showed that both the Commission and AMISOM continue their efforts to ensure the Mission and its personnel uphold the highest standards in terms of human Rights, including a zero tolerance to all forms of misconduct and indiscipline.¹⁵¹ In this regard, the Commission, for instance, decided to thoroughly investigate the allegations of Sexual Exploitation and Abuse (SEA) leveled against some AMISOM personnel in 2014.¹⁵²

¹⁴⁵ *Id.*, Para.35

¹⁴⁶ Chataing Supra note 24, P.3

¹⁴⁷ *Id.*, p.6

¹⁴⁸ Mwangi, supra note 10

¹⁴⁹ Dembinski & Schott, supra note 30

¹⁵⁰ UNSC Resolution, Supra note 8, Para 1

¹⁵¹ Report of the Chairperson, Supra note 39, Para 36

¹⁵² Communiqué of Peace and Security Council, PSC/PR/COMM.(CDLXII)REV.1,462nd meeting Addis Ababa,(2014), Para 10

The AU effort to prepare the *AU Draft Guidelines for the Protection of Civilians* can specifically be taken as a response to ensure the protection of displaced persons, the delivery of humanitarian assistance, and to prevent serious human rights abuses from being committed against the civilian population.¹⁵³ The CONOPS also highlights a number of cross-cutting human right issues. These relate to, among others, conduct and discipline, including zero tolerance to the violation of international human rights law.¹⁵⁴ Interviewee¹⁵⁵ emphasized that AMISOM is also structured in a way to take into account all issues related to human rights, humanitarian assistance, gender issues and the right of victims. We have units to deal with these issues that existed at all level and sectors.

Although these all are one side narratives, on the contrary, there are accusations of various human right violations by peacekeepers of AMISOM, Killings, inhumane treatments and sexual violence are the most widespread human right violations by Military personnel of AMISOM.¹⁵⁶ In relation to sexual abuse and exploitation, Human Rights Watch in its compiled report, documented that twenty-one incidents of sexual exploitation and abuse have been committed by AMISOM soldiers in the Ugandan and Burundi contingent camps.¹⁵⁷ The US department report also discloses both Ugandan and Burundian troop committed sexual violence including rape of IDPs where many of the victims were children.¹⁵⁸

Taking the serious and growing nature of these violations, human right observers, particularly the Human Right Working Group encourage the Protection, Human Rights and Gender Unit of the AU to ensure that AMISOM operations are conducted in strict compliance with International Humanitarian and Human Rights law and call upon the AU to carry-out additional and specific training of PSO staff and personnel on gender and human rights issues.¹⁵⁹

¹⁵³Paul D. Williams, Supra note 139, P.6

¹⁵⁴Report of the Chairperson, Supra note 38, Para 19

¹⁵⁵Interview, Supra note 36

¹⁵⁶Richard J. Wilson, and Emily Singer Hurwitz, supra note 131, P.4

¹⁵⁷Human Rights Watch, “The Power These Men Have Over Us: Sexual Exploitation and Abuse by African Union Forces in Somalia”, (2014), P. 18

¹⁵⁸Country Reports on Human Rights Practices, United States Department of State, Bureau of Democracy, Human Rights and Labour, (2014), P. 2

¹⁵⁹The Human Right Working Group, AU's investigations on sexual exploitation and abuse in Somalia: HRWG calls for action, (2015), P.1; See also Human Rights Watch, Supra note 135

3.9. Gaps and challenges of use of force by AMISOM

As things seen now, AMISOM experienced a range of challenges that hinders the effectiveness in its operations and prevents the achievements of its mandated. Firstly, the nature of the threats is associated with asymmetric attacks, including direct and indirect attacks, ambushes reinforced with Improvised Explosive Devices (IEDs) on AMISOM convoys along Main Supply Routes (MSRs) and hurling of grenades across all sectors.¹⁶⁰This emanated from Al-Shabaab's ability to adapt to its new environment that enables it to carry out a successful asymmetric campaign. AMISOM and TFG can also be seen as weak in some critical areas: air assets; the numerical strength of spoilers; and the area of rural mountains and terrain to cover.

Clan dynamics, Somalia clan structure or affiliation has been the decisive factor that enabled the militias to gain support of the populace and this implies a fight against every single member of the other clan. This become even more complicated by which the external actors are portrayed by Somalis with great suspicion.¹⁶¹SNA could not be developed due to clan dynamics as one of the factors.

In addition, the challenge which is related to a viable national interlocutor, in the context of weak TFG or "virtual government", which does not exercise actual authority over the vast parts of its territory, or which lack internal legitimacy and weak in terms of integrating the interests of different groups.¹⁶² This is also interrelated with impartiality which affects the credibility of the mission. It become a source of negative local perceptions about AMISOM and undermines its capability to separate al-Shabaab from the local population.

The desire and purpose of external and internal actors to form a government are not a genuine one. The frontline states especially Ethiopia and Kenya have pursued policies in Somalia that sought to retain their influence over local and national dynamics. This time the TFG was perceived as an Ethiopian proxy and some regional governments, such as Kenya, began to distance themselves from the TFG, whereas others, like the Eritrean government openly questioned the legitimacy of the entire process. Provided these regional factors, the TFG has

¹⁶⁰Report of the Chairperson, Supra note 17, Para 8; See also Stephen Burgess , "A Lost Cause Recouped: Peace Enforcement and State-Building in Somalia", *Contemporary Security Policy*, (2013), PP 302-318

¹⁶¹ Report of the Chairperson, Supra note 30, Para16: See also Jutta Bakonyi, supra note 44

¹⁶² Max Byrne, "Consent and the use of force: an examination of 'intervention by invitation' as a basis for US drone strikes in Pakistan, Somalia and Yemen", *Journal on the Use of Force and International Law* ,(2016), Vol. 3, No. 1, PP. 115-116;

lacked for legitimacy not only internally but also at the region level. Regular political friction, between Somalia 'élites, have also diverted the focus away from fighting opposing armed groups.¹⁶³

Moreover, as Gakuo argued, there is a loose kind of command and control between the Headquarter and sectors as well as a problem in coordination among TCCs. AMISOM's force headquarters has generally played a coordinating role but has often failed to ensure effective coordination across the mission's different sectors. TCCs have the freedom to pursue their strategic interests in Somalia at the expense of the mission's mandate.¹⁶⁴ Internal problems of AMISOM, the limitations that are mentioned by interviewee¹⁶⁵ are at the structural level, the staffing which is under the required number qualitatively as well as quantitatively that affects the proper conduct of the mission. At the operational level, the lack of adequate enablers, intelligence gathering assets, fight against IEDs and force multiplier such as Helicopters and the incapacity of SNSF to efficiently conduct operations.

Another challenge that are raised by interviewee,¹⁶⁶ the mission by itself is very huge because it extends from peace keeping, peace enforcement, fighting terrorism and up to peace building which is a multi-faceted one, to put it in his term a "benign" type of mission. In addition, there are three types of groups to be dealt by AMISOM, these are; the first group is completely radicalized and who desired to be ruled by the Sharia law. The second group is the grant on youth who pursue their own interest but align themselves with Al shabab. The third group is clan militia. In dealing with these groups, the first group is a hardliner whereas the second and the third groups can be handled through elders. Consequently, such a fluid environment has complicated the ROEs. He said that the international communities and agencies took long to start directly engaged and support AMISOM. Somalia's crisis has been left only to AU and had put a big burden to be resolved by AU alone as well as it does not gain sufficient understand by some portion of international communities. On top of this, some have been failed to appreciate

¹⁶³ Paul D. Williams, Exit strategy challenges for the AU mission in Somalia, *The Heritage Institute for Policy Studies (HIPS)*, (2016), PP. 3-40; see also Report of the Chairperson, Supra note 39, Para 28; see also Dehéz & Gebrewold, Supra note 84; See also Mastro, Supra note 54

¹⁶⁴ Report of the Chairperson, Supra note 14, Para 14; See also Oscar Gakuo Mwangi, supra note 10, P 31

¹⁶⁵ Interview, Supra note 36

¹⁶⁶ Interview, Supra note 16

AMISOM's political and security efforts and also failed to come up with proved, analyzed and precise advice.

3.10. Legal Mechanisms and remedies used by AMISOM

AMISOM has come up with communications strategy which prioritizes reaching out to the Somalia population to effectively communicate its mandate. It has evolved in line with the mission's revised concept of operations in September 2015 and aims to strengthen the credibility and legitimacy of AMISOM which works to create positive narratives of public perception in AMISOM's direction. Although, it does not amend the harm previously done as remedy. Another worth mentioning here as a remedy by AMISOM is an indirect fire policy aimed at restricting the use of such fire in order to reduce civilian harm issue which has damaged AMISOM's reputation.¹⁶⁷ An establishment of a Civilian Casualty Tracking, Analysis, and Response Cell (CCTARC), also intended to collate all information from Operations and investigate all incidents to enable accurate attribution of responsibility and as AMISOM's follow up mechanism.¹⁶⁸ The pre-deployment training is conducted with mission-specific training on key principles of IHL for AMISOM officers and SNA since 2012 as a respond.¹⁶⁹

All these are aimed as future mechanisms but not intended to amend the harm already caused to Somali populace. When we look at the Somalia justice system, firstly, since 1991, it has been collapsed and become creple to the extent that it cannot provide service to the people. Secondly, there are no victims' protection schemes or rules and procedures for the individuals to enable them forward their compliant and mechanisms that makes sure their safety. There have been violations of the principle of *non refoulement* by AMISOM, based on the reason that it does not have a legal capacity to put ex-fighters under AMISOM's custodian "indefinitely".¹⁷⁰

¹⁶⁷ Alexander William Beadle, *Supra* note 18, PP. 2-3; see also Paul D. Williams, *Supra* note 28, PP 1-17

¹⁶⁸ Sahr Muhammedally and Marla Keenan, "Acknowledge, Amend, Assist, Addressing Civilian Harm Caused by Armed Conflict and Armed Violence", Harvard Law School Human Rights Program and Action on Armed Violence, (2015), P.9-10

¹⁶⁹ Report of the Chairperson, *supra* note 39, Para 37

¹⁷⁰ Adebayo Kareem, "The Legal Challenges Rose By Conducting Hostilities Against Organized Non-State Armed Groups", Xxxviii Round Table On Current Issues Of International Humanitarian Law The Distinction Between International And Non-International Armed Conflicts: Challenges For IHL? SANREMO, 3rd – 5th SEPTEMBER, International Institute of Humanitarian Law,(2015)

According to the interviewee¹⁷¹, Military and police members of AMISOM are subject to the exclusive jurisdiction of their respective participating states in respect of any criminal offences which may be committed by them. The host government cannot undertake a trial against AMISOM's personnel. This is provided under Status of Mission Agreement (SOMA) and Memorandum of Understanding (MOU). He further raises the initiative taken by Ugandan government which sent and established in-mission court martial of its own Defense Force (UPDF) to undertake trials of some soldiers for alleged misconduct.

During a discussion with the interviewee¹⁷² on these issues, he explained that AMISOM is structured in a way to take into account legal steps and dispositions where it is necessary to deal with any violation of human rights through the mechanisms of board of inquiry, investigations, etc., at all level and sectors. He further explained that locally recruited Somalis have some immunities captured in the MOU signed with FGS. In the MOU all cases where a local employee should be prosecuted by and fall under the Somalia jurisdiction. Otherwise, any allegations against AMISOM personnel are TCC's jurisdictions. The internal mechanism, in order to prevent any loss of civilian life or minimize, is the use of restrictive rules in the use of force or the employment of certain types of deadly weapons which are provided by ROEs and guaranteed under the responsibility of commander on the ground that they are applied. Military alone does not carry out arrest and search unless accompanied by police or Somalia national police.

In this connection, the important issue that can be raised here is that the violations of international Human rights obligation give rise to state responsibility or not. Wilson and Hurwitz has raised that the recent decisions in the European Court of Human Rights as well as the Inter-American human rights system accept that human rights obligations can be applied for military operations carried out in a foreign land where a state has effective control over its troops.¹⁷³ In addition, a decision by the Dutch Supreme Court came up with a similar conclusion and held the

¹⁷¹ Interview, Supra note 16

¹⁷² Interview, Supra note 36

¹⁷³ Richard J. Wilson, and Emily Singer Hurwitz, Supra note 131, PP 5-6; See also Emanuele Sommario, "Unlawful conduct of UN Peacekeepers: who is to blame – the contributing State or the UN?", in Michele Gonnelli(ed), *peacekeeping Trends and challenges in Africa*, ITPCM International Commentary,(2014), PP. 53-6

state of Netherlands responsible for the incident occurred during the 1995 Srebrenica massacre, while the Dutch peacekeepers were under UNPROFOR.¹⁷⁴

In the case of AMISOM, firstly, the investigation and prosecution of individual peacekeepers exclusively given to the sending state and there is no follow up mechanism. Secondly, the issue of reparation for victims of violation has not been addressed as similar as the experience of Dutch's. The reality in AMISOM troop contributing countries shows that, they rarely prosecute their peacekeepers to the crime committed in the receiving country. Therefore, the only sanction or remedial process against the alleged AMISOM personnel is repatriation and there is no follow up mechanism to ensure whether the investigations and trial is properly undertaken in the country of origin.

TFG and AU signed a SOMA in March 2007. Paragraph 54 of the agreement provides that all AMISOM personnel are immune from legal process for any act performed in their official capacity and Paragraph 55(b) also stipulates that military members of AMISOM who commit crimes in Somalia are subject to the exclusive jurisdiction of their home state.¹⁷⁵ This provision suggests that Somalia could not effectively prosecute a military member of AMISOM for crimes that he or she commits within Somalia.¹⁷⁶

Wilson and Hurvitz argue that despite the fact that the SOMA between the African Union and Somalia provides that AMISOM personnel are immune from legal process for acts performed in their official capacity but, for instance, sexual violence cannot be committed within an official capacity.¹⁷⁷ They also explain that if criminal acts, committed by AMISOM troops, were not committed in the official capacity and it is found in the domestic law of the TCCs, then the SOMA may not apply but it fall into the jurisdiction of sending state.¹⁷⁸

¹⁷⁴ Supreme Court of the Netherlands judgment, "The case between the state of the Netherlands vs. Hasan Nuhanovic", First Chamber, 12/03324, LZ/TT, (2013)

¹⁷⁵ Richard J. Wilson, and Emily Singer Horvitz, *Supra* note 131, PP.5-6

¹⁷⁶ *Ibid*; see also Report of the Chairperson, *Supra* note 39, Para 19

¹⁷⁷ *Ibid*; See also Grubeck, *Supra* note 134

¹⁷⁸ Alexander William Beadle, *Supra* note 18, PP. 2-3; see also UN, Convention On The Safety Of United Nations And Associated Personnel, 9 Dec 1994, New York, Art 4, 8; see also UN, Optional Protocol To The Convention On The Safety Of United Nations And Associated Personnel, Adopted in New York,(adopted 8 December 2005) and entered into force on the 19 August 2010,

Conclusions

AMISOM use of force is based on a number of legal instruments; UNSC resolutions, AUPSC communiqué, CONOPS to implement the mandate with annexed ROEs, and the Conflict and mission scenario 5. AMISOM has a robust peace enforcement mandate to support the Federal Government of Somalia, fight Al Shabaab and other armed groups but it lacks Clarity and robustness with regard civilian protection to which its troops or police who witness violence against civilians are authorized to stop it or not. It declines to the protection of the partial political process rather than providing protection from physical violence. There is also mandate-related confusion due to dual mandating authorities as well as deficient in Clarity as to whether UNSC authorizes the AU as a regional organization or its individual member states.

AMISOM's operations and contingents of TCCs are characterized by "fragmented" system of coordination and inharmonious. The motivations of TCCs for providing troops vary among countries and not clear whether troops participating in these missions are deployed to achieve the mandate or to protect their immediate interests. AMISOM's use of force is not in line with the international legal principles of Humanitarian, Human rights, Refugee Laws and AU convention on IDPs. Its operations have abrogated the three basic principles, such as; Consent of the parties, Impartiality, Non-use of force except in self-defense. In addition, it does not take into considerations the importance of the three success factors of legitimacy, credibility and local ownership. Moreover, at this level of human civilizations and legal development, it lacks remedial mechanisms in a strictest sense of legal terms which undermines AMISOM's sacrifices.

Chapter Four

Conclusion and recommendations

4.1. Conclusion

As discussed throughout this paper, the issue of use of force is still a delicate matter under international plane in general and in peace operation in particular. Initially, it was the responsibility of UN to engage in peace operation missions in conflict ridden areas but recent developments have showed that there is a need to share the burden with the regional actors. As such, African states have decided to be involved in a number of peace operations through their continental organization, AU. As a result, AMISOM has become a typical and unique African peace operations mission that carries out enforcement action, fighting terrorism and somehow peace building activities that involved multi-dimensional responsibilities. The experiences of UN missions in Rwanda and former Yugoslavia in 1990s have raised the issue of civilian protection as priority agenda of peace operations. Hence, It is necessary to study whether AMISOM is operating based on the lesson acquired from the previous UN mission, particularly, its use of force.

The study has found out that AMISOM's use of force is based on the decisions of AUPSC by its communiqué, on 19 January 2007 and UNSC's resolutions, issued under Chapter VII of the UN Charter. It is supported by a number of legal instruments, such as; the CONOPS, ROEs, SOMA, MOU, and AU Conflict and mission scenarios. AMISOM has a robust peace enforcement mandate which covers many aspects including engaging into a war against some of the parties. But UNSC resolution fails to expressly mention civilian protection as AMISOM's major objective, not to repeat the UN failure as in the case of Rwanda and former Yugoslavia. It is a basic fact that the command and control of a coalition force like AMISOM must always take into account the existence of chain of command, especially when the mission involves combat. Unity of command and control still remain one of the key issues to be considered in AMISOM's command architecture. There are practices of loosely coordinated military operations among the TCCS that undermine the successes of the mission which need harmonization process among T/PCC forces on this matter and during its operation to ensure effectiveness of the mission. This study comes to the conclusion that the motives of external and internal actors who are engaged

into the use of force in Somalia, to form a government, is not a genuine one. This is reflected by, after nearly a decade of operations, AMISOM has been unable to build capable and inclusive national security forces.

Moreover, there is also a problem in relation to dual sources of mandate; AUPSC is acting as a Chapter VIII Partner with complementary capabilities, with its own sources of legitimacy, since it often forwards its communiqués to the UNSC to be endorsed in the form of UNSC resolutions. There is a mandate-related confusion about why UN acted under Chapter VII of the Charter and decides to authorize member states of the AU, not the AU as an institution. Another important issue is that AMISOM's alignment with TFG, a weak partner without effective control of the vast territory but only with external legitimacy. This affects AMISOM's impartiality and credibility and become a source of negative perception among the populace; as a result, its entire efforts and operations lack local ownership.

Despite some efforts made to address, the application of International Humanitarian Law and International Human Rights Law still remain one of the key issue. AMISOM has also experienced a number of challenges. Firstly, the tactics and the nature of warfare used by its belligerents or threats is an asymmetric. Secondly, the absence of a viable national interlocutor that is capable of exercising actual control over considerable parts of the territory, or which has internal legitimacy, has also hindered the effectiveness of AMISOM. This problem is further complicated with clan dynamics. Thirdly, the nature of the mission by itself is very huge because it involves several tasks; like, peace enforcement, fighting terrorism, etc. Fourthly, the limitation which is related to structural and operational capability such as staffing, lack of adequate enablers, intelligence gathering assets and force multiplier affects the proper conduct of the mission.

Furthermore, AMISOM exerted its efforts in using some quasi-legal mechanisms as a remedy towards human rights violations and misconduct, such as; board of inquiry and investigations. In addition, the initiatives that had been taken by individual troop contributing country, particularly, Uganda, which sent and established in-mission court martial to try her alleged soldiers, is exemplary. However, this is not an easy issue to be left without comprehensive scheme to the exclusive jurisdiction of sending state, especially, in cases which are related with misuse or abuse of force, without the follow up mechanism.

To sum up, this study examines AMISOM's legal foundation for use of force based into three pillars. It identifies lacunae in the nature of its initial mandate that have implications on the entire operations, such as, lack of clarity and mandate related confusion. It shows the violations of IHL, IHRL and the issue of impartiality and related negative perception of Somalia populace towards AMISOM which undermine the legitimacy of its use of force. It also finds out the absence of comprehensive scheme that can deter civilian harm, attribute individual as well as state responsibility, and failed to amend the harm already made through appropriate legal mechanisms. Finally, it establishes the link between these legal lacunae and AMISOM's ineffectiveness to build a credible and inclusive SNA as its exit strategy.

4.2. Recommendations

AMISOM, as African initiated peace operation, exerts its efforts to carry out its mandate and committed to achieve the goal of stabilizing Somalia as it is envisaged by AUPSC and UNSC. However, the above findings showed that there are some legal and practical gaps to be filled. Hence, there is a need to come up with recommendations in this respect. Thus, the following are forwarded to that effect.

- ❖ Even though, several steps have been taken to include the issue of civilian protection in the revised Concept of Operations (CONOPS) from 2013 onwards, the UN mandate still does not incorporate the civilian protection. Therefore, the UN mandate of AMISOM should be revisited so that it expressly, includes civilian protection as a primary concern over protection of TFG as well as its officials.
- ❖ To enable AMISOM attain its mandated objectives, its use of force should gain credibility and ownership of the majority of Somalia people. It needs to gain a local partner which acquire internal legitimacy or help TFG be more inclusive through bottom up approach instead of the existing top down imposition of FGS by use of force.
- ❖ As seen for nearly a decade, AMISOM has not been able to build an effective Somali national security forces and defeat al-Shabaab without the support of the local people. Therefore, it should work in the direction to build a capable and inclusive national security forces as an exit strategy.

- ❖ The nature of the threats against AMISOM is associated with asymmetric strategies, including direct and indirect attacks, ambushes reinforced with Improvised Explosive Devices (IEDs) and hurling of grenades across all sectors. As result, AMISOM should adapt itself to the current environment and build a capacity to undermine the asymmetric attacks and the nature of warfare used by its belligerents or threats.
- ❖ AMISOM experienced with structural and operational limitations. Thus, it should alleviate the limitation which is related with structural and operational capability that affects the proper conduct of the mission such as, staffing, lack of adequate enablers, intelligence gathering assets and force multiplier.
- ❖ With regard to Unity of Command and Control, PSC emphasized the need to rationalize AMISOM command and control under the overall direction of the Special Representative of the Chairperson of the Commission and Head of Mission. Besides, the AU has tried to undertake a structured and targeted reconfiguration of the Mission to enable efficiency, through strengthening command and control structures, to ensure all force enablers and multipliers operate under the authority of the Special Representative of the Chairperson of the Commission. But, Unity of command and control still remain one of the key issues to be considered in AMISOM's command and coordination architecture. Therefore, it should alleviate the problems of fragmentation and increase efforts towards more harmonization among T/PCC forces including SNSF, without which success cannot be achieved.
- ❖ In cases of misuse or abuse of force, the issues of individual accountability and state responsibility have not been addressed in a clear and credible manner. To illustrate this, Somali could not bring their cases of abuse due to the absence of victim protection procedures. In addition, it is difficult for Somali citizen to bring his/her case before TCC's court of law. Therefore, victim protection Scheme and procedures should be designed. Moreover, for short term, it should establish follow up mechanism to ensure that the proper investigations and trial undertaken in the country of origin or establish in-mission court of laws. In a long run, Africa should have a court of law that can undertake a trial to this purpose.

- ❖ UNSC has authorized AMISOM to take all necessary measures in compliance with applicable international humanitarian law. In addition, AMISOM, in cognizance of its obligations said to be continued to make considerable efforts to ensure that its operations are conducted in line with applicable IHL and HRL. However, this study shows that the challenges have still been prevailed. Hence, AMISOM needs to exert more efforts to ensure consistency with international human rights and humanitarian standards.

Bibliography

Books and Articles

- Abe, Yuki “Japan Norm dilemmas and international organizational development: humanitarian intervention in the crisis of Bosnia and the reorganization of North Atlantic Treaty Organization”, *Contemporary Security Policy*, Faculty of Law, Kumamoto University,(2016), Vol. 37, No. 1,
- Ada ,Siret Hürsoy Nesrin,(ed), “Challenges To Peace Operations In The 21st Century, Proceedings of the 2nd International Conference on Security”, Izmir University of Economics Press, (January 2007)
- Adebajo, Adekeye, *UN peace keeping in Africa, from the Suez crisis to the Sudan conflicts*, (2011)
- Africa union commission, *hand book, a guide for those working with and within the African union*, jointly published by Africa union commission and New Zealand ministry of foreign affairs and trade, forth editions, (2017)
- Albrecht, Peter, *Fragmented peace keeping regional interest before the Africa Union Mission in Somalia*, Danish Institute For International Studies policy brief, (2015)
- Allard, Kenneth, *Somalia Operations: Lessons Learned*, CCRP Publication Series, (2007)
- Amnesty International *Public statement, AFR 52/008/2013, Returns to South and Central Somalia: A Violation of International Law*, (2013)
- Amnesty International, *The State of world’s Human Right report*, (2015)
- Bakonyi ,Jutta ,*Authority and administration beyond the state: local governance in southern Somalia, 1995–2006*, *Journal of Eastern African Studies*, School of Government and International Affairs, University of Durham, Durham, UK ,(2013)
- Beadle, Alexander William, *Protecting Civilians While Fighting a War in Somalia: Drawing Lessons from Afghanistan*, Policy Brief,(2012)
- Bellal, Dr Annyssa and Dr Stuart Casey-Maslen, *Geneva Academy of International Humanitarian Law and Human Rights, Rules of Engagement, Protecting Civilians through Dialogue with Armed Non-State Actors*, work shop Report, (2011)
- Berdal ,Mats & David H. Ucko ,*The United Nations and the Use of Force: Between Promise and Peril*, *Journal of Strategic Studies*, Department of War Studies, King’s College London, K, College of International Security Affairs, National Defence University, Washington, DC, USA, Vol. 37, No. 5, (2014)
- Berdal, Mats and David Hucko, *The Use of Force in UN Peacekeeping Operations*, *The RUSI Journal*, (2015)

- Berhe ,Mulugeta Gebrehiwot and Alex de Waal, Preliminary Report to the African Union, Peace Missions in Africa: Constraints, Challenges, and Opportunities, World Peace Foundation, (2015)
- Berman, Sir Franklin, The UN Charter and the Use of Force, Singapore Year Book of International Law and Contributors, (2006)
- Beshah, Zekarias, African Union Peace And Security Council: To Compete or Complement the UN Security Council? Addis Ababa University, (2010)
- Blank, Laurie R., Rules of Engagement and Legal Frameworks for Multinational Counter-Piracy Operations, Case Western Reserve University Journal of International Law, Volume 46, issue 1, (2015)
- Brosig, Malte ,“Rentier peacekeeping in neo-patrimonial systems: the examples of Burundi and Kenya”, Contemporary Security Policy , Department of International Relations, University of the Witwatersrand, Johannesburg, Republic of South Africa,(2017)
- Brownlie, Ian, International law and the use of force by states, Oxford University Press, Clarendon Press Publication,(1963)
- Bruton, Bronwyn E. and Paul D. Williams, Counterinsurgency in Somalia: Lessons Learned from the African Union Mission in Somalia, 2007-2013, Joint Special Operations University Report 14-5, (2014)
- Bumgardener, Sherrod Lewis, NATO Legal Desk book, 2nd ed. , (2010)
- Byrne , Max ,“Consent and the use of force: an examination of ‘intervention by invitation’ as a basis for US drone strikes in Pakistan, Somalia and Yemen”, Journal on the Use of Force and International Law, Vol. 3, No. 1, (2016)
- Caparini, Marina and Ann Livingstone, African perspectives on challenges of police command in peace support operations, Institute for Security Studies, ISS Paper 276, (2014),
- Chataing, Paul-Antoine, Peacekeeping and Civilian Protection, Armed Conflict Location and Event Data Project, Working Paper No. 9, (2015)
- Cole ,Commander Alan, Major Phillip Drew, Captain Rob McLaughlin and Professor Dennis Mandsager (ed.), Sanremo-Hand Book on rules of engagement, International Institute of Humanitarian law, Sanremo, (2009)
- Country Reports on Human Rights Practices, United States Department of State, Bureau of Democracy, Human Rights and Labour,(2014)
- Country Reports on Human Rights Practices, United States Department of State, Bureau of Democracy, Human Rights and Labour, (2015),
- Crawford, James & Catherine Redgwell, “Armed Attack and Article 51 of the UN Charter Evolutions in Customary Law and Practice” the British yearbook of international Law, Oxford University Press, Vol., 83, Issue 1, (2012)
- Croxton, Derek, The Peace of Westphalia of 1648 and the Origins of Sovereignty, The International History Review, Ohio State University, (1999)
- Davies,Olivia Victoria , Reclaiming protection of civilians under international humanitarian law Reflections from the Oslo global conference, (2015)

- de Coning ,Cedric, Linnéa Gelot and John Karlsrud, Strategic Options for the Future of African Peace Operations 2015–2025, Rep. No. 1, Norwegian Institute of International Affairs, (2015)
- Dehéz ,Dustin & Belachew Gebrewold “When Things Fall Apart”, Conflict Dynamics And An Order Beside The State In Post collapse Somalia, African Security ,(2010)
- Dembinski, Matthias & Berenike Schott, “Converging Around Global Norms?”, , Protection of Civilians in African Union and European Union Peacekeeping in Africa, African Security, (2013)
- Dersso, Solomon A., “A retrospective look at peace and security in Africa in 2012”, African Security Review, (2013)
- Drumbi, Mark, International Law and Institution, International Law regarding The Conduct of War, Virginia, USA, (2011)
- Duale, Asha-kin F. and Jibril Ali Aw Mohammed, Somalia: Time to review AMISOM mandate, (2015)
- Engel, Ulf, “The African Union, the African Peace and Security Architecture, and Maritime Security”, African Security, Institute of African Studies, University of Leipzig, Germany,(2014)
- Erskine, E.A., Lt-Gen., Peacekeeping Techniques, for Africa’s conflict Management, Accra, Ghana, Afram publication, (2000)
- Faix, Martin, Rules of Engagement: Some Basic Questions and Current Issues, (2010)
- Ferencz, Benjamin B, The Illegal Use Of Armed Force As A Crime Against Humanity, Journal on the Use of Force and International Law, , Vol. 2, No. 2, 08 Oct 2015
- Findlay Trevor, The Use of Force in UN Peace Operation, SIPRI Oxford University Press, (2002)
- Freire, Maria Raquel, Paula Duarte Lopes & Daniela Nascimento, “Responsibility to protect’ and the African Union: Assessing the AU’s capacity to respond to regional complex humanitarian and political emergencies”, African Security Review, VOL. 25, NO. 3, (2016)
- Gaggioli, Gloria (ed.), The Use of Force in Armed Conflicts Interplay Between the Conduct of Hostilities and Law Enforcement Paradigm, International Committee of the Red Cross, report of expert meeting,(2013)
- Gelot, Linnea, Legitimacy, Peace Operations and Global- Regional Security, the African Union- United Nations Partnership in Darfur, New York, Routledge Taylor and Francis Group,(2012)
- Gelot, Ludwig -Cedric de Coning, Supporting African Peace Operations, policy dialogue No 8, the Nordic Africa institute, (2012)
- Gloria Gaggioli(ed), “The Use of Force in Armed Conflicts Interplay Between The Conduct of Hostilities and Law Enforcement Paradigm”, International Committee of the Red Cross, expert meeting, Report, (2013)

- Hammond, Laura Somalia rising: things are starting to change for the world's longest failed state, Journal of Eastern African Studies, Development Studies, School of Oriental and African Studies, University of London, Vol. 7, No. 1, (2013)
- Henckaerts, Jean-Marie and Louise Doswald-Beck, Customary International Humanitarian Law, ICRC, UK, Cambridge University Press, Vol. I., (2005)
- Herro, Annie, “The responsibility to protect, the use of force and a permanent United Nations peace service”, The International Journal of Human Rights, Centre for Peace and Conflict Studies, University of Sydney, Vol. 19, No. 8, (2015)
- Human Rights watch, (2010), Harsh War, Harsh Peace Abuses by al-Shabaab, the Transitional Federal Government, and AMISOM in Somalia
- Human Rights Watch, The Power These Men Have Over Us: Sexual Exploitation and Abuse by African Union Forces in Somalia,(2014)
- Hurd, Ian “Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World”, Carnegie Council for Ethics in International Affairs, Ethics & International Affairs, 25 no. 3, (2011)
- Hussein, Mohammad A, From AMIB to AMISOM, The Need for Institutional And Mandate Clarity in APSA, Institute for Security Studies, (2012)
- International Committee of the Red Cross, Violence and The Use of Force reference, (2015)
- Karlsrud, John, “The UN at war”: examining the consequences of peace-enforcement mandates for the UN peacekeeping operations in the CAR, the DRC and Mali, Third World Quarterly, Peace Operations Group, Norwegian Institute of International Affairs (NUPI),(2015), Vol. 36, No. 1
- Kenkel, Kai Michael, Five generation of peace operation from the thin blue line to painting a country blue, (2015)
- Kille ,Kent J. and Ryan C Hendrickson, “Explaining International Organizations, NATO and the United Nations”: Debates and Trends in Institutional Coordination, College of Wooster , Eastern Illinois University,
- Kioko, Ben B., The right of intervention under the African Union’s Constitutive Act: From non-interference to non-intervention, International Review of the Red Cross, (2003)
- Kreb, Claus Major Post-Westphalia Shifts And Some Important Neo-Westphalia Hesitations In The State Practice On The International Law On The Use Of Force, Journal on the Use of Force and International Law , Vol. 1 No. 1,
- Kuwali, Dan “From stopping to preventing atrocities, Actualisation of Article 4(h) African Security Review”, Institute for Security Studies. (2015)
- Lotze , Walter and Paul D. Williams, The Surge to Stabilize: Lessons for the UN from the AU's Experience in Somalia, International Peace Institute, (2016)
- Mastro, David “ Expert Opinion On AMISOM Contributing Countries Continued Provision Of Troops”, Centre for 21st Century Security and Intelligence, OCTOBER 2016
- Meron, Theodor, “The Humanization of International Law”, The Hague Academy Of International Law Monographs Martinus Nijhoff Publishers, Volume 3, (2006)

- Muhammedally ,Sahr and Marla Keenan, Acknowledge, Amend, Assist, Addressing Civilian Harm Caused by Armed Conflict and Armed Violence, Harvard Law School Human Rights Program and Action on Armed Violence, (2015)
- Mwangi , Oscar Gakuo, State collapse, peace enforcement and the responsibility to protect in Somalia, *The International Journal of Human Rights*, *The International Journal of Human Rights*, 2015, Vol. 19, No. 8, (2015)
- Nduwimana, Lt. Col. Donatien, AMISOM in Somalia: A Ray of Hope, Occasional Paper Series 4, No.4, The international peace support training Centre, Nairobi, Kenya. (2013)
- Peter, Mateja, Between Doctrine and Practice: The UN Peacekeeping Dilemma, *Global Governance* 21, (2015)
- Peter ,Mateje (ed.), United Nations Peace Operations aligning principles and practice Report, The Norwegian Institute of International Affairs, NUPI, Rep. No. 2, (2015)
- Plaut, Martin “How unstable is the Horn of Africa?, Review of African Political Economy”, *Institute of Commonwealth Studies, University of London*, Vol. 40, No. 136, (2013)
- Sartre, Patrice “Making UN Peacekeeping More Robust: Protecting the Mission, Persuading the Actors”, international peace Institute, IPI Publications, (July 2011),
- Seguí, Neus Ramis, The role of the African Union in Somalia: Where to go from here with the AMISOM peace operation?, Policy paper, No.08, International Catalan Institute for Peace, (2013)
- Shaw,Malcolm N. ,*International Law*, 5th ed., Cambridge University press, (2005)
- Stupart, John, *Jus Ad Bellum* and Intervention In Somalia: Why a Military Response Can Still Work, *Scientia Militaria*, South African Journal of Military Studies, Vol. 39, No. 2, (2011),
- The Human Right Working Group, AU's investigations on sexual exploitation and abuse in Somalia: HRWG calls for action, (2015),
- UN, DPKO, Provisional, master list of numbered rules of engagement, Rules 1-5, Guidelines for the development of ROE for UNPKO, (2002),
- United Nations, Report of the Commission to the General Assembly on the work of its fifty-third session, *Yearbook Of The International Law Commission*, Volume II, Part Two New York and Geneva, (2001)
- Weir, Erin A., Policies That Protect: The African Union and the Protection of Civilians, Policy Brief, Norwegian Institute of International Affairs,(2013)
- Williams, Paul D., AMISOM in transition the future of the AU Mission in Somalia, (2013)
- Williams, Paul D., The African Union Mission in Somalia and Civilian Protection Challenges, Stability: *International Journal of Security & Development*, (2013)
- Williams, Paul D., “Reflections on the Evolving African Peace and Security Architecture”, *African Security*, Elliott School of International Affairs, George Washington University, (2014)
- Williams, Paul D., Peace Operations in Africa: Lessons Learned Since 2000, African Center for Strategic Studies, Africa Security Brief, (2013)

Willmot, Haidi and Scott Sheeran, “The protection of civilians mandate in UN peace keeping operations”; reconciling protection concepts and practices, multinational operations and the law, international review of the Red Cross, (2014)

Wilmshurst ,Elizabeth (ed.), International Law and the Classification of Conflict, the British yearbook of International Law, Vol., 83, Issue 1, Oxford University Press, (2012),

Wilson,Richard J. and Emily Singer Hurvitz, Human Rights Violations by Peacekeeping Forces in Somalia, Human Rights Brief, Vol.21, No. 2, issue 1, (2014),

Wood, Michael, International law and use of force: what happens in practice,(2013)

Resolutions/ decisions/ Communiques

- African Union Policy Framework for the Establishment of The African Standby Force and The Military Staff Committee, (2003),Document adopted at the 3rd Meeting of African Chiefs of Defense Staff
- African Union Policy Framework for the Establishment of the African Standby Force and the Military Staff Committee, (2004), Assembly/AU/Dec.16 (II), Adopted by AU Heads Of States And Government, Third AU Summit, Addis Ababa, Ethiopia
- African Union Mandating Process for Peace Support Operations, (2013), Aide Memoire, the African Union’s Planning And Decision-Making Process
- AU, (2013), Aide memoire for the consideration of issues pertaining to the protection of civilians in Africa
- Briand Kellogg Pact, (1928), General Treaty for Renunciation of War as an Instrument of National Policy, Paris
- Charter of The United Nations, (1945), San Francisco
- Constitutive Act of African union, (2000), Adopted by the Thirty-Sixth ordinary session of the Assembly of Heads of state and governments, Lome, Togo
- Covenant of the League of Nations, (1919), Adopted in Paris
- ICCPR, International Covenant on Civil and Political Rights, (1966), General Assembly resolution 2200A (XXI)
- Protocol relating to the establishment of the peace and Security Council of the African union, (2000), the first ordinary session of the Assembly of the African union, Durban,
- Sirte Declaration, (1999), Fourth Extraordinary Session of The Assembly of Heads of State and Government, EAHG/Draft/Decl. (IV) Rev.1, Sirte, the Great Socialist People's Libyan Arab Jamahiriya
- UN Security Council Resolution, (2011), S/RES/2010 (2011), Adopted by the Security Council at its 6626th Meeting to extend Mandate of AMISOM until 31 October 2012.
- United Nations Security Council Resolution, (2007), S/RES/1744 (2007), Adopted by the Security Council at its 5633rd meeting.
- United Nations Security Council Resolution, (2008),S/RES/1831 (2008), Adopted by the Security Council at its 5957th meeting,

- United Nations Security Council Resolution, (2012), S/RES/ 2073 (2012), Adopted by the Security Council at its 6854th meeting
- United Nations Security Council resolution, (2007), S/RES/1772 (2007).
- Communiqué of the African Union Peace And Security Council, PSC/PR/Comm.(LXIX), (2007), 69th Meeting, Addis Ababa, Ethiopia
- Report of The African Union Commission on The Strategic Review of The African Union Mission In Somalia (AMISM), (2013), African Union Peace And Security Council 356th Meeting, Addis Ababa, Ethiopia,
- United Nations Security Council Resolution, (2009), S/RES/1863 (2009), Adopted by the Security Council at its 6068th meeting
- United Nations Security Council Resolution, (2014), S/RES/ 2182 (2014), Adopted by the Security Council at its 7286th meeting
- United Nations, (2000),Report of the Panel on United Nations Peace Operations(**Brahimi** Report), General Assembly, Security Council, Fifty-fifth session
- Report by the Chairperson of the African Union Commission to The Peace And Security Council on Somalia, (2016), PSC/PR/RPT.(DCXXII), 622nd Meeting
- African union, Press Release, (2015) , Appointment of Francisco Madeira as the new Special Representative of the African Union for Somalia and Head of the AU Mission in Somalia, Addis Ababa
- Communiqué, African Union Peace and Security Council, (2015), PSC/PR/COMM.(DXXI), 521st Meeting, Addis Ababa, Ethiopia
- Report of the Chairperson of the Commission on the follow-up of the relevant provisions of communiqué PSC/PR/COMM. (DXXI) on the situation in Somalia,(2015), PSC/PR/2(DXLIV),Peace and Security Council 544th Meeting, Addis Ababa, Ethiopia
- PSC Report of the Chairperson of the Commission on the Situation on Somalia IV, (2014), PSC/PR/2. (CDLXII), Peace and Security Council 462nd Meeting, Addis Ababa, Ethiopia
- Communiqué of Peace and Security Council, (2016), PSC/PR/COMM(DCXXII),622ndMeeting, Addis Ababa, Ethiopia
- Common African Position on The UN Review of Peace Operations, (2015), PSC/PR/2(DII), Peace And Security Council 502nd Meeting, Addis Ababa, Ethiopia
- Communiqué of Peace and Security Council, (2014), PSC/PR/COMM.(CDLXII)REV.1,462ndmeeting Addis Ababa, Ethiopia
- Cedric de Coning, Julian Detzel and Petter Hojem,(2008), Report of the TFP Oslo Doctrine Seminar, UN Peacekeeping Operations Capstone Doctrine, Oslo Norway

Interviewees

Major General Okello Francis, Head of plans and operations, AUC/PSOD, African Union Commission HQs, Dec 23, 2016, 08:30 AM

Colonel Khalifa Ndione , plans and operation unit AUC / PSOD/ POU , African Union Commission HQs, Dec 23, 2016

Cases

- Caroline case, (1838), correspondences of US state secretary Vs UK
- ICJ, Nicaragua V. United States of America,(1986),Case Concerning Military and Paramilitary Activities In and Against Nicaragua
- Supreme Court of the Netherlands ,judgment, (2013), The case between the state of the Netherlands vs. Hassan NUHANOVIC, First Chamber, 12/03324, LZ/TT

Web Sources

- Amira A. Ghoniem, (2003), United Nations Peacekeeping Operations: Improvements for Mission Success,
<http://web.stanford.edu/class/e297a/United%20Nations%20Peacekeeping%20Operations.pdf>
- Christopher D. Amore,(2013), Rules of Engagement: Balancing The (Inherent) Right and Obligation of Self-Defense with The Prevention of Civilian Casualties
https://www.nslj.org/pdfs/NSLJ_Vol1_Iss1_Spring2013_Amore_39-76.pdf
- Nico Schrijver, (2003),The Use of Force under the UN Charter: Restrictions and Loopholes,
http://acuns.org/wp-content/uploads/2012/09/WebPageSchrijver_UseofForce.pdf
- Dr. Ismail PAMUK, (2014), Rules of Engagement: A Review of Its Definition, Scope and Practice,
<http://www.journals.istanbul.edu.tr/iuhmhohb/article/viewFile/5000121272/5000111803>
- ICRC , (2012), Expert Meeting: The Use of Force in Armed Conflicts<https://shop.icrc.org/e-books/the-use-of-force-in-armed-conflicts-expert-meeting.html>
- George F. Oliver, (2002), the other Side of Peacekeeping: Peace Enforcement and Who Should Do It?, The Yearbook of International Peace Operations, Volume 8,
<http://www.internationalpeacekeeping.org/pdf/04.pdf>
- How to keep Military personnel from going jail for doing the right thing: Jurisdiction and ROE, (2000) , http://www.au.af.mil/au/awc/awcgate/law/roe_deadly_force.pdf
- Katharina Remshardt, (2010), Under what Conditions has the UN been able to use its Chapter VII Powers?, <http://www.e-ir.info/2010/11/13/under-what-conditions-has-the-un-been-able-to-use-its-chapter-vii-powers/>

- Laurie Blank and Amos Guiora, (2010), Teaching an Old Dog New Tricks: Operationalizing the Law of Armed Conflict in New Warfare, http://harvardnsj.org/wp-content/uploads/2015/01/Vol.-1_Blank-Guiora_Final.pdf
- Law of Armed Conflict Desk book, (2012), International and Operational Law Department https://www.loc.gov/rr/frd/Military_Law/pdf/LOAC-Deskbook-2012.pdf
- Law of War/ Introduction to Rules of Engagement Student Handout, (2015), United States Marine Corps, <http://www.trngcmd.marines.mil/Portals/207/Docs/TBS/B130936%20Law%20of%20War%20and%20Rules%20Of%20Engagement.pdf>
- Lt. Col. David Bolgiano,(2008),The rules of Engagement <http://www.pbs.org/wgbh/pages/frontline/haditha/themes/roe.html>,
- Lt. Col. Sylvain Fournier,(2009),NATO military interventions abroad: how ROE are adopted and jurisdictional rights negotiated, <http://www.defensesociale.org/warandpiece/SYLVAIN%20FOURNIER.pdf>
- Major Herman C. Broadstone, USMC, (1996), Rules of Engagement in Military Operations Other Than War, from Beirut to Bosnia, <http://smallwarsjournal.com/documents/broadstone.pdf>
- Martin Ortega, (2001), Military intervention and the European Union, <http://www.iss.europa.eu/uploads/media/cp045e.pdf>
- Mats Berdal & David Hucko, (2015), The Use of Force in UN Peacekeeping Operations, Problems and Prospects, can be found at <http://www.tandfonline.com/action/journalInformation?journalCode=rusi20>
- Necessity and proportionality: Rules of Engagement, <http://www.globalsecurity.org/military/library/policy/army/fm/27-100/chap8.htm>
- Paul D Williams, (2013), The African Union Mission in Somalia and Civilian Protection Challenges, <http://www.stabilityjournal.org/articles/10.5334/sta.bz>
- Principles and Guidelines for UN Peacekeeping operations, (2010), Peace Operations Training Institute, http://cdn.peaceopstraining.org/course_promos/principles_and_guidelines/principles_and_guidelines_english.pdf
- Rules of Engagement, (2005), Standing Rules of Engagement (SROE)/Standing Rules for The Use of Force (SRUF) for U.S. Forces, https://www.loc.gov/rr/frd/Military_Law/pdf/OLH_2015_Ch5.pdf
- Rules of Engagement Handbook, (2013), International Institute of Humanitarian Law <http://www.jag.navy.mil/distrib/instructions/San-Remo-ROE-Handbook.pdf>
- Richard P. DiMaggio LTC and others (2012), law of armed conflict desk book https://www.loc.gov/rr/frd/Military_Law/pdf/LOAC-Deskbook-2012.pdf
- Sebastian Heselhaus, (2017),International law and the Use of Force, <http://www.eolss.net/Sample-Chapters/C14/E1-36-01-02.pdf>

- Sherrod Lewis Bumgardener (ed.), (2010), NATO Legal Desk book, 2nd ed.
<https://info.publicintelligence.net/NATO-LegalDeskbook.pdf>
- The Right to Adequate Food in Emergencies, (2003), FAO Office of Director-General,
<http://www.fao.org/docrep/005/Y4430E/y4430e04.htm>
- UN Department of Peacekeeping Operations, (1998), Glossary of UN Peacekeeping Terms, DPKO Training Unit, , www.un.org/Depts/dpko/glossary/r.htm
- United Nations Peacekeeping Operations Principles and Guidelines,(2008),
[https://www.google.com.et/?hl=ug&gws_rd=cr,ssl&ei=B8tgWMvLCYLiWQKbmYn4CA#hl=ug&q=canope+doctrine+of+peace+operation+by+UN\(pdf\)](https://www.google.com.et/?hl=ug&gws_rd=cr,ssl&ei=B8tgWMvLCYLiWQKbmYn4CA#hl=ug&q=canope+doctrine+of+peace+operation+by+UN(pdf))
- Mali and Africa guardian newspaper, (2015), African Union apologizes, admits to Ugandan troops killing 7 Somali civilians at wedding: <http://mgafrica.com/article/2015-08-21-african-union-force-admits-to-killing-seven-somali-civilians-at-wedding>
- Human Right Watch, (2016), World Report, Somalia, <https://www.hrw.org/world-report/2014/country-chapters/somalia>

Annexes

Annex -1

Addis Ababa University, school of law and governance, graduate studies:

The purpose of this in-depth interview is to collect information in relation with the use of force by African mission in Somalia (AMISOM) for academic study. Hence;

- All responses will be kept confidential
- All responses will only be used for academic purpose

Therefore, your kind help and co-operation as well as honesty will make the study reliable and valid.

Brief professional and personal information:

Name -----

Qualification -----

Current position -----

1. In your opinion, could the consent by TFG or FGS be taken or equally elevated as legitimate as the consent given by the host authorities and/or the main parties to the conflict?
2. Is the mandate of AMISOM consistence with the traditional principles of consent, impartiality and minimum use of force? How?
3. What are the clarity of the justifications by AU as well as UN to establish the legitimacy of the use of force by AMISOM to take side with one of the local partner, particularly, first with Transitional Federal government(TFG), and then, with Federal Government of Somalia (FGS) and its SNSF?
4. Who has the primary monopoly of legitimate use of force in Somalia, AMISOM or SNSF?

5. Why does the mandate give way to a more expansive role for AMISOM military forces that would likely involve taking the initiative in the use of force?
6. What are the structures that established the unified command and control relationship?
7. What are the AMISOM's structural and operational limitations that affect its mission?
8. What are AU's well-established doctrine, model concepts of operation for various missions, model rules of engagement (ROE), directives or policy with regard to use of force?
9. What are AMISOM's legal instruments that guide its use of force? Are they robust enough to respond to the perception and the expectation of protection created by its very presence in Somalia?
10. What are the trainings provided to the militaries that can clearly show of the role expected of them as peacekeepers?
11. What are the experiences or lessons that AMISOM forces have stood by and observed or withdrawn from the scene or reluctance to use force during violence against civilians?
12. Are they common to all troop contributing countries (TCC) contingents? Or are there caveats by TCCs based on their national policy or laws?
13. What is the mechanism to ensure that AMISOM's use of force is conducted in compliance with international humanitarian law (IHL)?
14. What are the provisions of the AMISOM's ROE that are designed to minimize harm to civilians?

15. What are the efforts that were made to deal with the repeated allegations that AMISOM had violated IHL and was unable to protect civilians?
16. What is the mechanism for addressing the structural weaknesses (if any) of AMISOM to ensure its compliance with protecting the fundamental rights of civilians, victims and non-combatants in violent conflict?
17. What is the legal mechanism to ensure that AMISOM's use of force is conducted in compliance with international human rights law (IHRs)?
18. What are the relevant AU policies and guidelines in this regard?
19. What are the legal remedies when Civilians remained at risk of being directly targeted in attacks by AMISOM?
20. What are the immunities of all AMISOM personnel, including locally recruited Somalis, from local legal processes in Somalia for criminal acts they commit while deployed, particularly, in relation with the use of force?
21. What are the exclusive jurisdictions of The TCCs over their personnel for criminal offenses they commit with regard to the use of force?
22. What are the challenges that can hinder the effectiveness of AMISOM?
23. Finally, what are your recommendations?

Thank you!!

Annex- 2

Addis Ababa University, school of law and governance, graduate studies:

The purpose of this in-depth interview is to collect information in relation with the use of force by African mission in Somalia (AMISOM) for academic study. Hence;

- All responses will be kept confidential
- All responses will only be used for academic purpose

Therefore, your kind help and co-operation as well as honesty will make the study reliable and valid.

Brief professional and personal information:

Name -----

Qualification -----

Current position -----

1. What is your opinion about AMISOM's mandate and its consistency with international law, specially, United Nations Charter?
2. How can you explain it in accordance with the provisions of African union constitutive act?
3. What is your position as to whether AU intervention needs UN authorization or not?
4. Is the mandate of AMISOM consistence with the traditional principles of consent, impartiality and minimum use of force? How?
5. In your opinion, could the consent by TFG or FGS be taken or equally elevated as legitimate as the consent given by the host authorities and/or the main parties to the conflict? How can it be competent to act on behalf of the state of Somalia?
6. What are the clarity of the justifications by AU as well as UN to establish the legitimacy of the use of force by AMISOM aligning with local partner, particularly, first with Transitional

Federal government(TFG), and then, with Federal Government of Somalia (FGS) and its SNSF?

7. How do you see whether a government without effective control over its territory can give a valid consent? How the criterion of effectiveness is properly observed to the validity of consent in relation to the Somalia case?
8. What impact does it constitute in relation with the right to self-determination of Somalia people?
9. What are AU's well-established doctrine, model concepts of operation for various missions, model rules of engagement (ROE), directives or policy with regard to use of force?
10. What are AMISOM's legal instruments that guide its use of force? Are they robust enough to respond to the perception and the expectation of protection created by its very presence in Somalia?
11. Are they common to all troop contributing countries (TCC) contingents? Or are there caveats by TCCs based on their national policy or laws?
12. What are the roles of the AUC legal office in the process of drafting and adoption of those instruments?
13. What is the legal mechanism to ensure that AMISOM's use of force is conducted in compliance with international humanitarian law (IHL)?
14. What are the provisions of the AMISOM's ROE that are designed to minimize harm to civilians?
- 15, what is the legal mechanism to ensure that AMISOM's use of force is conducted in compliance with international human rights law (IHRs)?

16. What are the relevant AU policies and guidelines in this regard?
17. What are the legal remedies when Civilians remained at risk of being directly targeted in attacks by AMISOM?
18. What are the immunities of all AMISOM personnel, including locally recruited Somalis, from local legal processes in Somalia for criminal acts they commit while deployed, particularly, in relation with the use of force?
19. What are the exclusive jurisdictions of The TCCs over their personnel for criminal offenses they commit with regard to the use of force?
20. What are the legal gaps or lapses that can hinder the effectiveness of AMISOM? If any, what efforts have been made to fill these gaps?
21. Finally, what are your recommendations?

Thank you!!