

**EXAMINATION OF THE IMPACT OF THE UNITED NATIONS SECURITY
COUNCIL RESOLUTION 2098 ON THE PROTECTION OF CIVILIANS IN
NORTH-KIVU, DEMOCRATIC REPUBLIC OF THE CONGO**

BY

MUGOMBOZI AKONKWA FELICITE

LLM-1164-01056-09285

**A RESEARCH THESIS SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL
FULFILLMENT OF THE REQUIREMENT FOR THE AWARD
DEGREE OF MASTER OF LAWS OF KAMPALA
INTERNATIONAL UNIVERSITY**

OCTOBER, 2018

DECLARATION

I, **Mugombozi Akonkwa Félicité**, declare that this thesis is my original work and has not been presented for a degree or any other academic award in any university or institution of learning.

.....

Signature of Candidate

.....

Date

APPROVAL

I confirm that the candidate under my supervision carried out the work reported in this thesis.

Dr. Brian Kalenge

.....

Signature of Supervisor

.....

Date

DEDICATION

I dedicate this thesis to my lovely husband Mr. Franklin Nzinga, my children Corneille, Gabriella and Adan; and lecturers who tirelessly contributed to the successful completion of this research through their functional, moral and academic support. May their efforts be rewarded by the Almighty God.

ACKNOWLEDGEMENTS

I would like to thank God for the grace, strength and wisdom He has provided me to write this thesis right from the start to the very end of it, glory be to God.

Great appreciation goes to my supervisor Dr. Brian Kalenge, for having sacrificed his time to guide me whenever necessary. I am so grateful and may the good Lord richly bless the work of your hands.

Special thanks to my Mum Mrs. Léontine Ngangura, siblings, and the in-laws for the prayers and all the support towards this thesis.

Gratitude goes to all the people who have helped me in one way or the other to complete my research. May the almighty God shower them with his blessings, Amen.

TABLE OF CONTENTS

DECLARATION	i
APPROVAL	ii
DEDICATION	iii
ACKNOWLEDGEMENT	iv
TABLE OF CONTENTS	v
LIST OF TABLES	ix
LIST OF FIGURES	x
LIST OF ABBREVIATIONS	xi
LIST OF STATUTES	xii
The Hague Convention III of 1907	xii
The Covenant of the League of Nations of 1919	xii
LIST OF RESOLUTIONS	xiii
TABLE OF CASES	xiv
ABSTRACT	xv
CHAPTER ONE	1
GENERAL INTRODUCTION	1
1.1 Background to the study	1
1.2 Statement of the Problem	5
1.3 Objectives of the Study	6
1.3.2 Specific Objectives	6
1.4 Research questions	7
1.5 Scope of the study	7
1.6 Significance of the study	8
1.7 Research Methodology	9
1.7.1 Population and Sample Population	9

1.7.2 Sampling and Sampling Techniques	Error! Bookmark not defined.
1.7.3 Data collection instruments	10
1.7.4 Data analysis plan.....	10
1.7.5 Ethical considerations	10
1.8 Literature Review	11
1.10 Organisational Layout	17
CHAPTER TWO	19
FRAMEWORK OF THE UNITED NATIONS SECURITY COUNCIL	19
2.1 United Security Council (UNSC) Creation.....	20
2.2 The United Nations Security Council members.....	21
2.3.1 The UNSC and powers for the pacific settlement of dispute	24
2.3.2 The United Nations Security Council under the UN Charter Chapter VII	28
2.3.3 United Nations Security Council under Chapter VIII	32
2.3.4 Limitations on the United Nations Security Council powers.....	35
CHAPTER THREE	38
UNITED NATIONS PEACEKEEPING IN THE DEMOCRATIC REPUBLIC OF THE CONGO.....	38
3.1 Understanding the United Nations Peacekeeping and peace-making operations	38
3.2 Principles of Peacekeeping missions.....	40
3.3 Status of force and mandate of the UN Peacekeeping missions in DRC	43
3.4 The role of the UN Peacekeeping mission in the DRC Crisis	46
3.4.1. ONUC.....	46
3.4.2. MONUC.....	47
3.4.3. The United Nations Stabilisation Mission in the Congo (MONUSCO)	48
3.5 The UN Missions Challenges in DRC	50

3.5.1 Internal Challenges.....	50
3.5.2 External challenges	52
CHAPTER FOUR.....	55
ANALYSIS OF THE IMPACT OF THE UNSC RESOLUTION 2098 ON CIVILIANS’ PROTECTION IN NORTH-KIVU	55
4.1 The 2098 Resolution effectiveness on peacekeeping in DRC with respect to civilian protection in North Kivu	55
4.1.1 The Resolution 2098 context and opportunity	Error! Bookmark not defined.
4.1.2 Mandate implementation.....	57
4.1.2 A. The mandate comprehension.....	58
4.1.2.B. The respect of the mandate	60
4.1.2.C. The Brigade outcome from March 2013 up to March 2018.....	61
4.2 Measures taken by the Brigade to ensure effective protection of civilians under imminent threat of physical violence.....	63
4.2.1 Existence of civilian protection mechanisms	63
4.2.2 Responses to rebel groups attacks	64
4.3 The brigade attacks risk mitigation to civilians before, during and after any military operation.....	66
4.3.1 The Brigade base location.....	66
4.3.2 The interventions time and its implications	67
4.4 Factors impeding the Resolution implementation and to a new mechanism of protection	68
4.4.1 The Brigade collaboration with DRC army forces (FARDC) in the implementation of the Resolution 2098.....	68
4.4.2 Towards a new mechanism of civilians’ protection in North-Kivu, Rutshuru	71

CHAPTER FIVE	73
CONCLUSION AND RECOMMENDATIONS	73
5.1 Conclusion.....	73
5.2 Recommendations	75
5.2.1 To the United Nations Security Council	75
5.2.2 To the Brigade	75
5.2.3 To the Democratic Republic of the Congo	76
REFERENCES.....	Error! Bookmark not defined.
Books.....	77
Articles	Error! Bookmark not defined.
Reports	83
APPENDICES	87
Appendix I: An Interview Schedule for Military Officers, Police Officers and Monusco Personnel in Eastern Congo, DRC	87
Appendix II: An Interview Schedule for Chiefs Of Rutshuru Localities And Villages	88

LIST OF TABLES

Table 1: The link between the mandate non comprehension and the lack of Brigade intervention in the field.	58
Table 2: Link between the mandate non-respect and the population mistrust.....	60
Table 3: Link between the Brigade responses to rebel groups attacks and the 2098 Resolution effectiveness.....	65
Table 4: Link between the Brigade Base location and human rights violation arise.	66

LIST OF FIGURES

Figure 1: The link between security context and The Resolution 2098 Opportunity	56
Figure 2: Link between other Rebel Groups neutralisation by the Brigade and its Outcome Lukewarm	61
Figure 3: Link between the Existence of specific protection mechanisms and the Resolution 2098 effectiveness.....	63
Figure 4: Link between intervention time and mitigation, reduction of attacks	67
Figure 5:The link between the Brigade-FARDC collaboration and the effectiveness of the 2098 Resolution.	69
Figure 6: Variables of the 2098 Resolution effectiveness on civilian protection in North-Kivu, Rutshuru territory	71

LIST OF ABBREVIATIONS

ADF:	Allied Democratic Forces
AMISON:	African Union Mission in Somalia
COB:	Company Operating Base
DPA:	Department of Political Affairs
DPKO:	Department of Peace Keeping Operations
DRC:	Democratic Republic of the Congo
FARDC :	Forces Armées de la République Démocratique du Congo
FDLR:	Democratic Forces of the Liberation of Rwanda
FNL:	National Force of Liberation
ICJ:	International Court of Justice
ICTY:	International Court of the former Yugoslavia
IDPs:	Internal Displaced Persons
ISSSS:	International Security and Stabilisation Support Strategy
M23:	Mouvement du 23 Mars
MONUC:	United Nations Mission in the Democratic Republic of the Congo
MONUSCO:	United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo
NATO:	North Atlantic Treaty Organisation
OCHA:	Office for the Coordination of Humanitarian Affairs
ONUC:	United Nations in the Congo
PKOs:	Peacekeeping Operations
PNC:	Police Nationale Congolaise
STAREC:	Stabilisation and Reconstruction Program
TCCs:	Troop-Contributing Countries
UN:	United Nations
UNCT:	United Nations Country Team
UNEF:	United Nations Emergency Force
UNGA:	United Nations General Assembly
UNOSOM:	United Nations Operation in Somalia
UNSC:	United Nations Security Council
UNTSO:	United Nations Truce Supervision Organisation
VCLT:	Vienna Convention on the Law of Treaties

LIST OF STATUTES

- **INTERNATIONAL INSTRUMENTS**

The Briand–Kellogg Pact of August 1928

The Constitutive Act of African Union

The Covenant of the League of Nations of 1919

The Hague Convention III of 1907

The protocol relating to the establishment of peace security council of African Union

The Rome Statute

The United Nations Charter of 1945

The Vienna Convention of the Law of Treaties 1969

Treaty of Southern Africa Development Community (SADC)

- **NATIONAL LEGISLATION**

The Constitution of the Democratic Republic of the Congo of 18th February 2006 as modified today.

LIST OF RESOLUTIONS

UNSC Resolution 83 (1950)
UNSC Resolution 84 (1950)
UNSC Resolution 687 (1990)
UNSC Resolution 787 (1992)
UNSC Resolution 794 (1992)
UNSC Resolution 940 (1994)
UNSC Resolution 1258 (1999)
UNSC Resolution 1291 (2000)
UNSC Resolution 1744 (2007)
UNSC Resolution 1973 (2011)
UNSC Resolution 1925 (2010)
UNSC Resolution 2098 (2013)
UNSC Resolution **2348 (2017)**

TABLE OF CASES

- **International Court of Justice**

1. *Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. USA)*, ICJ 1986..... Page 1
2. *Case Concerning the Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, ICJ 2005..... Page 18
3. *Advisory opinion on Legal consequences for states of the continued presence of South Africa in Namibia*, ICJ 21 June 1971..... Page 26

- **National courts**

1. *Mother of Srebrenica v. Netherlands and United Nations*, Supreme Court of Netherlands, 2012..... Page 11
2. *Mukeshimana Ngulunzira and others v. Belgium*, Brussels Court, 2010.....Page 11

ABSTRACT

The United Nations Security Council has taken several measures to stabilise the Democratic Republic of the Congo since 1960. Facing so many security issues and civilians' human rights violations, in 2013 the Resolution 2098 created the Intervention Brigade with the mandate of using all necessary measures to protect civilians.

This study intended to examine the impact of the UNSC Resolution 2098(2013) on protection of civilians in North-Kivu, DRC, with the following specific objectives: To examine the effectiveness of the 2098 Resolution on peacekeeping in DRC with respect to the protection of civilians and the neutralisation of rebel group; to determine measures taken by the brigade to ensure, within its area of operations, effective protection of civilians under imminent threat of physical violence; to assess how the brigade mitigates the risk to civilians before, during and after any military operation; to identify challenges faced by UN peacekeepers in carrying out the Resolution 2098.

This study is social-legal as its used both doctrinal and non-doctrinal methods to address the objectives. The qualitative approach was applied to access findings and key respondents were purposively selected within members of the community of Rutshuru in North Kivu, DRC. The major tools used were Interviews and document analysis.

The researcher noticed that the lack of the Interventions Brigade promptness and completeness has the outcomes on civilian attacks and human rights violation by rebel groups. Thus, the intervention Brigade delay in time did not mitigate the risk of civilian attacks, kidnapping and other human rights violation as provided by the 2098 Resolution;

The unclear definition mandate of the Brigade and the inexistence of specifics mechanism of civilian protection lead to the ineffectiveness of the Resolution and the mistrust of the mission by the population.

Since there is no need of adopting Resolutions which, at the end of the day, will not sort out the conflict and restore peace and security in the country or region concerned, for the further effectiveness of the United Nations Security Council resolution, the mandate should be clearly defined and provide for measures of its implementation. As the implementation tool of the UNSC 2098 Resolution, the Brigade must follow the guidelines provided by the UNSC on civilian protection task. Moreover, the DRC collaboration with the Brigade is most welcomed to ensure the effectiveness of the Resolution 2098.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the study

War is as old as mankind and its effect can either be long or short term. It impacts both a country and its neighbours' economic, social and infrastructure development level. As much as trauma and civilian suffering were too much during war time, the first major diplomatic attempts to restrict warfare were made during The 1899 and 1907 Hague Peace conferences. The parties agreed to the good offices or mediation of one of all friendly powers and they should reduce the cruelty of war by limiting the warfare ways.¹

After the First World War, the League of Nations was created in 1924 and one of its objectives was the maintenance of the status quo as it existed at that time, based on a collective system that granted peace and security. Article 2 stipulates that,² any war or threat of war, whether immediately affecting any member of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations².

In the Kellogg-Briand Pact, parties declared that in the name of their populations, they condemn recourse to war for the solution of international disputes or controversies.³As the League of Nations failed to prevent the Second World War, the United Nations (UN) was created to maintain the status quo by stipulating 'never again'.

The use of force is prohibited under international law.⁴ However there are exceptions where States can use force as provided under UN Charter for self-defense (Article 51) and for the purposes of maintaining peace and security by United Nations Security Council.

Under Article 24(1) of the United Nations Charter, all State members of United Nations (UN) gave the primary role of maintaining international peace and security to the United Nations Security Council (UNSC).⁵

¹The Hague convention III of 1907 relating to the opening of hostilities.

²Covenant of the League of Nations 1924, Article 2.

³The Kellogg-Briand Pact of August 1928.

⁴See ICJ Cases Nicaragua v. United Nations (1986) and DRC v. Uganda (2005).

⁵UN Charter, Article 24.

Chapter VII of the United Nations Charter, deals with existence of threat, breach of the international peace and security and aggression. The determination of such threat or breaches is under the power of United Nations Security Council.⁶

According to article 39, for maintaining peace and security, UNSC shall make recommendations or decide what measures shall be taken in accordance with Articles 41 and 42. The Security council's ability to intervene in disputes is almost unlimited and its decisions represent a binding obligation on all member states.

In 1950, the first UN operation for maintaining international peace and security was voted to stop the invasion of North Korea in South Korea.⁷ The UN operation in South Korea called United Nations Emergency Force (UNEF) which had the mandate to ensure and supervise the cessation of hostilities, to supervise the withdrawal of forces and ensure compliance with other UN provisions⁸. The latter established basic criteria of the foundation of peacekeeping missions. The success of the UNEF operation opened the way for an interest resurgence in using the international peace and security functions of the UN.⁹

In the resolution 687 of 1990, the Iraq's invasion and annexation of Kuwait prompted the UN second experience mandate under Chapter VII with the imposition of sanctions, then moved to enforcement measures.¹⁰In 1992, after the existence of the Agenda for peace addressing the whole specific aspects of peace and security actions, the UNSC in the resolution 787 up to 1995 authorised the UN Peacekeepers in Bosnia to use force. The Security Council called upon State members to enforce UN arms and trade embargo against the former Yugoslavia. The Resolution authorised participant states to 'use such measures...as may be necessary... to halt all inward and outward maritime shipping...to insure strict implementation of the arms and trade embargo.'¹¹

In Haiti, The UNSC Resolution 940 authorized military action to cease the brutal population suppression by the army after expelling the elected president Jean Bertrand Aristide.¹²

⁶Ibid. Article 39.

⁷P. V. Jakdson, 'National interest, Humanitarianism or CNN: What triggers UN Peace Enforcement After the cold war?' *In Journal of peace Research*, [1996], P.4.

⁸UNSC Resolutions 83(June, 1950) and 84(July, 1950).

⁹Ibid note 7.

¹⁰J. Boulden, 'peace enforcement: The UN experience in Congo, Somalia and Bosnia', *in Library of Congress Catalog*, [2001], pp. 2-42.

¹¹B. Chu, 'the forgotten Chapter: The legality of peacekeeping, peace enforcement, and military intervention under chapter VII of United Nations Charter' *in Journal of international law*, [January 2017] GONZAGA university.

¹²UNSC Resolution 940 (1994).

The Resolution 794 of December 1992, expressed grave alarm regarding the situation in Somalia and authorised the use of force by United Nations Interim Task Force.¹³ As the result of persisting conflict in Somalia, The UNSC authorised AMISOM in early 2007 and mandated the mission to conduct offensive operations against Al-Shabaab and other actors.¹⁴ The first troop composed of 1,650 Ugandan peacekeepers were deployed in March 2007 and were subsequently joined by Burundian troops in late 2007.¹⁵

For the same purpose of maintaining peace and security, in 2011, the UNSC resolution 1973 authorised the NATO to intervene in Libya to end the civil war. Acting under Chapter VII, the UNSC authorized ‘state members...acting nationally or through regional organisation or arrangement... to take all necessary measures to protect Libyan civilians and enforce ‘No-Fly Zone over Libya’.¹⁶

In 1993, with genocide in Rwanda, which made displacement of population from Rwanda to DRC, an armed group also crossed the border. The armed group Democratic Forces for the Liberation of Rwanda (FDLR) and the presence of many other rebel groups in the eastern part of DRC maintain the existence of conflict.¹⁷

According to the UN Charter, the UNSC can intervene on behalf of a UN Charter member or not for the purpose of maintaining international peace and security. However, DRC has been admitted in accordance with Article 4 of the UN Charter since 20th September 1960.¹⁸

According to Article 215 of the Constitution of DRC, treaties and conventions legally ratified are binding on the State and become part and parcel of the DRC juridical arsenal.¹⁹ Therefore, UN Charter is part of the DRC arsenal and UNSC in particular has legally intervened in DRC through several stabilisation missions.

In 1960, by the Resolution 143 of 1960, United Nations Organisation in the Congo (ONUC) was the first UN peacekeeping mission being deployed to maintain peace and security in the

¹³UNSC Resolution 794 (1992).

¹⁴UNSC Resolution 1744 (2007).

¹⁵P. Williams, “The African Union Mission in Somalia and Civilian Protection Challenges,” *in* Stability: International Journal of Security & Development[2013]2(2):39,available at <http://www.stabilityjournal.org> accessed on: 29 September 2017.

¹⁶UNSC Resolution 1973 (2011) paragraph 4.

¹⁷Human Right Watch, Attacks of rebel groups reported, December 16, 2014. See also number of rebel groups in DRC, Reported by Pole institute, Goma February 2016.

¹⁸United Nations Treaties Collection available at <http://www.treaties.un.org> accessed on 29 September 2017.

¹⁹Art. 215, Constitution de la RDC du 18 Fevrier 2006 telle que modifiée et complétée en 2011. DRC is a monist country. There is no need of an act of incorporation for an international convention of treaty to become part of the national legislation and bound on the State. However, exception is on article 214.

context after independence where so many rebel groups were fighting for the secession of some provinces from DRC and created what many qualified as the Congo crisis.²⁰

Before Resolution 1291 was passed in 2000, UN presence in DRC was regulated by Resolution 1258 (1999), and consisted of military observers reporting on factions' compliance with peace accords. Based on the 1999 Lusaka Ceasefire Agreement, the UNSC established the United Nations Mission in the Democratic Republic of the Congo (MONUC). Its mandate was to safeguard UN installations and equipment, to ensure the secure and free movement of personnel, and to protect civilians from the imminent threat of physical violence.²¹

Ten years after 1999, under Chapter VII of the UN Charter, in 2010, the UNSC adopted the Resolution 1925 to establish the United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo (MONUSCO) with the mandate of improving government capacity to protect the population; and the consolidation of State authority throughout the territory.²²

In March 2013, as a result of the continued persistent climate of insecurity in the Eastern Democratic Republic of the Congo (DRC), defeating the presence of the United Nations largest peacekeeping mission (MONUSCO)²³, the UNSC authorised the Brigade to undertake military operations against armed groups in DRC²⁴. Over years, DRC has experienced numerous armed groups rapidly increasing and consecutively challenging the Armed Forces of the Republic.²⁵ Within the country, we have seen many different territories where rebel groups interchange hands and the country remains marked by recurring changes in alliances among armed groups²⁶. For example, the defunct March 23 Movement (M23) and Raia Mutomboki (Kiswahili' angered citizens') to name but a few.

²⁰1960-1965 The Congo Crisis available at <http://www.congoforum.be> accessed on 27th September 2017.

²¹UNSC resolution 1258 (1999). See also M.H.A. Menodji, 'problematic peacekeeping in DRC: From MONUC to MONUSCO' in think Africa Press, [February 4, 2013] available on <http://thinkafricapress.com> accessed 15 September 2017.

²²UNSC Resolution 1925 (2010).

²³M. Schwikowski, 'UN Peacekeeping Missions in Africa', Published on 15/04/2017 available on <http://p.dw.com/p/2bFHX> accessed 27th September 2017.

²⁴UNSC Resolution 2098 (2013) paragraph 12.

²⁵Human Right Watch, 'Report on Attacks of rebel groups', December 16, 2014. See also number of rebel groups in DRC, Reported by Pole institute, Goma February 2016.

²⁶IRIN, 'Armed groups in Eastern Democratic Republic of the Congo' available on <http://www.irinwes.org> published on 5/10/2013 accessed on 27 September 2017.

As a result of these rebel groups especially the M23's Goma invasion in November 2012 there have been serious humanitarian consequences harrowing.²⁷ According to the Office for the Coordination of Humanitarian Affairs (OCHA) (2008) there are 1.3m IDPs in DRC²⁸. Therefore, displacement renders populations more vulnerable and makes them the key candidates for a humanitarian response. For instance, in 2012, Thousands of families fled their homes in the DRC eastern province of North Kivu due to the renewed fighting, it implicated an urgent aid basic need such as food, water, shelter and healthcare.²⁹ Considering at this analysis, the author seeks to dissect the possible consequences and impact of the UNSC Resolution 2098 on the protection of Civilians in North-Kivu DRC.

1.2 Statement of the Problem

The UN has taken many measures for the stabilisation of the DRC through peacekeeping missions from 1960 up to the date from MONUC to MONUSCO. Owing to recurrent conflicts in Eastern DRC, the UNSC decided to take another strategy of peace maintenance by adopting the Resolution 2098 creating the 'Intervention Brigade' (the Brigade) with a force mandate to cease the conflict in 2013.

Based on its paragraph 12 (a)(i), The UNSC Resolution 2098 provides that the Brigade should take any necessary measures to ensure, within its area of operations, effective protection of civilians under imminent threat of physical violence, and mitigate the risk to civilians before, during and after any military operation and neutralised armed groups and to protect civilians.

Nevertheless, by the time the UNSC Resolution 2098 (2013) has been adopted by the UNSC, conflict and humanitarian crisis still factual in eastern DRC. As evidenced by council on foreign relations, seventy armed groups are believed to be currently operating in the eastern Democratic Republic of the Congo (DRC). For instance, the Democratic Forces for the Liberation of Rwanda (FDLR) and the Ugandan Allied Democratic Forces (ADF) continue to terrorise communities and control weakly governed areas of the country despite the stabilising

²⁷Sida, Democratic Republic of the Congo: Humanitarian crisis and analysis, 2016 available on <http://www.sida.se> accessed 27 September 2017.

²⁸OCHA, Population Movements in Eastern DR Congo, OCHA DRC, July 2008.

²⁹OCHA, DRC: Aid workers need access and funding in North Kivu, June 2012.

presence of 19, 000 UN Peacekeepers.³⁰ Those rebel groups are financing their activities by exploiting the country's rich natural resources.³¹

Millions of civilians have been forced to flee the fighting. The United Nations estimates that there are currently at least 2.7 million Internally Displaced Persons in DRC, and approximately 450,000 Congolese refugees in other countries'.³² Moreover, taking into account this situation, the UNSC decided to renew the mandate of MONUSCO including its intervention Brigade by maintaining its current force levels on 30th March 2016.³³

Therefore, in the view of what is above, it is important to efficacy examine the resolution 2098.

1.3 Objectives of the Study

The main objective to this study is the examination of the impact of the United Security Council Resolution 2098 on the protection of Civilians in North-Kivu. The objectives of this Study are twofold: general objective and specific objectives.

1.3.1 General Objective

The main objective of this study is to examine the impact of the UNSC Resolution 2098(2013) on protection of civilians in North-Kivu, DRC.

1.3.2 Specific Objectives

The specific objectives of the study are:

- To examine the effectiveness of the 2098 Resolution on peacekeeping in DRC with respect to the protection of civilians and the neutralisation of rebel groups;

³⁰Council on Foreign Relations, violence in the Democratic Republic of the Congo in Global Conflict Tracker, September 2017 available on <https://www.cfr.org> accessed on 28th September 2017

³¹S. J Ouko, T. Kiguta, C. Nthiga, C. Muthui, E.K. Gachoki, K.W.A. Ngeno, 'Financing of Armed Groups in Sub-Saharan Africa: A Review of Literature on Armed Group Financing in the Democratic Republic of Congo', in Journal of Social Science and Humanities Research, [July - September 2016], Vol. 4, Issue 3, pp: (288-294), P 288.

³²Council on Foreign Relations, violence in the Democratic Republic of the Congo in Global Conflict Tracker, September 2017 available on <https://www.cfr.org> accessed on 28th September 2017

³³UNSC 7659th Meeting on 30 March 2016 available on <https://www.un.org> accessed 28th September 2017

- To determine measures taken by the brigade to ensure, within its area of operations, effective protection of civilians under imminent threat of physical violence;

and

- To identify challenges faced by UN peacekeepers in carrying out the Resolution 2098.

1.4 Research questions

- To what extent has the Resolution 2098 been effectively implemented?
- To what extent the Brigade ensured an effective protection of civilians under imminent threat of physical violence in Rutshuru territory?
- What are the factors impeding the full implementation of the Resolution 2098?

1.5 Scope of the study

As the third largest country in the African continent, DRC has the population of 66M estimated from 2016 population census survey. Its capital is Kinshasa and it has 26 provinces.

The study focused on eastern Congo because of the contest of the conflict which makes the eastern DRC as the most conflictual party of the Republic. This study covers the North-Kivu province which was generally concerned by the UNSC Resolution 2098. North-Kivu's capital is Goma and has six territories (Beni, Lubero, Rutshuru, Nyiragongo, walikale, masisi). Nevertheless, due to time this study covers Rutshuru territory which has been one among all to benefit of the intervention of the brigade.

Moreover, the study focuses on the analysis of the Resolution 2098 with use of force mandate and its impact on the protection of civilians under imminent threat of physical violence during and after any military operation according to its paragraph 12(a).

The study covers the period which stated from the existence of the Resolution 2098 and its impact on ground up to March 2018. Therefore, the temporal scope of the study is from 2013 up to 2018.

1.6 Significance of the study

The civilian protection ability in eastern Congo depends on both implication of the DRC Government and the United Nations. Civilian protection is very important because it is a core element to build peace and the latter is a keystone for the development of a country. Therefore, there is a link between development and civilian protection. This thesis will contribute to the existing body of knowledge in the field of peacekeeping missions. Specifically, this thesis should provide a contribution on the current peace operation in Congo with a peace enforcement mandate, The Brigade. It will outline civilian protection tasks and mechanism for measuring the impact of the 2098 UNSC Resolution.

Moreover, the study could come up with evidence data about the situation in eastern DRC, so general public or other researchers could be aware of statistics and how far MONUSCO is dealing with the protection of civilians under its mandate. If findings indicate the mission fails to protect civilians, the study will help the UN in formulating lasting solution to the eastern conflict and a legal framework to overcome challenges of UN Peacekeeping operations regarding civilian protection in the world generally and in DRC in particular for successful future peacekeeping. Finally, the thesis also adds to the larger study of peacekeeping operations as it provides evaluation criteria of a successful peacekeeping operation with a civilian protection mandate that can be critiqued and compared to other.

1.7 Research Methodology

The adopted methodology is broadly with the purpose and objectives of the research since after framing the UNSC Resolution 2098 and all peacekeeping missions' legal basis, an empirical research has been conducted to assess their effectiveness on civilian protection in eastern DRC. Thus, the research is socio-legal as it applied both doctrinal and empirical.

To achieve the research objectives, the research followed qualitative approach. Therefore, according to the issue of understanding the nature of 2098 UNSC Resolution, a doctrinal research applied wherein the analysis of the UN Charter and the Resolution its self has been relevant. Answering the three research questions about the extent to what the Resolution 2098 has been effectively implemented, to what extent the brigade ensured an effective protection of civilians under imminent threat of physical violence in Rutshuru territory and the identification of factors impeding the full implementation of the Resolution 2098, an empirical research has been done because the contact of the civilians in protection need was better the way for having a picture of what has been done in that area of DRC. The major methods used to address the issue of the effectiveness of 2098 UNSC Resolution were Interviews and document analysis.

1.7.1 Population and Sampling

For data collection on ground, the study focuses on non-probability sampling. As the effect of the conflict is general and does not depend on an individual to another, non-probability sampling technique does not give all the individuals in the population equal chances of being selected. Therefore, in the purpose of getting the real context of the implementation of the 2098 UNSC resolution, chief of localities and villages in Rutshuru territory, North Kivu, some key respondents of the armed forces (FARDC), police officers, and MONUSCO civil personnel in North Kivu are the population of the study.

The judgemental sampling or purposive helped the researcher to select the respondents based on the researcher's beliefs that some subjects fit more the research than other individuals. Therefore, a total of 30 key respondents from whom the researcher got the information were

selected; 15 localities/villages, 5 members of the Brigade, 5 members of PNC and 5 members of FARDC were purposively chosen as subjects.

1.7.3 Data collection instruments

Interview as a face –to-face conversation between an interviewer and a respondent conducted for the purpose of obtaining information, the interview guide was the main instrument used to collect data from the respondents about the implementation of the UNSC resolution by the Brigade on its civilian protection task. The Interview protocols contained questions related to the research objectives. One was for Chiefs of localities/villages to address how the civilian population have been protected by the Brigade when implementing the UNSC Resolution 2098 and the other one for military officers, police officers and Brigade’s members to address how in their collaboration have been implemented the UNSC Resolution.

1.7.4 Data analysis plan

Qualitative data were done manually by the researcher. Qualitative data have been analysed through ‘the grounded theory’ approach. Codes have been used in assigning units of meaning to the descriptive or inferential information compiled during the study. Coding was carried out line-by-line which led to the categorisation of data collected. To establish the linkages between such categories, the researcher used coding paradigm.

The tape-recorded interviews were transcribed verbatim. The researcher listed transcripts to avoid omissions or distortions of meaning. The Topic was subsequently assigned labels or codes where the labels will be used according to terms they represented.

1.7.5 Ethical considerations

For ethical considerations, the researcher was ethical in collecting data and in the process of dissemination of findings, respect was shown to those who participated in the research and operate with sincerity and integrity. Therefore, to ensure confidentiality of the information provided by respondents and ascertain the practice of ethics in this study, the following activities were implemented by the researcher:

- An introduction letter was obtained from the University to solicit approval to conduct the study from the respective respondents
- Asked for authorisation through a written request or oral to respondents
- Acknowledge the authors quoted in this study through citations and referencing
- Present the findings in a generalised manner.

1.8 Literature Review

The essence of literature review is to provide information from the existing scholars, identify possible gaps and therefore, show how the study is going to bridge those gaps in order to provide a comprehensive understanding of the topic.

In view of this, several works found to be relevant to the topic are herein under review.

The deployment authorisation of the United Nations peacekeeping operations into volatile post-conflict settings where the State is unable to maintain security and public order by the Security Council is based on Chapter VII of the UN Charter.³⁴The first intervention to claim purely or even predominantly humanitarian motivation was the North Atlantic Treaty Organization (NATO) action against Yugoslavia over the conflict in Kosovo in 1999.³⁵

Michael maintains that the Chapter VII of UN Charter is the basis of peace enforcement operations and UN officials tend to view it as an entirely different activity from peacekeeping.³⁶In his work, he finds that the growing gap between the missions and results expected from UN operations resides on the resources placed at their disposal and restrictions on their ability to enforce military compliance with their mandates. That has been the case in the 1990s peacekeeping operations which led to three devastatingly failed missions. Peacekeeping failures in the 1990s include the organisation's failure to prevent or limit the Rwandan Genocide in 1994³⁷; its inefficiency in bringing about a political accord, coupled with relatively heavy military losses in Somalia; and its failure to protect civilians and itself in Bosnia, symbolized by the 1995 Srebrenica massacre.³⁸ The author concluded that lessons from those operations could afford to a profound rethinking of the UN peace operations.

However, the author has not studied the case of DRC yet, which qualified by many other studies as the largest operation of the United Nations.

Wood, after analysing the use of force in international law perspectives argues that the existing rules, in particular the Security Council's powers under Chapter VII of the Charter to authorise

³⁴United Nations Peacekeeping Operations Principles and Guidelines,2008.

³⁵A. J. Bellamy, 'The 'Next Stage' in Peace Operations Theory?' *In International Peacekeeping*. Vol. 11, No. 1; p. 17–38 [2004] P. 12.

³⁶K. M. KenKe, 'Five generations of peace operations: from the "thin blue line" to "painting a country blue", *in Rev. Bras. Polít. int.* [2013] 56 (1): 122-143.

³⁷See the case *Mukeshimana Nguluzira and others v. Belgium*, Brussels Court (2010).

³⁸See the case *Mother of Srebrenica v. Netherlands and UN*, Supreme Court of Netherlands (2012).

the use of force, and the right of self-defence recognised in Article 51 of the Charter, are adequate to address current threats.³⁹ He finds that at some extent, the use of force has been the solution to the threat of international peace and security.

Nevertheless, the author has not analysed the effectiveness of the UNSC resolutions based on the use of force on the conflict resolution in DRC which this study seeks to do.

As Eckhoff argues, the use of force should be the last UN intervention in maintaining international peace and security, there should be preventive actions then conflict resolution (whether traditional peacekeeping or peace enforcement)⁴⁰.

The study agrees with the author because there are many steps based on Articles 41 and 42 of the UN Charter that the UNSC council should undertake before the use of force. Those steps could include Observers missions, alternative disputes resolutions provided by the charter.

Hirsch and Oakley in their work find that the United Nations Operation in Somalia (UNOSOM I) in 1992 faced constant looting, banditry and violence, and the operation proved ineffective in addressing the situation.⁴¹ Although, Adjovi, finds that UNOSOM II, which was focused on humanitarian efforts initially, bore some fruits, violence increased in the absence of a political resolution and the whole mission withdrew in March 1995 and ten years following the withdrawal of UNOSOM II, there was little progress in obtaining a negotiated peace settlement in Somalia.⁴²

In the face of humiliation of peacekeeping forces and the continuation of human suffering, there has often been the need to change the mandate of the forces to that of enforcement, says Audu. He also says that the employment of the strategy created an atmosphere in which peace negotiations could be conducted is more welcome than other operations even though this pattern of alternating between peacekeeping and enforcement actions had not been too commonly experienced in other peacekeeping operations.⁴³ The author seeks to analyse the consequences of peace-enforcement operations in West Africa and DRC. However, he criticises the rationale of 2098 the Resolution without analysing its impact on ground and what

³⁹M. Wood, "International law and use of force: What happens in practice?" *In Indian journal of international law* [2004] Vol. 53, P.50.

⁴⁰L. Eckhoff, "The Legal basis for the Use of Force by the UN Peacekeeping Operations" available at <https://www.duo.uio.no> accessed 25 September 2017.

⁴¹P. Hirsch & J. Oakley, 1995, pp. 17-33, by P. Diehl, "With the Best of Intentions: Lessons from UNOSOM I and II," in *Studies in Conflict and Terrorism*, [2006] p.155.

⁴²R. Adjovi, "Introductory Note to the United Nations Security Council Resolution 2093 on the situation in Somalia," in *International Legal Materials*, [2013] pp. 53-1185.

⁴³B. N. Audu, "Aspects of Peacekeeping and Peace-Enforcement in Conflict Resolution: West Africa and the Congo," in *Journal of Humanities and Social Science (IOSR-JHSS)* [Sep. 2014], Volume 19, Issue 9, Ver. VI PP 14-19.

challenges faced the 'intervention brigade' to achieve its mandate. Therefore, this study covers that gap.

Nevertheless, The International Refugee Rights Initiative, in a research on ground about civilian perspectives on the African Union Mission in Somalia, finds that the AMISOM has managed to significantly weaken Al-Shabaab and has increased the Somalia government's capacity, Al-Shabaab remains a significant threat. Despite recognition of the difficult context in which is operating, many still felt the mission was not effective in delivering its mandate and there were significant criticisms of their action and inaction.⁴⁴

Boutellis in his article, tries to criticise the effectiveness of the UNSC Resolution which gave the MINUSMA a robust mandate with the right to use 'all necessary means' to perform its tasks, including protecting civilian centres and taking proactive steps to 'prevent the return of armed elements to those areas'. He argues that there is still a considerable lack of clarity about what stabilisation is, and Council members have so far given little guidance and means to UN missions for implementing stabilization mandates. As the result of unfair achievement of the UN operation in the context of Mali, the UN must also adapt its ways of doing business and start addressing the mismatch between doctrine and current UN peacekeeping practices.⁴⁵

However, as the author analysed the UN peace enforcement operation in Mali (April, 2013), the study analyses the peace-enforcement mandate of MONUSCO in DRC (March, 2013)

Agada, argues that UN mission in Somalia is a good example of the kind of challenges UN peace operations face today. His finding is that the prerogative to deploy peace operations with enforcement mandate is a discretionary power of the UN Security Council. But he advises, after analysing the impact of Peace Keeping Operations in Somalia, that the use of force mandate should be given with extreme caution because the UN is not well suited to combat operations.⁴⁶

However, his analysis is still relevant in the context of Somalia. The research bases in the context of DRC in general and Eastern DRC in particular which is a sui generis conflict.

Solhjell & Rosland argue that the problems identified with stabilisation interventions in general are also found in the mandate of MONUSCO and the conceptualisation issue of previous efforts

⁴⁴IRRI, 'Civilian perspectives on the African Union Mission in Somalia', May 2017 available on <http://www.refugee-rights.org> accessed on 29th September 2017.

⁴⁵A. Boutellis, 'Can the UN Stabilize Mali? Towards a UN Stabilization Doctrine Stability' in *International Journal of Security and Development*, [2015], 4(1), p. 33.

⁴⁶S. Agada, 'The Challenges of United Nations Peacekeeping in Africa: Case study of Somali', in *peace operations Training Institute*, [2008] P. 23.

on stabilisation in DRC have all failed to address the root causes of conflict. In their article, authors examined a new approach to stabilisation, manifested in the International Security and Stabilisation Support Strategy (ISSSS), which aims at being an innovative, holistic, yet targeted approach to both bottom-up and top-down measures for stabilisation. In their conclusion, they argue that there are a number of challenges, but also opportunities, ahead for stabilisation in the conflict-stricken regions of DRC.⁴⁷

This research agrees with authors that there are challenges but also opportunities to end the conflict in eastern DRC although only a research on ground could give the better solution as well as findings should be used for new steps of stabilisation of DRC.

In his work, Putting Security Council Resolution 2098 on the Democratic Republic of the Congo in Context: The Long Way of Peacekeeping, Janik⁴⁸ tries to find out the consequences of peace-enforcement elements within a Peacekeeping mission on the notion of impartiality in general and with regard to the situation in DRC in particular, thus emphasising the pressing need to distinguish between the MONUSCO's task in protecting the civilian population and the offensive mandate of the Intervention Brigade. He finds that there are more than enough grounds to be worried, not only about the Peacekeeping mission in DRC but also about the future of Peacekeeping as such.

However, the author analysed the consequences of the 2098 Resolution based on the historical background of the UNSC resolutions about international peace and security and its purpose without approaching the implementation of the resolution within its context. Thus the present study covers that gap.

Also Karlsrud investigates and analyses the inclusion of robust stabilisation mandates in UN peacekeeping. He discovers that the Intervention Brigade has consequences at two levels: Strategic level (relationship between African Union and United Nations) and operational and tactical level (combat organisation). At the strategic level a division of labour has developed between the UN and regional organisations. The African Union is less than thrilled that the UN replaced its missions in Mali and the CAR before it got a chance to show that it could handle these situations. At the operational and tactical levels, the UN does not have the tools or

⁴⁷R. Solhjell & M. Rosland, 'Stabilisation in the Congo: Opportunities and Challenges' *in* *Stability: International Journal of Security and Development*, [2017]. 6(1), p.2.

⁴⁸R. Janik, 'Putting Security Council Resolution 2098 on the Democratic Republic of Congo in Context: The Long Way of Peacekeeping', *in* *10 Human Security Perspectives* (2014), pp. 142-185.

capabilities to execute combat operations and it is highly uncertain whether it is possible to enable it to be a combat organisation. Indeed, there is currently no consensus among member states that this is a desired development. In particular, some of the traditional Troop-Contributing Countries (TCCs), which provide the absolute majority of troops on the ground, are wary of a development towards peace enforcement as this increases the risk their troops are exposed to.⁴⁹

Even though the author explains consequences of the Intervention Brigade, he has not discussed about its impact on ground according to the mandate on paragraph 12 of the 2098 UNSC Resolution. The paragraph authorises MONUSCO, through its military component:

‘(...) to take all necessary measures to perform the following tasks, through its regular forces and its Intervention Brigade as appropriate;

(a) Protection of civilians (i) Ensure, within its area of operations, effective protection of civilians under imminent threat of physical violence, including civilians gathered in displaced and refugee camps, humanitarian personnel and human rights defenders, in the context of violence emerging from any of the parties engaged in the conflict, and mitigate the risk to civilians before, during and after any military operation (...)’⁵⁰

Ponthieu et al., in their article look ahead to the possible consequences of the Intervention Brigade for humanitarian action in this fragile region. They found that the ‘Intervention Brigade’ had negatively impacted on the deteriorating security and humanitarian situation.⁵¹ In their work , they noticed that there was a direct causal link between UN integration and the reduced humanitarian access and humanitarian actors may be perceived as associated with political actors, particularly in volatile environments like DRC and the real level of influence on humanitarian action. However, authors have not analysed the consequences of the Intervention Brigade on others civilians’ rights like right to life, freedom from torture, etc. The current study analyses the consequences of 2098 Resolution on the protection of civilians in general, not only the humanitarian access aspect.

⁴⁹J. Karlsrud, “The UN at war: examining the consequences of peace- enforcement mandates for the UN peacekeeping operations in the CAR, the DRC and Mali “, *in Third World Quarterly* [2015], 36:1, 40-54, P.51.

⁵⁰UNSC Resolution 2098 (2013) paragraph 12.

⁵¹A. Ponthieu, C. Vogel, K. Derderian, “Without Precedent or Prejudice? UNSC Resolution 2098 and its potential implications for humanitarian space in Eastern Congo and beyond“,[January 21, 2014] available on <http://www.sites.tufts.edu> accessed on 24 September 2017 .

In addition, in their article, Blyth and Cammaert⁵² argue that making the UN a party in the fight increases the risks to the civilian components of MONUSCO, who may be at risk of rebel responses to the Intervention Brigade operations. The authors recommend that the Brigade must form a part of a wider strategy for bringing peace to DRC, creating political space for the new Peace, Security and Cooperation Framework for the Democratic Republic of the Congo and the Region. Military intervention unsupported by a political process could, in fact, discourage parties from engaging in negotiations.⁵³

Although, authors have not analysed that the ‘Intervention Brigade’ of MONUSCO might have severe consequences on the civilians’ population rights and on those who have been affected by the fight between the Intervention Brigade/ FARDC and rebel groups.

Sheeran and Case consider that the implementation of the 2008 UNSC Resolution was and is now largely considered a success, and some consider it as a model for future UN peacekeeping operations. While the focus has been primarily on its political and operational aspects, the legal issues are real and of practical consequence.⁵⁴

Therefore, it is relevant to analyse the impact of the 2008 UNSC Resolution according to its mandate to neutralise rebel groups in eastern DRC thus the situation remains the same and civilians’ rights are not protected.

Benson, in his discussion paper about The UN Intervention Brigade⁵⁵, he focuses on some key considerations which were examined in order to determine the success and failures of the Intervention Brigade. He finds that the mission has failed on its mandate on protection of civilians and that since 1990s. Criticising the neutralisation of armed groups in eastern DRC such as M23, the author argues that the targeted armed groups were effective but harm one of the major objectives of the UNSC Peacekeeping missions which is its role of neutral arbitrator in conflicts.

⁵²F. Blyth and P. Cammaert, “The UN Intervention Brigade in the Democratic Republic of Congo,” *in* International Peace Institute Issue Brief,[July 2013], p. 8, available at <https://www.ipinst.org/wp-content/uploads/publications> accessed on 21 September 2017.

⁵³Ibid.

⁵⁴S. Case and S. Sheeran, “The Intervention Brigade: Legal Issues for the UN in the Democratic Republic of Congo,” *in* Protection of Civilians, Oxford: Oxford University Press, [2016], p. 7.

⁵⁵J. Benson, “The UN Intervention Brigade: Extinguishing Conflict or Adding Fuel to the Flames?” *in* A One Earth Future Discussion Paper [June 2016], P.4

However, the author has not supported his arguments with data from the province in which the fight took place. Therefore, this study seeks to cover and support the findings with a research on field.

1.10 Organisational Layout

This study is divided into 5 chapters. Chapter 1 concerns general introduction. It contains the background to the study, Research problem statement, objectives of the study, research questions, hypothesis, scope of the study, significance of the study, methodology and literature review and the organisational lay out.

Chapter two focuses on an introduction to the UNSC and its working mechanism. The chapter will also unveil the UNSC composition and its purposes.

Chapter three examines peacekeeping missions. The DRC case study will be framed.

Chapter four will be at its core relevance, a critical analysis of the underlying purpose, impact of the 208 UNSC resolution on the civilian protection in Rutshuru, North-Kivu.

Chapter five is related to the findings, conclusion to the discussion and analysis above. In this conclusion, intend to provide recommendations on how effective can such Resolution might be even viewed in their future.

CHAPTER TWO

FRAMEWORK OF THE UNITED NATIONS SECURITY COUNCIL

2.0 INTRODUCTION

The United Nations Organisation is an international organisation created in 1945. Its purpose and principles are equal rights and self-determination of peoples, prohibition of threat or use of force in international relations and non-interference in domestic affairs by UN, obligation of State members to give assistance to the UN and refrain from assisting states targeted by undertaking preventive or enforcement action, non-State members should act in accordance with the UN principles.⁵⁶

According to Chapter III of the UN Charter, The UN has eight organs : the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the UN Secretariat.⁵⁷

Under the United Nations Charter (Charter) the use of Force is prohibited. Article 2(4) of the Charter stipulates that: ‘ All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations’⁵⁸.The objective of the prohibition of Use of force is to protect the territorial integrity and political independence of sovereign States. That has been stipulated in several others instruments such as the 1970 UN General Assembly Declaration on the principles of International Law concerning Friendly Relations and the 1974 declaration on aggression definition.⁵⁹

In the same view, the Nicaragua case **is** the key case in the prohibition of use of force under the UN system. In that case International Court of Justice called on the United States to "cease and to refrain" from the unlawful use of force against Nicaragua and stated that the US was "in breach of its obligation under customary international law not to use force against another state" and ordered it to make reparation.⁶⁰ The same principle **is** also applied in the cases Yugoslavia V. NATO Countries,1999 and Congo V. Uganda, 2005.⁶¹ However, exceptions to prohibition

⁵⁶ Articles 1 and 2 UN Charter.

⁵⁷ Articles 7 UN Charter.

⁵⁸ Art 2(4) of the UN Charter.

⁵⁹ UNGA Declaration of 1970.

⁶⁰ *Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. USA)*, ICJ 1986.

⁶¹ *Case Concerning the Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, ICJ, 2005. See also ICJ case available at <http://www.un.org> accessed 02 October 2017.

of use of force are provided under the Charter. Following are the exceptions: self-defence (Article 51), humanitarian intervention, and the chapter VII application by the United Nations Security Council (UNSC).

The following lines depict the UNSC, as a UN organ in charge of maintaining international peace and security. It focuses on the UNSC creation (1), its members (2) and its roles and functions (3).

2.1 United Security Council (UNSC) Creation

In 1945, after the Second World War, being aware of the guiding principles of the League of Nations and of its numerous failures as well, representatives from China, Great Britain, the Soviet Union, and the United States met at the Dumbarton Oaks mansion in Washington D.C. for the initial discussions to the United Nations creation. The representatives narrow the capacity of the League of Nations to discuss significant international affairs. However, they pointed out that the League of Nations was not shaped in a manner which was able to yield successful measures to deter aggression and prevent conflict.⁶²

Firstly, the absence of the United States in the organisation handicapped the League of Nations by preventing it from achieving maximal financial backing and international political support.⁶³ Secondly, The League has not provided a demarcation, that is a clear division duties between the League's Assembly and Council committees. Therefore, obligations were improperly managed.⁶⁴ Thirdly, the consensus which was required to all resolutions to pass and there was the dim sense of collective security hindered the League in the sense that it is not easy in States' international relations. Therefore, individual State Members of the League continued the policy of pursuing security of their own countries. The limited scope of the League refrains the materialisation of its objectives because many countries which would have been beneficial to the League simply were not invited to join. That has been proved by the Treaty of Versailles which unfairly penalised Germany in its terms.⁶⁵ In addition, the League was unable to prevent

⁶²LM. Goodrich, From League of Nations to United Nations, in International Organisations[1947] Vol.1 Issue 1 available at <http://www.jstor.org> accessed 1 November 2017

⁶³LM. Goodrich, AP. Simons, The United Nations and maintenance of International Peace and Security, in The American Political Science Review [1956] Vol 50, NO I.

⁶⁴Ibid.

⁶⁵J. Mixon, Why did the League of Nations fail?, available on <https://www.quora.com> accessed on 1 November 2017

foreign incursions or negotiate their resolutions successfully after they had occurred; for instance from the Chaco War of 1922 to the Nazi annexation of Czechoslovakia, the League had not means to sort out the conflict and Colonialism was merely incompatible with the League's existence.⁶⁶

As the nations represented at Dumbarton Oaks were mindful of these failings of the League of Nations, they proposed a new international Organisation with a principal organ tasked specifically with promoting international peace and security.⁶⁷ After careful consideration at the San Francisco Conference later in 1945, delegates from countries as first State members of the United Nations came to the conclusion that an organ acting as the United Nations' defence advisor and operations executioner, dealing with the maintenance of international peace and security, should be created. Therefore, the United Nations Security Council was created.

2.2 The United Nations Security Council Members

In the nineteenth century there was the creation of a privileged place for great powers that limited lesser powers to a peripheral role. Lesser states possessed few rights and certainly not that of equality. Therefore, they were occasionally consulted when their interests were involved.⁶⁸ Likewise, the UN Charter follows the same way by offering a similar privileged status to key powers. The first powerful seat was given to the dominant Allied powers such as the United States, the Soviet Union, and the United Kingdom. France and China seats were offered in the expectation that these countries would assume huge power of their status.⁶⁹ However, at time the three Allied powers have a significant debate about whether this expectation was reasonable and appropriate to give a unique place and special privileges to France and China but they decided to do so.

The Security Council is composed of fifteen State members, of which five nations holding permanent seats and ten rotating elected seats. The five permanent members referred to as the "P-5" are China, France, Great Britain, the Russian Federation (in place of the former Soviet Union) and the United States.

⁶⁶ JC. Ebegebulem , "The Failure of Collective Security in the Post World Wars I and II International System", in *Transience* [2011] Vol.2, Issue 2

⁶⁷Ibid

⁶⁸R. C. Hilderbrand, D. Oaks, *The Origins of the United Nations and the Search for Postwar Security* (Chapel Hill: University of North Carolina Press, 1990).

⁶⁹Ibid

The ten non-permanent State members are represented geographically⁷⁰ and at any given time by two Latin American, one Asian, one Arab, two Western European, one Eastern European and three African. Those States are mandated by the UN Charter to have a representative at the headquarters' organisation in New York City, for the purpose of facilitating the Council to operate ceaselessly and without delay or hesitation about current issues on international peace and security.⁷¹ Current non-permanent members of the Security Council are : Bolivia and Uruguay from the Latin American and Caribbean Group, Egypt, Ethiopia and Senegal from the African Group, Italy and Sweden from the western European and other Groups, Japan and Kazakhstan from the Asia-Pacific Group and Ukraine from the Eastern European Group.⁷²

Pursuant to Article 27 of the UN Charter, each member of the security council has one vote. Seven affirmative votes are required for matters. However, seven votes including the vote of five permanent State members are required for other matters except procedural matters. Nevertheless, a State party involved in a dispute shall abstain from voting.⁷³ However, for any resolution discussed in the Security Council, the five permanent members have the veto power. The P-5 were granted the veto power in order to ensure that no State among them would attack another and to prevent the UN from taking direct action against any of its principal founder members.⁷⁴

In recent years, the P5 have often met separately from the rest of the Council and have negotiated many draft resolutions among themselves before presenting them to the rest of the membership. These deeds emphasise the fact that the Council's permanent members have usually operated as a distinct community within the Council, in practice.⁷⁵ Hence, Permanence and possession of the veto power create a critical status between the permanent and elected members.⁷⁶ However, the veto power is still exercised for self-interest or the allies' interests. Out of a total of 24 vetos used by the USA from 2000 up to 2011 , 15 were to protect

⁷⁰Article 23(2) UN Charter.

⁷¹Articles 23(3) and 28(1) UN Charter.

⁷²Members of the UNSC on 1 November 2017 available at <http://www.un.org> accessed on 1 November 2017

⁷³Article 27 of the UN Charter.

⁷⁴S. Okhovat, 'The United Security Council: Its Veto Power and its Reform', Centre for Peace and Conflict Studies [2011] No 15/1.

⁷⁵D. Bosco, 'Assessing the UN Security Council: A Concert Perspective', Global Governance 20 (2014), 545 – 561.

⁷⁶M., E. O'Connell., *International Law and the Use of Force: Cases and Materials, University Casebook Series* (New York: Foundation Press; Thomson West, 2005).

Israel.⁷⁷ This fact evidences an example of challenges faced by the UNSC to maintain international peace and security.

Moreover, as regarded the humanitarian crises and conflict in Syria, the international community responses have not been consistent. The Veto power used by Russia has blocked the maintenance of peace and security in Syria. There is also another instance which could be related to the interests of the UNSC five permanent state members while dealing with threat to international peace and security. The case of Rohingya in Myanmar could be a very good example nowadays. Many authors have argued that UN in general and UNSC in particular is not responding in an appropriate way to the peace need in Myanmar.⁷⁸

This undemocratic privilege of the five permanent combined appeals for reform. Presently, countries have started to consider this body issue more seriously and therefore we record the reform call increase of UN, most importantly the UNSC.

Anyway, analysts believe that an augmentation in the number of seats in the UNSC is much more plausible than reforming or removing the veto.⁷⁹

2.3 The UNSC Functions and Powers

Article 24(1) of the Charter stipulates that: 'In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council the primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under the aforementioned Article, the Security Council acts on their behalf'.⁸⁰ Therefore, the Security Council has the ability and authority to exercise powers from existing international law by creating binding Resolutions. In accordance with the UN purposes and principles, specific powers of the UNSC are stipulated under chapters VI, VII, VIII and XII. Thus, The UNSC in its mandate has the right to decide on "investigate any dispute or situation which lead to international friction"⁸¹, establish peacekeeping missions, create tribunals to try persons accused of war crimes, and in extreme cases declare a nation to merit corrective action by other State member. This legislative right was given to the Security Council in associations with articles 37 and 39 of the UN Charter, which allow the Council to settle a particular dispute and

⁷⁷S. Okhovat, [The United Nation Security Council: Its veto power and its Reform], The Centre for Peace and Conflict Studies, [December 2011] No. 15/1.

⁷⁸See conference about is The Crime Committed against Rohingya's genocide? on 27 September 2017, Kampala International University, school of law.

⁷⁹S. Okhovat, Op. Cit., [December 2011] No. 15/1

⁸⁰Article 24(1) of the UN Charter.

⁸¹Article 34 of the Charter.

make its accords compulsory on any involved parties or on the international community as a whole, hence, becoming international binding documents.⁸²

Following the United Nations Charter, according to its chapter V⁸³, the Security Council functions and powers are: to maintain international peace and security in accordance with the principles and purposes of the United Nations; to investigate any dispute or situation which might lead to international friction; to recommend methods of adjusting such disputes or the terms of settlement; to formulate plans for the establishment plans to regulate armaments; to determine the existence of a threat to the peace or act of aggression and to recommend what action should be taken; to call on Members to apply economic sanctions and other measures not involving the use of force to prevent or stop aggression; to take military action against an aggressor; to recommend the admission of new Members; to exercise the UN trusteeship functions in "strategic areas"; to recommend to the General Assembly the appointment of the Secretary-General and, together with the Assembly, to elect the Judges of the International Court of Justice.

In carrying out these powers the Security Council shall act in accordance with the UN purposes and principles.⁸⁴ According to Article 25, State members agree to accept and to carry out the UNSC decisions.⁸⁵ Therefore, The Security council has ability to intervene in disputes and potential disputes are almost unlimited and its decisions represent a binding obligation on all State members. The Security Council broad powers are provided for in Chapters VI, VII and VIII of the UN Charter. The powers could be divided into different strands, namely powers for the pacific settlement of disputes, powers to determine the existence of a threat to peace, breaches of peace and acts of aggression, and powers to decide what measures are to be taken to restore international peace and security.

2.3.1 The UNSC and Powers for the Pacific Settlement of Dispute

The Security Council primarily operates under the mandate of the United Nations Charter Chapter VI. Chapter VI is titled "Pacific Settlement of Disputes" and mandate actions which may include pacific settlement of disputes such as negotiation, enquiry, mediation, conciliation, arbitration and judicial settlement.⁸⁶ Moreover, State parties to a dispute can resort to regional

⁸²S. Zunes, "International law, the UN and Middle Eastern conflicts". Peace Review, Volume 16, Issue 3 [September 2004], pages 285 – 292:291.

⁸³Article 24 of the UN Charter

⁸⁴Article 25 UN Charter

⁸⁵Article 25 UN Charter

⁸⁶Article 33(1) UN Charter

agencies or other peaceful means of their own choice in order to sort out the conflict without use of force.⁸⁷

According to Article 33, the Council may recommend appropriate procedures or methods of dispute settlement and, if all the parties to a dispute so request, may make recommendations to the parties for a pacific settlement of the dispute.⁸⁸

Article 34 stipulates that 'The Security Council may investigate any dispute or any situation in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security'.⁸⁹ For the fulfilment of that function, Article 29 allows the Council to establish a body which deals with pacific settlement of disputes. Article 29 provides that 'the Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions'.⁹⁰

Referring to the wording of Article 34, it appears that the body created powers are restricted to ascertaining whether a situation or dispute amounts to a danger to international peace within Chapter VI, and does not enlarge to establish whether a situation falls within the meaning of Chapter VII as 'threat to the peace', 'breach of the peace' or 'act of aggression'.⁹¹ Furthermore, the UNSC sub-committee on the Spanish questions established in 1946 was set to ascertain whether the activities of the Franco regime constituted a situation within the meaning of Article 34 or Article 39, and therefore Article 34 has been interpreted to allow fact finding bodies in general.⁹² All those actions can only be undertaken with the consent of the State or States involved in the dispute.

According to Article 35, any state may bring any dispute or any situation of the nature referred to in article 34 to the attention of the UNSC or General Assembly.⁹³ For instance, Pakistan, Saudi Arabia, Syria, Thailand and Yemen in their letter dated 13 June 1956 addressed either to the Secretary-general or UNSC offered their good offices to sort out conflicts in their

⁸⁷Article 33 (1) UN Charter

⁸⁸Article 33(2) UN Charter

⁸⁹Article 34 UN Charter

⁹⁰Article 29 UN Charter

⁹¹N.D. White, The UN Security Council and the settlement of disputes, available at <http://www.plane-truth.com> accessed 4 November 2017

⁹²UNSC Subcommittee on the Spanish questions , 1 June 1946 available at <https://www.digilibrary.un.org> accessed on 4 November 2017

⁹³Article 35(1) UN Charter

countries.⁹⁴ There are other examples such as the one when the Security Council sent a mission to Nicaragua. It was a foretaste of the regional settlement process started by the 1987 Guatemala Accords which cumulated the UN supervision of peaceful elections in Nicaragua in 1990.⁹⁵

In 2014 the UNSC voted a resolution for the inquiry commission establishment to investigate reported violations of international humanitarian law and human rights law in the Central African Republic.⁹⁶In relation to the situation in Mali, by resolution 2164 (2014), the Council requested the establishment the international inquiry commission as envisaged in the Ouagadougou Preliminary Agreement and the ceasefire agreement of 23 May 2014.

According to Article 25 which creates a binding obligation on member States 'to accept and carry out the UNSC decisions', many authors argued that a decision to send an investigation mission appears to be binding if it is related to a threat or breach of peace and security under chapter VII.⁹⁷However, the United States and the United Kingdom have argued that it is only under Chapter VII that a mandatory decision can be adopted.⁹⁸Many of the resolutions dealing with the mandatory decision for example, merely stated that the Council was 'acting under Chapter VII of the Charter'. However, it might be better to accept that the Security Council can adopt mandatory resolutions outside the Chapter VII confines, and this would include the power of investigation.

According to the UN Secretary-General Agenda for Peace⁹⁹ and more significantly to the General Assembly Resolution of 9 December 1991, the ability of the United Nations to maintain international peace and security depends to a large extent on its acquiring detailed knowledge about the factual circumstances of any dispute or situation and the UNSC should undertake activities that should be comprehensive, objective, impartial and timely. States recognised, therefore, that the sending of a United Nations fact finding mission to the territory of any State requires the prior consent of that State.¹⁰⁰In respect of its members, the UN stated

⁹⁴Repertoire of the Practice of the Security Council, available at <http://www.un.org> accessed on 6 November 2017.

⁹⁵UNSC Resolution 637 (1989).

⁹⁶UNSC Resolution 2127 (2013).

⁹⁷E. De Wet, "The Security Council as a Law Maker: The Adoption of (Quasi)-Judicial Decisions", in Wolfrum, Rüdiger and Röben, Volker, *Developments of International Law in Treaty Making*, Springer, [2005], p. 203

⁹⁸S. Zunes, "International law, the UN and Middle Eastern conflicts". *Peace Review*, Volume 16, Issue 3 [September 2004], pages 285 – 292:291.

⁹⁹Secretary-General Agenda for peace A/47/277 of 17 June 1992.

¹⁰⁰UNGA Resolution A/RES/46/59 of 9 December 1991.

that the institutionalisation of fact finding leads to States. Although, the General Assembly encouraged States to adopt 'a policy of admitting fact finding missions to their territory'.¹⁰¹

Moreover, in its advisory opinion, the ICJ held that the UNSC Resolution 276 (1970) contained legal declarations based on article 24. Moreover, the Court argued that the interpretation of the Charter that limits the domain of binding decision only to those taken under Chapter VII would change the meaning of article 25. This is the reason why the "language of a resolution of the Security Council should be carefully analysed before a conclusion can be made as regards its binding effect".¹⁰²

However, the cooperation of States in the success of UNSC investigation missions is more relevant. In fact, that could prompt a disaster when a State refuse to facilitate the mission. The situation of Myanmar government which refused visas to the UN Team investigating Rohingya's abuse in June 2017¹⁰³ and the Killing of the two UN experts in DRC in March 2017 as they were investigating violation of UN arms embargo¹⁰⁴, to name but a few examples, could sustain the idea of cooperation between the State involved and the UN.

In addition, the UNSC has a quasi-judicial power. For example, the Security Council unanimously condemned the acts of violence committed by the Israeli Security forces while calling on Israel to abide by the Fourth Geneva Convention Relative to the Protection of Civilians following disturbances in Jerusalem which resulted in the death of several Arabs in 1990.¹⁰⁵ In the Resolution 242 (1967) the UNSC supported the Secretary General's decision to send a mission to examine the circumstances surrounding the events in Jerusalem and to report on ways to protect Palestinian civilians under Israeli occupation. As Israel refused consent to the resolution, it was condemned for its intransigence by the Council.¹⁰⁶

Article 36(1) of the Charter provides that 'the Security Council may, at any stage of a dispute of a nature referred to in Article 33 or of a situation of a similar nature, recommend appropriate procedures or methods of adjustment'. However, article 36(2) provided that the Council should

¹⁰¹UNGA Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security on 9 December 1991. A/RES/46/59.

¹⁰²ICJ, *advisory opinion on Legal consequences for states of the continued presence of South Africa in Namibia of 21 June 1971*.

¹⁰³Myanmar refuses visas to UN team available at <http://www.theguardian.com> accessed on 6 November 2017.

¹⁰⁴Human Right Watch, DRC: Bodies of two experts found, reported on 28 March 2017.

¹⁰⁵UNSC Resolution 242(1967).

¹⁰⁶Ibid.

'take into consideration any procedures for the dispute settlement which have already been adopted by the parties'. Furthermore, Article 37(2) empowers the Council to recommend 'such terms of settlement as it may consider appropriate'. Where article 36 allow the UNSC to recommend appropriate mode of disputes resolution, Article 37 enables it to directly recommend the terms of settlement.

The quasi-judicial power is also recognised in article 1(1) of the Charter based on one of its purposes which is to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement or settlement of international disputes or situations which might lead to a breach of peace.¹⁰⁷ Nevertheless, the problem is that the UNSC exercised the quasi-judicial powers to maintain or restore international peace and security in accordance with political considerations, not necessarily legal principles.¹⁰⁸ And an examination of most Council debates leading to the adoption of a recommendation towards the pacific settlement of a dispute illustrate that it is often agreed on political consensus.

2.3.2 The United Nations Security Council under the Chapter VII

The UN Charter Chapter VII is named action with respect to threats to the peace, breaches of the peace and acts of aggression and covers Articles 39,40,41,42,43,44,45,46,47,48,49,50 and 51 of the UN Charter. One of the main reasons for its creation, as the response to the failures of the League of Nations, was to enable the Security Council to rapidly respond to international crises as they arise by adopting a strategy that is specially aimed at the particular conflict. The UNSC must have a clear idea on the problems causing the conflict and its victims before any intervention. Chapter VII of the United Nations Charter, deals with existence of threat, breach of the international peace and security and aggression. The determining of such threat or breaches is under the power of the United Nations Security Council.¹⁰⁹ According to article 39, for the maintaining of peace and security, the UNSC shall make recommendations or decide what measures shall be taken in accordance with the Articles 41 and 42.¹¹⁰

When invoking binding powers of the Articles 41 and 42 to enforce its decision, the UNSC must determine threat to peace, breach of the peace or act of aggression. Only then the Security

¹⁰⁷Article 1(1) UN Charter.

¹⁰⁸N.D. White, Op. Cit., available at <http://www.plane-truth.com> accessed 4 November 2017.

¹⁰⁹Article 39 UN Charter.

¹¹⁰J. Schott, Chapter VII as Exception: Security Council Action and the Regulative Ideal of Emergency, [2008] 6 Nw.J. Int'lHum.Rts.24.

Council can employ powers, including the use of force and coercive measures, making such determination.¹¹¹

However, there are no definitions of the concepts of threat to peace, breach of peace and act of aggression under the UN Charter. Then, the charge to determine the existence of any of these situations. Some authors argued that the lack of any definition of the meaning of terms used in article 39 leads to subjective political judgements.¹¹²

The concept of Peace could refer to the absence of war, in a common sense. Nevertheless, peace under International Law and the UN Charter refers not only to absence of war but also all other economic, ecological and humanitarian dimensions of inter-States relations.¹¹³ Therefore, the identification of situation is within and only the UNSC discretionary powers.

Next, the concept of 'Threat to the peace' appeared for the first time in 1948 when the UNSC found that the situation in Palestine at that time constituted a threat to the peace. Before that situation, the concept Threat was restricted to threat to international Peace.

Nevertheless, The UNSC has identified threat to peace in many of its Resolutions. For instance, in 1960s, The UNSC found that the involving Southern Rhodesia after the unilateral proclamation of independence by the White minority regime was a threat to peace.¹¹⁴ This has been the case in the resolution 688(1991) which declared the mass flow of refugees from Iraq as a threat to peace. In addition, in its resolution 940(1994), the UNSC found that what was going on in Haiti was a threat to the peace. In all these cases the UNSC imposed enforcement measures including use of force.

The term 'Breach of the peace' has been subject of little considerations but is more specific than 'threat to the peace'. It could relate to aggression though the latter is limited to serious breaches of the peace. Therefore, to determine a breach of the peace is related to some actual use of armed force.¹¹⁵ However, the UNSC has rarely determined the existence of a breach of peace or an act of aggression wording article 39 of the UN Charter. Thus, some authors argued that the UNSC, for political reasons, has determined a threat to peace in situations where a

¹¹¹E. De Wet, *The Chapter VII Powers of the United Nations Security Council* (Hart publishing, Oxford and Portland Oregon, 2004).

¹¹²Ibid.

¹¹³A. Orakhelashvili, *The Interpretation of Acts and Rules in Public International Law* (Oxford University Press Inc., New York, 2008).

¹¹⁴UNSC Resolutions 217, 221 and 231.

¹¹⁵A. Kaczorowska-Ireland, *Public International Law*, 5th ed. (Routledge, New York 2005).

breach of peace or aggression could be probable.¹¹⁶The UNGA resolution 3314(XXIX) on the definition of aggression gives its meaning under the international Law.¹¹⁷Following are the rare occasions on which the UNSC has referred to as breach of peace and aggression: In the UNSC resolution 1/1501(1950) when North Korea invaded South Korea, when Argentina invaded the Falkland Islands in the UNSC Resolution 502 (1982), Iraq invaded Iran in the Resolution 514 (1982) and when Iraq invaded Kuwait, UNSC Resolution 660(1990).

In case the UNSC has established that there is threat to peace or breach to peace or act of aggression, it can take measures to prevent or to end the conflict which threat peace. According to article 40 of the UN Charter, the UNSC may order provisional measure to ensure that a conflict does not snowball into an international or regional conflict.¹¹⁸Article 40 wording, is about ceasefire and withdrawal and does not involve the intervention of the UNSC or sanction. For instance, in the Resolution 1701(2006), the UNSC called Hezbollah to cease all attacks on Israel immediately and on Israel to stop all military operations in Lebanon.¹¹⁹

According to Article 3 of the UNGA Resolution 3314 (XXIX) annexes on definition of Aggression: ‘Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression:

- (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof,
- (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- (c) The blockade of the ports or coasts of a State by the armed forces of another State;
- (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
- (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided

¹¹⁶M. Wood, *Peace, Breach of*, in *The Law of Armed Conflict and the Use of Force, The Max Planck Encyclopaedia of Public International Law*, F. Lachenmann, R. Wolfrum(Eds) (Oxford University Press, New York 2017).

¹¹⁷A. Kaczorowska-Ireland, *Op. Cit.*, 5th ed. (Routledge, New York 2005).

¹¹⁸Article 40 of the UN Charter.

¹¹⁹UNSC resolution 1701(2006).

for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.’¹²⁰

The ICJ has identified acts of aggression in cases, Nicaragua case and DRC v. Uganda in the 2005 armed activities.¹²¹ The Rome statute has quoted the article 3 under its article 8 bis and provides its competence under 15 bis.¹²² However, the ICC has jurisdiction on individuals responsible for aggression.

According to Article 41, the Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may encompass a wide range of actions consisting of complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations. However, Article 42 provides when measures taken under Article 41 are inadequate, the UNSC can use more enforceable measures to maintain peace and security including use of force¹²³ and State Members are call to facilitate those actions.¹²⁴

Against this background, there are steps that the UNSC should respect before involving force to impose peace within a country. These are: Observers missions, peace-making missions and peace enforcement operations if need be.

Here are some examples of the UNSC resolutions involving the Use of force : In 1950, the first UN operation for maintaining international peace and security was voted¹²⁵. The operation in

¹²⁰UNGA resolution 3314 (XXIX).

¹²¹Y. Dinstein , *War, Aggression and Self-defence*, 5th ed. (Cambridge University Press, 2011).

¹²²Articles 8 bis and 15 bis of the Rome Statute.

¹²³Article 42 UN Charter.

¹²⁴Article 43 UN Charter.

¹²⁵P.V Jakdson, National interest, Humanitarianism or CNN: What triggers UN Peace Enforcement After the cold war? In *Journal of peace Research*, 1996, P.4.

Korea was about the invasion of North Korea in South Korea in June 1950. In 1990, in the resolution 687, the Iraq's invasion and annexation of Kuwait prompted the UN second experience mandate under Chapter VII with the imposition of sanctions, then moving to enforcement measures.¹²⁶In 1992, after the existence of the Agenda for peace addressing the whole specific aspects of peace and security actions, in (1992-1995) the UNSC in the resolution 787 authorised the UN Peacekeepers in Bosnia to use force.¹²⁷In Haiti, The UNSC Resolution 940 authorized military action to cease the brutal population suppression by the army after expelling the elected president Jean Bertrand Aristide.¹²⁸

The Resolution 794 of December 1992, expressed grave alarm regarding the situation in Somalia and authorised the use of force by United Nations Interim Task Force.¹²⁹In DRC, the UNSC did the same to maintain peace and security by the Resolutions:1291(2000), 1258 (1999), 2098(2013).

Despite the purported necessity of making the article 39 determination before acting under Chapter VII, For the same purpose of maintaining peace and security, without first having determined the existence of a threat to peace, the UNSC has also adopted several resolutions under Chapter VII.¹³⁰ For example, Resolutions 1422 (2002) and 1487 (2004) concerning the immunity of UN peacekeepers from prosecution by the International Criminal Court and all Resolutions which established international tribunals and those amending their statutes as the International Criminal Tribunal for Rwanda (ICTR) and Yugoslavia (ICTY).

2.3.3 United Nations Security Council under Chapter VIII

Chapter VIII of the UN Charter is devoted to regional arrangements and the terms of their relationship with the UN in the field of peace and security.¹³¹The terms of Chapter VIII are related to Article 21 of the Covenant of the League of Nations stipulating that 'Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings such as the Monroe doctrine, for securing the

¹²⁶J. Boulden, peace enforcement: The UN experience in Congo, Somalia and Bosnia, in Library of congress catalog, 2001, pp. 2-42.

¹²⁷B. Chu, the forgotten Chapter: The legality of peacekeeping, peace enforcement, and military intervention under chapter VII of United Nations Charter in Journal of international law, GONZAGA university, 1 January 2017.

¹²⁸UNSC Resolution 940(1994).

¹²⁹P. Johansson, 'Equivocal Resolve? Toward a Definition of Chapter VII Resolutions', Working Papers in Peace and Conflict Studies, [2008] no 7.

¹³¹LV. Langenhove, et al., "The UN and regional organizations for Peace: Tracking a Slippery Partnership" in The United Nations and the Regions (Dordrecht: Springer, 2012).

maintenance of peace'.¹³²According to Article 52, the UN Charter authorised regional organisations to deal with questions of international peace and security and at some extent use them for the same purpose. However, their activities must be in accordance with the purposes and principles of the United Nations.¹³³

In 2011 the intervention of NATO in Libya under the Resolution 1973 to end the civil war,¹³⁴ proved that the UNSC can accomplish its mandate to maintain peace and security through other international organisations. NATO has the mandate to take all necessary measures, notwithstanding paragraph 9 of Resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of the Libyan territory.¹³⁵ Pursuant to paragraph 5, the Resolution recognized the important role of the League of Arab States in matters relating to the maintenance of international peace and security in the region and calls upon the organisation to cooperate with NATO for the implementation of the Resolution.¹³⁶

Pursuant to the wording of Article 53, without the authorisation of the Security Council, regional agencies are not allowed to take enforcement action.¹³⁷Therefore, regional agencies have the obligation to inform the UNSC of all activities undertaken for the maintenance of international peace and security.¹³⁸In practice, the presence of recurrent armed conflicts justifies the interest of regional organisations and their role in the maintenance of regional peace and security. In 1992 on the UN General Assembly, Secretary-General Boutros Boutros-Ghali said that Regional action could also contribute to a deeper sense of participation, consensus and democratization in international affairs¹³⁹.

Pursuant to article 53 of the UN Charter a Peace Security Council within the Union was established according to article 5(2) of the Constitutive Act of African Union.¹⁴⁰ The article 17(1) of the protocol relating to the establishment of peace security council of the African Union stipulates: 'the fulfilment of its mandate in the promotion and maintenance of the peace,

¹³²Article 21 of the Covenant of the League of Nations 1924.

¹³³Article 52(1) UN Charter.

¹³⁴Resolution 1973(2011).

¹³⁵Resolution 1973(2011) Paragraph 4.

¹³⁶Resolution 1973(2011) Paragraph 5.

¹³⁷Article 53(1) UN Charter.

¹³⁸Article 54 UN Charter.

¹³⁹L.V. Langenhove, et al., "The UN and regional organizations for Peace: Tracking a Slippery Partnership" in *The United Nations and the Regions* (Dordrecht: Springer, 2012).

¹⁴⁰Article 5(2) Constitutive Act of African Union.

security and stability in Africa, the Peace and Security Council shall cooperate and work closely with the United Nations Security Council, which has the primary responsibility for the maintenance of international peace and security'.¹⁴¹

Under Chapter VIII, the UN Security Council adopted Resolution 1631 on the cooperation between the UN and regional organisations in maintaining international peace and security in 2005. Many other Resolutions have been adopted such as the UNSC Resolution 2320 (2016) on United Nations-African Union cooperation. In 1990, the Economic Community of West African States' (ECOWAS) Standing Mediation Committee established a Military Observer Group (ECOMOG), to help resolve an armed internal conflict which had broken out in Liberia¹⁴². Therefore, the UN intervention in training ECOMOG in humanitarian law and refugee law, none can argue that it was based on Chapter VIII. In early 2007 a joint African Union-UN mission that became known as African Union Mission in Somalia (AMISOM) was established to support dialogue and reconciliation, conducting offensive operations against Al - Shabaab and other actors, assist in the implementation of the National Security and Stabilisation Plan for Somalia.¹⁴³ As a response to the letters dated 18 September 2012 and 12 October 2012 of the transitional government of Mali, the UNSC adopted the resolution 2017(2012) which authorised the military intervention of the Economic Community of West Africa States (ECOWAS) and the African Union to intervene.

According to article 5(1) c, one of the SADC objectives is to promote peace and security within the region. Pursuant to article 24(1) the treaty provides that SADC should enter into agreements with other organisations whose objectives are compatible with the SADC objectives.¹⁴⁴ Therefore, wording articles 5(1) c and 24(1) the SADC-UN relationship appears in dealing with peace and security.

The UNSC Resolution 2098 (2013) could lead to the meaning of chapter VIII for the fact that the UN has collaborated with SADC to accomplish its mandate of protection of civilians and neutralisation of rebel groups such as M23 in the eastern DRC.

¹⁴¹Article 17(1) of the protocol relating to the establishment of peace security council of African Union.

¹⁴²ECOWAS and the Sub regional Peacekeeping in Liberia, The Journal of Humanitarian Assistance [2012] available at <https://sites.tufts.edu/jha/archives/66> accessed on 8 November 2017.

¹⁴³P. Williams, "Fighting for Peace in Somalia: AMISOM's Seven Strategic Challenges," Journal of International Peacekeeping, 17, 2013, p. 228.

¹⁴⁴Treaty of Southern Africa Development Community (SADC) Articles 5(1) c and 24(1).

Nowadays the UN is increasing its relation with regional organisations in dealing with conflict mediation worldwide. However, it could forward the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution by bringing together the UN and regional organizations in a global interregional dialogue on mediation. Therefore, This would strengthen the UN in dealing with the complicated security challenges.¹⁴⁵

2.3.4 Limitations on the United Nations Security Council powers

As it has been observed that the Security Council has broad powers and it exercises them according to its discretion, the question is if there are any legal limitations to the ability of the Council to deal with peace and security. It has been observed that the Security Council, at the moment, the Chapter VII situation arises, it can take any measures (military, administrative, regulatory or even primarily judicial nature) that it considers useful and suitable for dealing with the situation.¹⁴⁶

In Tadic case, the Appeal Chamber of the ICTY held that: "The Security Council is an organ of the international organization, established by a treaty regarded as a constitutional framework for that organisation. The Security Council is thus subjected to certain constitutional limitations, however broad its powers under the constitution may be. These powers cannot, in any case, go beyond the limits of the organisational jurisdiction, not to mention other specific limitations or those which may derive from the internal division of power within the Organization. In any case, neither the text nor the spirit of the Charter conceives the Security Council as *legibussolutus* (unbound by law)."¹⁴⁷

Therefore, the Security Council is not only bound and restricted by the Charter itself but also by *jus cogens* like humanitarian law and human rights as some scholars have argued.¹⁴⁸

For instance, The Security Council is bound by the "Purposes and Principles" of the Charter when acting. This could include to develop friendly relations among nations¹⁴⁹ and promote human rights.¹⁵⁰ However, the Security Council is bound by the customary *jus ad bellum* and

¹⁴⁵L.V. Langenhove, et al., Op. Cit., (Dordrecht: Springer, 2012).

¹⁴⁶S. David, 'The Authority of SC under Chapter VII of the UN Charter: Legal Limits and the Role of the International Court of Justice.' Kluwer Law International, The Hague, Netherlands [2001] at pg. 165.

¹⁴⁷*Prosecutor v. Tadic*, Case No. IT-94-1-AR72.

¹⁴⁸M.E. O'Connell, "The United Nations Security Council and the Authorization of Force: Renewing the Council Through Law Reform", in *The Security Council and the use of force, theory and reality -a need for change* [2005].

¹⁴⁹Article 1(2) UN Charter.

¹⁵⁰Article 1(3) UN Charter.

jus in bello principles of proportionality and necessity in its capacity of authorising the use of force.

Another argument is that the UNSC has a legal duty to respond positively to situations where there are serious human rights violations by invoking the responsibility to protect civilians in its discretion, to "determine the existence of any threat to peace, breach of peace, or act of aggression" under article 39 of the UN Charter. The idea here is that the UNSC should qualify any form of ongoing genocide as a threat to peace and United Nations and the State members could conclude any refusal to do so an illegal act.¹⁵¹

Nowadays, the ongoing situation in Myanmar, which many authors qualified as 'genocide' of Rhoingas and the UNSC has not yet decided or pronounced itself on the situation. Thus, the UNSC has been criticised by not taking appropriate measures to sort out the massacre and human rights violations of minority people in Myanmar.

However, the legal obligation of the UNSC to end the commission of core crimes such as genocide, war crimes, crimes against humanity is under the principle of the responsibility to protect. This has a link with article 41(1)73 of the ILC on State Responsibility. Therefore, the UNSC has the obligation to fulfil in good faith its duties in accordance with article 2(2) of the UN Charter.¹⁵²

Moreover, the veto power of the P5's privilege within the Security Council creates an obligation on it to act under responsibility to protect.¹⁵³ It was argued that responsibility leads almost inevitably to the conclusion that collective action to prevent and respond to genocide, crimes against humanity and war crimes must not be made impossible by a non-concurring vote of one of the Council permanent members.¹⁵⁴ When the action is a response to a significant humanitarian crisis, and when a permanent member of the Security Council does not claim its

¹⁵¹A. Peters, *The responsibility to protect and the Permanent Five: the obligation to give reasons for a veto in Responsibility to protect: from principle to practice*, Hoffmann, Julia, André Nollkaemper, and Isabelle Swerissen, (Eds). (Amsterdam University Press, 2012).

¹⁵²Ibid. See also article 26 VCLT.

¹⁵³D. Kahama, *Responsibility to protect: Analysis of whether Pillar Three of the Responsibility to Protect doctrine obliges the Security Council to act in cases of mass atrocities such as those in Syria*, Maters dissertation, University of Pretoria 2015.

¹⁵⁴Statement of Liechtenstein in the debate on SC Res. 1674, 9 December 2005 (S/PV.5319 (Resumption 1)), p. 15.

vital interests to be involved, it should not use the veto to obstruct the passage of what would otherwise be a majority resolution.¹⁵⁵

¹⁵⁵International Community on Intervention & State Sovereignty, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (2001) para 6.211, available at <http://www.iciss.ca/pdf/Commission-Report.pdf> accessed on 8 November 2017

CHAPTER THREE

UNITED NATIONS PEACEKEEPING IN THE DEMOCRATIC REPUBLIC OF THE CONGO

3.0 INTRODUCTION

The Security Council has the primary responsibility for maintaining peace and security. For the fulfilment of that task, the UN system has provided missions and operations to maintain, support peace and security. Therefore, even though the legal basis for peacekeeping is not specifically enshrined in the Charter, the legal basis for peacekeeping can be found between the traditional methods for the “peaceful settlement of disputes” under Chapter VI and the more forceful action mandated under Chapter VII.

This chapter revolves around the understanding of the United Nations peacekeeping and peace-making operations (3.1) and its principles (3.2). It will also cover the UN peacekeeping missions in DRC (3.3), its role in peace keeping (3.4) and its challenges (3.5).

3.1 Understanding the United Nations Peacekeeping and Peace-making operations

In the aftermath of the devastating Second World War in 1945, the UN was founded in 1945 for the main purpose of maintaining international peace and security.

Wording Article 40 of the UN Charter which stipulates: that “In order to prevent an aggravation of the situation, the Security Council may... call upon the concerned parties to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims or position of the concerned parties.”¹⁵⁶This is considered to be the legal basis of peacekeeping operations and its principles.¹⁵⁷

Peacekeeping definition can be found in the so-called Capstone Doctrine as follows:

A technique designed to preserve peace, however fragile, where fighting has been halted, and to assist in implementing agreements achieved by the peacemakers. Over the years, peacekeeping has evolved from a primarily military model of observing

¹⁵⁶UN Charter, Article 40

¹⁵⁷J. Boulden, Mandates Matter: An exploration of Impartiality in United Nations Operations, [2005] Global Governance 11, 147-160 available at <http://www.atypon-link.com> accessed on 13th December 2017.

ceasefires and the separation of forces after inter-state wars, to incorporate a complex model of many elements, military, police and civilian, working together to help lay the foundations for sustainable peace.¹⁵⁸

Based on the purpose of the UN Charter, to maintain peace and security, State members through the UNSC Resolutions authorise peacekeeping operations. The Security Council has the right to determine its necessity and mandates on the ground of the Secretary General report on the country situation. However, through the General Assembly States members play an important role in the support and livelihood of peacekeeping missions. Every year at New York, the Special Committee on Peacekeeping Operations, which reports to the General Assembly through the Fourth Committee (Special Politics and Decolonisation), meets to negotiate and sets broad policy of UN peacekeeping. The UNGA, through the Fifth Committee (Administrative and Budgetary) approved the budget of Un peacekeeping.¹⁵⁹

The UN Truce Supervision Organisation (UNTSO) and the UN Military Observer Group in India and Pakistan (UNMOGIP) were the first two deployed UN peacekeeping operations.¹⁶⁰ Both of these missions are based on Art 40 and the first armed UN force was deployed in Suez called UNEF as a response to the 1956 crisis.¹⁶¹

The Secretary-General acts as a focal point on peacekeeping. The UNSC Resolution of peacekeeping deployment is based on the Secretary-General report. To formalise peacekeeping operations, in 1992 as a department of the UN Secretariat, the Department of Peacekeeping Operations (DPKO) has been established it has the mission of supporting mission components, including civil affairs operations.¹⁶² Following are department the UNSG which intervene in peace and security matter : Under-Secretary-General (USG), Division of Policy, Evaluation and Training (DPET), Department of Political Affairs (DPA). They have civil affairs components and can assist peacekeeping operations in guidance, advocacy, training, mediation, election and post-conflict peace building operations. That has been the case in Sierra Leone, Somalia and the former mission in Nepal.¹⁶³

¹⁵⁸DPKO, 'United Nations Peacekeeping Operations – Principles and Guidelines', 2008 (Capstone Doctrine).

¹⁵⁹Role of UN General Assembly in peacekeeping operations available at <http://www.un.org> accessed on 13th December 2017.

¹⁶⁰UN, *The Blue Helmets: A Review of United Nations Peace-keeping* (3rd ed., New York 1996).

¹⁶¹D. Nystrom, *The UN Mission in Congo and the Basic Principles of Peacekeeping- Revolution or Evolution*, Thesis in Public International Law, Stockholm University, Faculty of Law, 2015.

¹⁶²Organisational Chart of DPKO available at http://www.un.org/en/peacekeeping/documents/dpkodfs_org_chart.pdf accessed on 13th December 2017.

¹⁶³Regularly updated statistics can be found at <http://www.un.org/en/peacekeeping> accessed on 13th December 2017.

3.2 Principles of Peacekeeping Missions

For the responsibility to maintain international peace and security, The UN has many instruments and peacekeeping is one of them. Peacekeeping operations have been used to preserve and to build the peace conditions where there are a ceasefire agreement and the consent of parties to a conflict to deploy peacekeeping mission. However, as much as peace is a process, peacekeeping missions can assist parties to the conflict in the process until they reach an agreement.¹⁶⁴

According to the UN Peacekeeping Operations guidelines, Peacekeeping is an instrument of peace and security. For the deployment and the fulfilment of its mandate three core principles are provided: the consent among the parties to the conflict, impartiality of the UN forces deployed and the use of force by UN personnel only in cases of self- defense.

A. Consent of the Parties

The principle of the UN Peacekeeping operation deployment is the consent of the States parties to the conflict by their acceptance of a peacekeeping operation within their countries.¹⁶⁵ In fact, there are three levels of consent: the tactical level, the operational level, and the strategic level.¹⁶⁶

The consent of the main parties to the conflict concludes to the freedom of action, both political and physical, of peacekeeping mission to carry out its mandated tasks. Therefore, without that consent a United Nations peacekeeping operation endangers becoming a party to the conflict being targeted as violating the territorial integrity of the State and lose its fundamental role of maintaining peace and security.

However, the State can withdraw its consent. The complete consent withdrawal by one or more of the main parties challenges the rationale for the peacekeeping operations (PKOs) and thus

¹⁶⁴United Nations, United Nations Department of Peacekeeping Operations and Department of Field Support, Civil Affairs Handbook, New York [2012].

¹⁶⁵Although, based on chapter VII of the UN Charter, when there is threat of or breach of peace and security, The Security Council may take enforcement action without the consent of the main parties to the conflict. Therefore, the operation will be called peace enforcement operation.

¹⁶⁶N. Fenton, *Understanding the UN Security Council*. (Aldershot: Ashgate, 2004). 31.

fail to fulfil their mandates.¹⁶⁷ Therefore, up to the ground PKOs should maintain the State consent.

In spite of that background, peacekeeping missions once on the ground face many challenges. Sometimes host state has control on their operational freedoms. For instance, The UN, trying to meet the humanitarian need in Darfur, complied with the Sudanese government and changed the nature of the African Union/United Nations Hybrid Mission in Darfur (UNAMID) by reducing its operational choices and its ability of operational freedoms.¹⁶⁸ It has also been the case of the United Nations Mission to the Central African Republic and Chad (MINURCAT).

B. Impartiality

Impartiality is crucial to maintaining the consent and cooperation of the main parties. The principle provides the implementation of Peacekeeping Operations (PKOs) mandate without favour or prejudice to any party to the conflict. However, impartiality should not be confused with neutrality or inactivity.

Therefore, UN Peacekeepers in their relationships with parties to the conflict should be impartial but not neutral when accomplishing their mandate. Neutrality usually means not taking sides with warring parties and impartiality refers to non-discrimination and proportionality. Nevertheless neutrality is associated with passivity and inaction.¹⁶⁹

Impartiality is very important to establish and maintain good relations with parties. Therefore, peacekeeping operations must be careful, avoid actions which might be against the principle of impartiality by being prudent to ensure before any action that the acting bases are finely established and communicate to all. Failing to do so may affect the peacekeeping mission's credibility and may lead to a consent withdrawal of parties.¹⁷⁰

The Principle of impartiality has been outlined in the Resolution 46/182 of the UN General Assembly (1991). It states that "Humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality".¹⁷¹ For the purpose of humanitarian assistance which may be the base of the UN peacekeeping operation it is important to be

¹⁶⁷K. Beck, *The Challenges of Consent: Policy Recommendations for Maintaining Host State Consent for United Nations Peacekeeping Missions*, Diplomacy and World Affairs [2011], available at <http://www.scholar.oxy.edu> accessed on 6th December 2017.

¹⁶⁸Ibid.

¹⁶⁹D. Dominick, *Neutrality, Impartiality and UN Peacekeeping and the Beginning of the 21st Century*, *International Peacekeeping*, [2002] 9:4, 21-38 available at <http://www.dx.doi.org> accessed on 6th December 2017.

¹⁷⁰Ibid.

¹⁷¹UNGA Resolution 46/182 (1991).

impartial regarding the equal treatment of the civilians and all the victims of violence without any discrimination.¹⁷²

However, neutrality of the UN peacekeeping in situation of humanitarian crisis and genocide is questionable. For instance, the genocide in Rwanda and the mandate of the UN Peacekeeping operation in Rwanda (UNAMIR) whereby so many people have been killed because of the mission inaction makes the idea of neutrality dangerous. Therefore, UN peacekeeping missions should make choices about a situation and based on the political context they are not to be neutral.¹⁷³

According to the “Brahimi report”: “Impartiality for the United Nations must mean adherence to the principles of the Charter and to the objectives of a mandate that is rooted in those Charter principles.”¹⁷⁴ This seems that when one of the parties to a conflict or to a peace agreement is violating international law, the UN peacekeeping operations cannot continue equal treatment but must take action to prevent further violations. Thus, it is important to distinguish between impartiality regarding the Security Council Mandate and the mandate implementation impartiality which is at the UN peacekeeping operational level.¹⁷⁵

Impartiality is closely connected to the consent principle because only where UN peacekeeping operations have obtained the consent from parties, they can claim to act according to the principle of impartiality in their missions. However, in conflicts involving ethnic- based issues, political struggles or the collapse of State Institutions, brief, in situations which require the intervention of Chapter VII of the UN charter, the UN is not obliged to request for a clear consent from the parties to the conflict.¹⁷⁶

C. Non-use of force

For peacekeeping operations, non-use of force is the principle except self-defence and the mandate defence.

¹⁷²A-M. Johannessen, Neutrality and Impartiality of the United Nations Peacekeeping Operations, Research essay about the UN in International Conflict Resolution and Peacekeeping, [12 June 2007].

¹⁷³D. Dominick, Neutrality, Impartiality and UN Peacekeeping and the Beginning of the 21st Century, International Peacekeeping, [2002] 9:4, 21-38 available at <http://www.dx.doi.org> accessed on 6th December 2017.

¹⁷⁴UN General Assembly, A/55/305, 2000, p.9.

¹⁷⁵UN, GA, A/55/502, 2000. See also Boulden Jane, Mandates Matter: An exploration of Impartiality in United Nations Operations, [2005] Global Governance 11, 147-160 available at <http://www.atypon-link.com> accessed on 13th December 2017.

¹⁷⁶Ibid. Note 9.

UN peacekeeping operations are not enforcement tools in nature. Therefore, the use of force is an exception means where UN peacekeepers may use force only at the tactical level under the UNSC authorisation in their mandate and in case of self-defence. Based on the political and security context of countries or places where UN peacekeepers are deployed, the UNSC, in its resolutions, can give peacekeeping robust mandates which authorise them to use all necessary measures to protect civilians against a physical attack, brief, to impose peace and security. This has been the case of the 2098 Resolution in its paragraph 12 section (a) where the UNSC gave the mandate to use all necessary means to protect civilians, to neutralise armed groups, to enforce other resolutions concerning embargo,...¹⁷⁷

Robust peacekeeping mandate should not be confused with peace enforcement operations. Even if, on ground they seem to be similar, robust peacekeeping involves the State consent and the use of force at the tactical level. However, peace enforcement operation does not require the consent of parties and involves the use of force as a mandate under Chapter VII of the UN Charter to impose international peace and security.

However, even for self-defence or protection of the mandate purposes, the use of force of the UN Peacekeepers must be precise, proportional and appropriate and all in the principle of the minimum force necessary to achieve the mandate.

According to the peace keeping guidelines, here are other factors which must be taken into account when deploying peacekeeping missions: Legitimacy which derives from the UNSC mandate establishment and credibility when dealing with actors in a context of tension between parties.

3.3 Status of Force and Mandate of the UN Peacekeeping Missions in DRC

UN peace operations in DRC are as old as its independence. The organization has been present in DRC since the beginning of the 1960s. ONUC (United Nations Organisation in Congo) was a United Nations peacekeeping force in Congo established by the United Nations Security Council Resolution 143 of 14 July 1960. It was created to address the conflict between Belgium and its former territory of Congo, which gained independence on 30 June 1960.¹⁷⁸The

¹⁷⁷UNSC resolution 2098 (2013) paragraph 12.

¹⁷⁸J. Boulden, United Nations Operation in the Congo (ONUC), in the Oxford Handbook of United Nations Peacekeeping Operations [April 2015] available at <http://www.oxfordhandbooks.com> accessed on 12th January 2017.

ONUC mandate has been framed in several UNSC resolutions: The Resolution 143(1960) itself which created the mission authorised the Secretary General to enter into cooperation with the Congo Republic and to assist the government to overcome the presence of Belgian Soldiers, Resolution 161 (1961) of 21 February 1961 authorised ONUC to take all necessary measures to prevent a civil war in the Congo and use of force if necessary , Resolution 169 (1961) of 24 November 1961 authorised the use of force to chase out of the Congo territories all foreigners military and paramilitary personnel and mercenaries.¹⁷⁹ However, during the ONUC presence between 1960 and 1964, other resolutions have been adopted to in force its mandate such as Resolutions 145 (1960) of 22 July 1960 and 146 (1960) of 9 August 1960.

Even though the ONUC's mandate has been provided in five Resolutions, its main objective stayed coherent from the first to the fifth Resolution. All succeeding Resolutions were added to the initial resolution but did not change the fundamental operation purpose. In summary, its mandate was to withdraw Belgian military personnel called mercenaries and to assist the government with internal stability.¹⁸⁰

As a result of the genocide in Rwanda in 1994, the eastern part of DRC faced a security crisis. However, it has been observed as a general crisis in the Republic (Zaire at the time) whereby the putsch of Mobutu by Mzee Laurent Kabila and the intervention of neighbour States created a context of insecurity. Therefore, the UN launched a peace operation called United Nations Organisation Mission in Congo (MONUC) in 1999 by the Resolution 1279 with the observation mandate of the ceasefire and disengagement of forces first of all.¹⁸¹ Later on, thanks to the Resolution 1291 (2000) the UNSC expanded the mandate of MONUC by including the implementation supervision mandate of the Lusaka ceasefire Agreement and other related mandates.¹⁸² Moreover, MONUC was established as a traditional Chapter VI peacekeeping mission to observe and monitor the Lusaka Ceasefire Agreement. MONUC played a role at the political, military, capacity-building levels. The organisation of democratic elections in 2006 after 46 years one of the most evidenced examples.¹⁸³

¹⁷⁹UNSC resolutions available at <http://www.un.org> accessed on 12th January 2018.

¹⁸⁰A. House, *The UN in the Congo: The Civilian Operations*, University Press of America, 1978, 166.

¹⁸¹C. Williams, 'Explaining the Great War in Africa: How Conflict in the Congo Became a Continental Crisis', *The Fletcher Forum of World Affairs*, Vol. 37, No. 2, 81-100 [2013].

¹⁸²UNSC Res 1279 (1999).

¹⁸³J. Reynaert, *NONUC/MONUSCO and civilian protection in the Kivus*, in *Interns and Volunteers series*, IPIS [2010].

Nevertheless, when Goma North Kivu capital was attacked by Congres National pour la Defence du Peuple (CNDP) in October-November 2008, MONUC failed to prevent the killing of civilians. Therefore, the UNSC decided to make civilians' protection the MONUC priority through Resolution 1856 (2008) and it becomes the first UN operation with that priority. Yet, based on the context of eastern DRC, in Beni territory until today civilian protection remains an issue.

Considering its mandate, MONUC consists of a mix of peacekeeping and peace building operations. First of all, MONUC has been regarded as a peacekeeping operation by its mandate of observing peace, engaged in robust tasks to protect civilians. Operating in a post-conflict context by supporting the stabilisation of the State, MONUC can also be considered as a peace building mission.

In 2010, The UNSC changed the name of MONUC to the United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo (MONUSCO). Thanks to the Resolution 1925, MONUSCO has the civilian protection mandate, humanitarian personnel and human right defenders against imminent threat of physical violence and the support of the DRC government in its stabilisation efforts.¹⁸⁴ The mission has been authorised to use all necessary means to carry out its mandate. Under the Resolution 1925, it has been provided the MONUSCO reconfiguration based on the situation on ground such as finalising the process of military operations in the Kivus (North and South) and the Oriental Province, improving the government capacity of protection of civilians and the consolidation of State authority within territories.

But, the MONUSCO mandate details are provided in the UNSC Resolution 2053 of 27 June 2012 which extend the mandate of MONUSCO until 30 June 2013. Throughout the text, the UNSC apart from the first mandate renewal, MONUSCO should technically and logistically support the organisation of elections and ensuring that those elections were transparent and credible, respect of human rights and the prosecution of those who violated them during the 2011 elections.¹⁸⁵

Therefore, it calls for MONUSCO to support the DRC government in the establishment of democratic, accountable and professional national security and judicial institutions. Moreover, the text provides the proper integration of former armed groups in the national army and the

¹⁸⁴UNSC resolution 1925(2010).

¹⁸⁵UNSC resolution 2053 (2012).

law violation prevention by security personnel must be pursued, as stipulated below “the promotion within the Congolese security forces of well-known individuals responsible for serious human rights violations and abuses”.¹⁸⁶ In conclusion it calls for the Government to prosecute all perpetrators of crime against women and children like Bosco Ntaganda, leader of National Congress for the Defense of the people (CNDP) a rebel group which was operating North Kivu.

On good offices of the UNSG, on 24 February 2013 the Peace, Security and Cooperation Framework for DRC and the region (PSC Framework) called Addis Ababa Accord was signed by 11 countries in the region, the International Conference on the Great Lakes Region, the Chairs of the African Union, the Southern African Development Community so that the conflict in DRC could end.¹⁸⁷ Watching what was going on in DRC, the SG in his Special Report on the Democratic Republic of the Congo and the Great Lakes Region proposed that a dedicated intervention brigade be established within MONUSCO¹⁸⁸ to support the objectives of the PSC Framework agreement.

Therefore, the Resolution 2098 was adopted on 28 March 2013 and created the Intervention Brigade which operates under direct operational command of the MONUSCO Force Commander¹⁸⁹ with the mandate to use ‘all necessary measures’ to fulfil its mandate.¹⁹⁰

3.4 The Role of the UN Peacekeeping Mission in the DRC Crisis

This section is about the UN peacekeeping’s role to restore peace and security in eastern DRC. Different operations will help us to understand the role of the UN peacekeepers in the DRC crisis from 1960 up to date.

3.4.1. United Nations in the Congo (ONUC)

In the operation, ONUC goals are fourfold: restoration of law, order and stability, sustaining the country economy recovery and the protection of neighbours from the crisis.

¹⁸⁶Ibid.

¹⁸⁷N. Kok, ‘From the International Conference on the Great Lakes Region-led negotiation to the Intervention Brigade’, *African Security Review*, vol. 22, issue 3, 2013, 175-180

¹⁸⁸Special report of the Secretary-General on the Democratic Republic of the Congo and the Great Lakes Region, UN Doc S/2013/119, para 60-64 167.

¹⁸⁹UNSG Report S/2013/119 (2013), para 60

¹⁹⁰UNSC resolution 2098(2013)

As forces have been deployed, peacekeepers launched Rumpunch operation which led to the peaceful surrender of mercenaries in August 1961. However, in September 1961, the second Morthor operation concluded to the neutralisation of mercenaries and Tshombe's forces. The operation was the element of transition from peacekeeping to peace enforcement. The fight between ONUC and the Katangese forces lasted eight days.¹⁹¹ However, the Morthor Operation did not have the full approval of all permanent Security Council Members particularly the UK, France, and US.¹⁹² The Morthor operation illustrated a disconnection between what is going on in at the UN headquarter and what is going on the field and undermined both the credibility and impartiality of the peacekeeping mission, ONUC. In ONUC operations there were involvement of other States namely the Malaysian Army, Swedish Army, Irish Army, Canadian Army to name but few.

3.4.2. United Nations Mission in the Democratic Republic of the Congo (MONUC)

MONUC has played a role in the eastern DRC through several operations to restore peace and security as regards the protection of civilians. The first operation has been Umoja wetu (Our Unity), followed by Kimia II (Quietness II), the same year finally and the military operation Amani Leo (Peace Now) in 2010. Only Umoja wetu and Kimia II operations will be developed in this section because it seems that they were the big operations in the eastern DRC pacification.

3.4.2.1 Operation Umoja wetu (Our Unity Operation)

This was launched in January 2009 in North Kivu, Operation Umoja Wetu was headed by the Rwandan troops and conducted with FARDC in tandem with the MONUC logistical support to fight the FDLR militia. The military approach was to deploy ten soldiers for every FDLR combatant. The Congolese army supported by MONUC has been unable to neutralise the Rwandan militia and to provide security by preventing population from FDLR attacks. It is true that the operation reduced the number of the rebel group from approximately 6000 to 3000

¹⁹¹J. Reynaert, NONUC/MONUSCO and civilian protection in the Kivus, *in* Interns and Volunteers series, IPIS [2010].

¹⁹²Alwihda, La RD Congo, victime d'un complot international ?[5 July 2014] available at <https://www.alwihdainfo.com> accessed on 18 March 2018.

and pushed the rebel group away from many sites but did not influence its command.¹⁹³ Unfortunately, where FDLR have been removed, other armed forces occupied the sites and committed exactions to civilians by violating their rights. However, the FDLR group remains active. It is forging alliances with other militias hostile to Kigali. Their presence is still a potential justification for a Rwandan military intervention on DRC territories.¹⁹⁴

3.4.2.2. Operation Kimia II

In March 2009, MONUC force and FADRC commanders signed a joint operation Directive, known as Kimia II to engage in military operation against FDLR. MONUC supported the Congolese army military operations in the Kivus during the operation Kimia II by training FARDC to carry out military strikes against FDLR. The deployment of forces had the mandate to fight against FDLR and CNDP, a rebel group disturbing the province in 2007-2008.¹⁹⁵

3.4.3. The United Nations Stabilisation Mission in the Congo (MONUSCO)

Since July 2010, under the UNSC Resolution 1925 of May 2010 MONUC has been transformed into the United Nations Stabilisation Mission in the Congo (MONUSCO) which has the mandate of stabilisation and peace consolidation. Due to the DRC political context, civilian protection remains the mission's first priority, nonetheless.¹⁹⁶ Under the Resolution 1925, where security conditions allowed it, the UNSC authorised the withdrawal of a maximum of 2,000 troops in those zones.

However, the Resolution 1925 differs from previous Resolutions in the fact that MONUSCO mandate to prevent breach of peace by armed groups was not clear. However, it provides the civilian protection mandate by undertaking preventive action to interfere with the military capability of armed groups.¹⁹⁷

¹⁹³International Crisis Group, After MONUC, Should MONUSCO Continue to Support Congolese Military Campaigns? [19 July 2010] Available at <https://www.crisisgroup.org> accessed on 18th March 2018.

¹⁹⁴D. Beswick, Unpacking Rwanda's Involvement in DR Congo and the International Response,[Dec 19 2012] in E-international Relations, available at <http://www.e-ir.info> accessed on 18th march 2018.

¹⁹⁵MONUC, Public Information Division, 2009a; UN Security Council, march 2010.

¹⁹⁶UNSC Resolution 1925 (2010)

¹⁹⁷J. Reynaert, NONUC/MONUSCO and civilian protection in the Kivus, *in* Interns and Volunteers series, IPIS [2009]

In the Kibua-Mpofi crisis of 30 July- 2 August 2010, where there was an attack against thirteen villages by armed groups like Maimai Cheka, FDLR and undisciplined FADRC elements, at least 303 civilians were gang raped during several days although the MONUSCO did not intervene either having its base at approximately 30 kilometres away.¹⁹⁸

Therefore, it seemed that there was no preventive action to secure the area. However, based on the context that attackers were blocking the road, it was difficult for MONUSCO to undertake preventive measures to ensure the population's security as a result of that situation, peacekeepers were not away of what was going on because villagers were prevented from reaching outside communication.

When dealing with civilian protection in North-Kivu, for instance, a MONUSCO company operating base (COB) was deployed in Kibua. Unfortunately, peacekeepers who were deployed had any special training on civilian protection and were in habitual with armed groups involved and unfamiliar with the field. Furthermore, the Cob faced operational limitations such as lines saturation in the area.¹⁹⁹

For the implementation of the stabilisation and reconstruction program (STAREC) through the International Security and Stabilization Support Strategy (ISSSS) which has now become the main planning and coordination framework for stabilisation interventions in Eastern DRC, MONUSCO's Stabilisation Support Unit, established within the Integrated Office of the DSRSG/RC/HC, supports the DRC Government.

through the adoption of UNSC Resolution 2348 (2017) on 31 March 2017, MONUSCO's mandate to contribute to stabilisation and peace consolidation efforts in DRC was renewed as it authorised MONUSCO to provide:

'coordination between the DRC Government, international partners and United Nations agencies sequenced and coordinated approach to stabilisation informed by up to date conflict analysis, through the implementation of the International Security and Stabilization Support Strategy (ISSSS) and adoption of a conflict-sensitive approach across the Mission, in order to establish functional, professional, and accountable state institutions, including security and judicial institutions.'²⁰⁰

¹⁹⁸report issued by the Joint Human Rights office (September 2010)

¹⁹⁹Reynaert J., Op. Cit., IPIS [2010].

²⁰⁰MONUSCO and its Mandate, available at <https://monusco.unmissions.org> accessed on 18th March 2018

The UNSC Resolution 2348 (2017) emphasizes the need to address root causes of conflict and the conduct of conflict analysis, to provide a comprehensive response to area-based stabilization efforts and to integrate working methods with other MONUSCO sections and the United Nations Country Team (UNCT) on stabilization interventions.²⁰¹ The new resolution further links stabilization directly to DDR through the coordination of Community Violence Reduction interventions under the ISSSS framework.²⁰²

3.5 The UN Missions Challenges in DRC

The UN missions in DRC face challenges following the political and security contest of the Republic couple with the lack of roads and infrastructures which makes operations extremely slow since it is difficult to get from one place to another.²⁰³ As mentioned by many authors, civilian population in DRC faced a variety of threats namely physical from several militias and armed groups most of them operating in eastern DRC.

However, the UN peacekeeping operations in DRC faced internal and external challenges. Internal challenges are set at the UN system operational tactical levels whereas external ones are related to events outside the UN system in relation to DRC context (political and security context).

3.5.1 Internal Challenges

A. Bureaucracy

The bureaucratic system of peace operation where every action requires approval leads to immobility and makes the mission operational level complex. Therefore, the lack of immediate reactions and personal initiatives limits the feasibility of civilians' protection. Aftermath, MONUC peacekeepers, for instance, do not act to prevent damage or attacks of population and invoked bureaucracy and hierarchy as a challenge faced by them to fulfil their mandate.²⁰⁴ It has been alleged that MONUC has not been able to stop human rights violations of civilians in eastern Congo regions and has been charged of incompetence since its first deployment in

²⁰¹UNSC Resolution **2348 (2017)**.

²⁰²MONUSCO in DRC available at <https://monusco.unmissions.org> accessed on 18th March 2018.

²⁰³I. Uwimana, The United Nations Peacekeeping mission in Eastern Democratic Republic of Congo: Prospects and challenges, Master Dissertation, Kampala International University 2010.

²⁰⁴N. Kok, Op. Cit., 175-180.

1999.²⁰⁵ In Ituri for instance, so many civilians have been killed in the presence of MONUC without intervening to stop the threat.

B. UN military Structure

There is no integrated chain of command in UN military structure. Contingents from different countries are deployed under one command force. However, each contingent reports to its contingent commander who is accountable to his government. Therefore, as troops are sent by the contributing states; these troops are considered to a some extent as their own and not as part of the UN system.²⁰⁶

Moreover, national interests have influenced the performance of soldiers in the field. In fact, contingents are under their government pressure to avoid loss of life. As it seems that the success of peacekeeping operation depends somehow on the will of contributing states, to avoid interference, contributing states should be informed on the local contest before deployment of their forces and the reform of peacekeeping mission regarding responsible commander will be useful.

C. Contribution of Contingents

The UN system does not dispose a permanent army or police, it used troops of state members. According to Article 43, paragraph 1, which provides: ‘All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including right of passage, necessary for the purpose of maintaining international peace and security.’ State members have the obligation to contribute to a peacekeeping operation by military personnel, equipment,...²⁰⁷

²⁰⁵V. Holt et al., *Protecting Civilians in the Context of UN Peacekeeping Operations* (New York: DPKO/OCHA, November 2009), 4–7.

²⁰⁶D. Paul Williams, *Enhancing Civilian Protection in Peace Operations: Insights from Africa* (Washington DC: National Defense University, 2010),

²⁰⁷Art. 43 of the UN Charter

However, at several occasions developed countries are unwilling to deploy their soldiers to DRC, only few are doing so. As regards MONUC for instance, most peacekeepers were from India, Pakistan, Bangladesh. It has been proved that as most peacekeepers are supplied by third world countries, with sometimes rather poor human rights records of their own.²⁰⁸ Moreover, the rotation of the human resources system is still a challenge. Whereby military Personnel constantly moves and leaves. Consequently, the new peacekeepers need time to be familiarised to with the conflict context.

3.5.2 External Challenges

Apart from internal challenges, there are other factors which influence UN peacekeeping missions in DRC. External challenges take into account the environment and the relationship between the peacekeeping mission and the government.

A. The conflicting Environment

The eastern DRC itself has more than 40 armed groups.²⁰⁹ This context emphasised the nature of the conflict and the protection of civilians who are isolated because of the lack of roads and infrastructures which has become a big deal. It has been noticed alliances between these armed groups and the fact that when one is suppressed another one arises, and keeps on enforcing the conflict. Moreover, the presence of several foreign militias like the FDLR, ADF NALU justifies the existence of the conflict.

Therefore, most people argue that UN peacekeeping missions in DRC are implicated in a ‘guerrilla warfare’ as a type of war where insurgents know better the terrain than contingents and therefore, it becomes difficult to win. It has been proved that the eastern Congolese conflict context has a regional dimension since involving neighbour countries like Uganda and Rwanda. Both have proved their implications in several rebel groups operations.²¹⁰

²⁰⁸Bestdelegate, United Nations Peacekeepers: Which Countries Provide the Most Troops and Funding? [2017] Available at <http://bestdelegate.com> accessed on 18 March 2018

²⁰⁹P. Nantulya, A Medley of Armed Groups Play on Congo’s Crisis [2017] available at <https://reliefweb.int> accessed on 18 march 2018.

²¹⁰P. A Kasajja., The United Nations’ Mapping Exercise Report and Uganda’s involvement in the Democratic Republic of Congo conflict from 1996 to 2003, in *African Human Rights Law Journal* [2011] 11. See also United Nations, Democratic Republic of the Congo 1993-2003, UN Mapping Report, 2003.

Furthermore, the eastern DRC conflict has an economic dimension. Armed groups are financed by the exploitation of natural resources. It has been noticed that some territories of eastern DRC have been targeted due to their closeness to natural resources.

B. Cooperation with the Democratic Republic of the Congo

Peace and security is the first government responsibility within a State. The intervention of UN in general or peacekeeping operation is based on the unwillingness of a State or its incapacity to maintain peace and protect civilians.

However, the success of peacekeeping missions depends mostly on the cooperation of the State in which the force is deployed. The nature of that cooperation should be political and at some extent tactical. Therefore, in the DRC context, Peacekeeping missions have been blocked by the lack of security sector reform. Although DRC has proved an evolution in the educational aspect of its forces, FARDC, whose salary is deficient in payment of soldiers and leads to the banditry of soldiers. Unfortunately, the response to human rights violations is not enough and therefore impunity reigns. Human rights violators are not punished for their acts.²¹¹ The ‘brassage’²¹² process which is an integration of ex-rebels into the regular army is still a big challenge of the DRC government. The social and political aspects of it touch the unitary criteria of FARDC.²¹³

Ultimately, it is a difficult task for peacekeeping operations to deal with such army and fulfil their mandate. Against that background, the population expects the UN peace missions to ensure their protection as they are not trusting the government to do so. Nevertheless, as long as the DRC government is unwilling or unable to assume its duties, the peace process will fail.²¹⁴

²¹¹United Nations, United Nations Peacekeeping Essential, But Success Not Guaranteed Because Peacekeepers Work in Most Demanding Physical, Political Environments, [2010] available at <http://www.un.org> accessed on 18 March 2018.

²¹²Brassage was a process which aimed to reorganize rebel groups in two respects: dismantling the rebel command and control lines and integrating the former combatants within the FARDC, and physically relocating them to different regions of the country. Implementation of the brassage framework included limited military assistance by MONUC to the FARDC for enforced demobilization.

²¹³Available at <https://www.files.ethz.ch> accessed 14th January 2018

²¹⁴T. Gambino, Democratic Republic of the Congo, World Development Report[2011] available at <http://web.worldbank.org> accessed on 18 March 2018.

CHAPTER FOUR

ANALYSIS OF THE IMPACT OF THE UNSC RESOLUTION 2098 ON CIVILIANS' PROTECTION IN NORTH-KIVU

4.0 Introduction

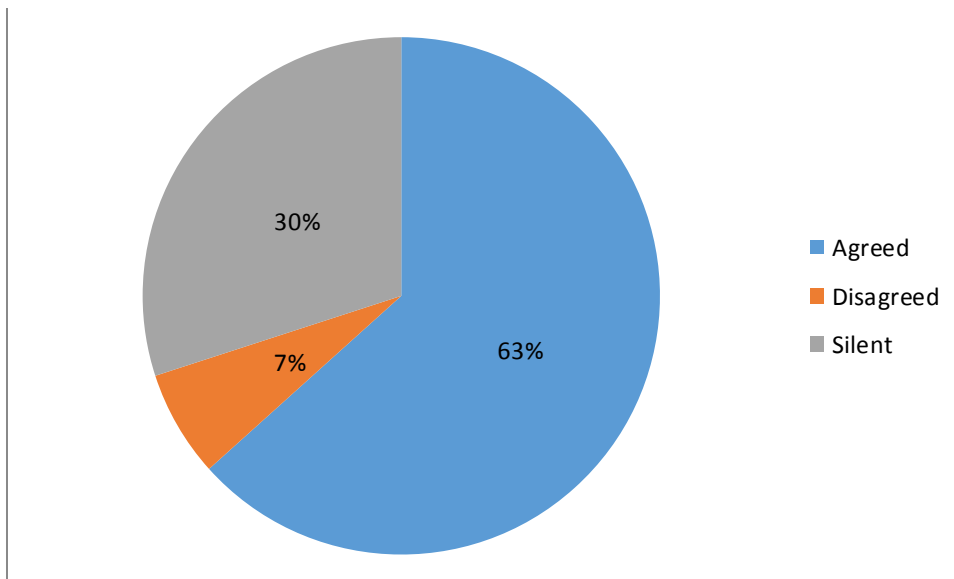
This chapter is about an analysis of the effectiveness of the UNSC Resolution 2098 on civilians' protection in North-Kivu, DRC. It concerns an evaluative research on the impact of the Resolution in Rutshuru territory in North-Kivu.

This chapter revolves around the following sections: The 2098 Resolution effectiveness on peacekeeping in DRC with respect to civilian protection in North Kivu (4.1), the measures taken by the Brigade to ensure effective protection of civilians under imminent threat of physical violence (4.2), the brigade attacks risk mitigation of civilians before, during and after any military operation (4.3), factors impeding the Resolution implementation and to a new mechanism of protection (4.4).

4.1 Resolution 2098 on Civilian Protection in North Kivu

To examine the context and opportunity of the Resolution 2098, this section provides the link between the security context in Rutshuru territory, North-Kivu and the opportunity of the Resolution as the best way of examining the impact of the Resolution 2098 starts from its opportunity.

Figure 1: The link between security context and The Resolution 2098 Opportunity



Source: Primary Data 2018

On a total of 30 respondents 19 (63%) agreed that the 2098 Resolution was opportune based on the North-Kivu security context, 2 (7%) Disagreed as the MONUSCO ha failed and the 2098 Resolution will not change the situation and 9 (30%) remained silent to the question.

Prior to every military intervention within a state the Security Council must be sure of the opportunity of its intervention. The opportunity of the resolution 2098 depends on the security context in the eastern part of DRC.

The legal provisions which authorise the UN peace operations to use military force to protect civilians could lie in the article 2(4) which regulates the use of force by state members and, as such, prohibits the UN from acting against the “territorial integrity or political independence of any state”.²¹⁵ Article 2(7) prohibits the UN from intervening in domestic affairs of states while allowing for the “application of enforcement measures under Chapter VII”.²¹⁶ The UN may, therefore, interfere in the domestic affairs of states when pursuing enforcement measures stipulated in Chapter VII, which lies in the very heart of the UN collective security machinery. Human rights violations, can be considered as a threat to international peace and security.

Being conscious of eastern insecurity context, the UNSC, provides in the Resolution: “Strongly condemns the M23, the FDLR, the ADF, the APCLS, the LRA, the National Force of Liberation (FNL), the various Maimai groups and all other armed groups and their

²¹⁵Article 2(4) of the UN Charter.

²¹⁶Article 2(7) of the UN Charter.

continuing violence and abuses of human rights, including summary executions, sexual and gender based violence and large scale recruitment and use of children, demands that all armed groups cease immediately all forms of violence and destabilizing activities....(.....)”²¹⁷

In the interview with a General of FARDC answering the question whether the UNSC Resolution 2098 is opportune, he said: “We were in a real need of support. We have faced the M23 movement since 2012, a well-organised rebel group, and others which defeated us. All the eastern part was in a chaotic context”²¹⁸

Several other respondents agreed on the same way as the administrator of Rutshuru territory who stated: “To be honest, it was time for the UNSC to intervene with a peace enforcement mandate. People have been killed, women raped where MONUSCO does not have the authorisation to use force and so many people fled the territory because it was unbearable.”²¹⁹

Moreover, the chief of Kiwanja argued that: “As DRC is a member of the UN, it has the right to ask for help when it is unable to protect civilians and to restore its authority within its territories. Even if MONUSCO was present in DRC, Kiwanja in particular and most of Rutshuru territory in general has been a theatre of human rights violation and under rebel control.”²²⁰

In Jomba locality, where everybody fled the village, the chief of locality recognises the opportunity of the UNSC Resolution 2098 through the Brigade.²²¹ It seems that MONUSCO and its mandate was unable to protect civilians in North-Kivu without a peace enforcement task. Thus, the UNSC Resolution 2098 was the best way to protect civilians in the region.

4.1.2 Mandate implementation

As an examination indicator of the effectiveness or success of a peacekeeping operation, this section is about not only the comprehension of the Brigade mandate provided in the Resolution, but also the respect of the mandate in order to guarantee an effective civilians’ protection during and after any military operation.

²¹⁷ UNSC Resolution 2098.

²¹⁸ Interview with a General of FARDC, 12th February 2018.

²¹⁹ Interview with the chief of Rutshuru territory, 8th March 2018.

²²⁰ Interview with the responsible of kiwanja City, 8th March 2018.

²²¹ Interview with the chief of Jomba locality, 9th March 2018.

4.1.2 A. The mandate comprehension

The mandate comprehension is an essential factor of the Resolution implementation. This section provides the implication of the link between the mandate comprehension and the Brigade interventions in the field for the purpose of civilian protection.

Table 1: The link between the mandate non comprehension and the lack of Brigade intervention in the field.

Response	Frequency	Percentage
Yes	20	66.67
No	10	33.33
Total	30	100

Source: Primary Data 2018

From table 1 above it shows that 66.67% agreed that there is a link between the mandate non comprehension and the lack of the Brigade intervention in the field to protect civilians in Rutshuru and only 33.33% disagreed with that statement.

The mandate non comprehension causes the lack of the Brigade interventions in the field. On the understanding that the mandate comprehension is the basis of its respect and identification of civilian protection mechanisms, the 2098 Resolution effectiveness depends upon the mandate comprehension.

As MONUSCO military component, it was recommended to the Brigade ‘to take all necessary measures for civilian protection with the possibility of use of force’. Practically, under the 2098 Resolution which creates the Force Intervention Brigade (FIB) on its paragraph 12(a), the civilian protection passes by ensuring, within its area of operations, effective protection of civilians under imminent threat of physical violence, including civilians gathered in displaced and refugee camps, humanitarian personnel and human rights defenders, in the context of violence emerging from any of the parties engaged in the conflict, and by mitigating the risk to civilians before, during and after any military operation.²²²

However, based on the Resolution, the civilian protection will be effective with the neutralisation of foreign and national rebel groups. Unfortunately, it seemed when implementing the mandate, the Brigade only targeted foreign rebel groups such as M23 and

²²²UNSC Resolution 2098, paragraph 12(a).i.

ADF. It has been the same comprehension by a FARDC officer who said: “The first mandate of the Brigade was the neutralisation of M23 and other groups such as FDLR and ADF. As national rebel groups are constituted by citizens, the Brigade would intervene if they only caused a lot of damage to the population.”²²³

Pursuant to a Brigade element: “Our mandate is the neutralisation of big and organised rebel groups as it has been the case of M23. Now our mission is the neutralisation of ADF which is destabilising the northern part of North-Kivu. The matter of kidnapping and rape by Maimai and Nyatura in Rutshuru territory is a FARDC task.”²²⁴ Therefore, civilians in Rutshuru faced most of the time other rebel groups attacks which are not indicated in the ‘understanding’ of the mandate by either Brigade element or FARDC and which cause the population in that part of the province experience a persistent insecurity context characterised by kidnapped, rapes, killings, etc.

In the Agenda for peace, (1992) there are three components necessary for effective peacekeeping. Material and political support from the international community, cooperation with local authorities and clearly defined mandates.²²⁵ In my view, while noticing that the mandate must be clearly defined, Boutros-Ghali tries to outline the comprehension of the mandate.

Furthermore, Duane Bratt offers four dimensions on which to measure peacekeeping success: mandate implementation, conflict resolution, conflict containment, and casualty prevention.²²⁶

Based on that, the mandate comprehension is a relevant element of its implementation. Even if the mandate has been clearly defined in the resolution, as it is the case of the Resolution 2098, but never understood by those who are supposed to implement it, results will not be achieved because there will be absence of appropriate measures for the adequate implementation of the mandate. This leads to a high risk of non-civilian protection as provided by the Resolution.

²²³Interview with an officer of FARDC, Goma, 10th February 2018.

²²⁴Interview with the FIB member, Kiwanja, 9th march 2018.

²²⁵Boutros-Ghali, Agenda for peace, 1992.

²²⁶Bratt (1996) by Victoria Holt et al., *Protecting Civilians in the Context of UN Peacekeeping Operations* (New York: DPKO/OCHA, November 2009), 4–7.

4.1.2.B. The respect of the mandate

The mandate respect by the Brigade is an important factor of the Resolution effectiveness and its impact on the population impressions. This strand provides an analysis of the relationship between the non-respect of the mandate Resolution and the population mistrust.

Table 2: Link between the mandate non-respect and the population mistrust

Response	Frequency	Percentage
Yes	18	60
No	12	40
Total	30	100

Source: Primary data 2018

According to table 2 above, it shows that 60% of the respondents agreed that there is a straight link between the 2098 Resolution mandate non-respect and the population impression. 40% said there is no link between the 2098 Resolution mandate non-respect and the mistrust of People regarding the Brigade.

“They do not know why they are here in DRC. I cannot understand the presence of all South-Africans, Tanzanians and contingents from other countries who are unable to end the phenomenon of Nyatura, Maimai or FDLR who are kidnapping people, raping our sisters and plundering our villages. They should go back home and transfer their equipment to FARDC.”²²⁷

The MONUSCO mistrust in general and the Brigade in particular is a factor which impacted the 2098 Resolution effectiveness in the sense that it influenced the collaboration between local entities and the Brigade regarding the security information. The Rutshuru geopolitical context where rebel groups are related to ethnic communities and tribes, demands a strict and frank collaboration between all parties to ensure civilian protection in that part of eastern DRC. One of those parties are Chiefs of villages. The mistrust of chief of villages makes the Brigade task difficult as the latter need the former for the identification of rebel groups members. As these rebel groups are tribal, only tribe members can identify them and, therefore, this fact makes the Resolution 2098 implementation easier.

²²⁷Interview with a chief of village, Rutshuru 9th March 2018.

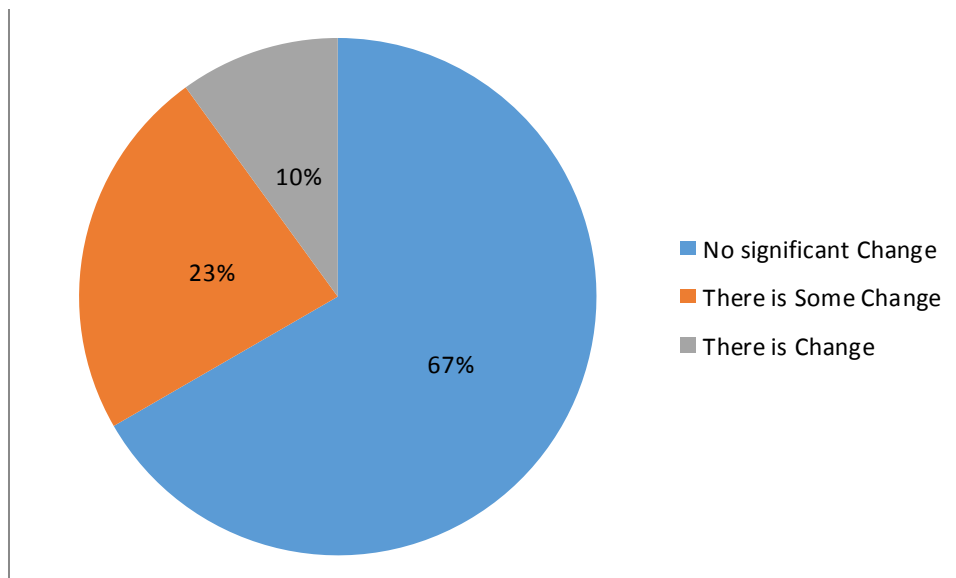
Furthermore, in an interview with one of respondents who words:’ In Rutshuru territory there are two most frequent rebel groups which are related to tribes namely Maimai (Nande) et Nyatura (Hutu). I do not trust the Brigade regarding to the civilian protection in so far as people have been kidnapped, others killed, there were arsons without any intervention. I prefer not to tell the Brigade something for the identification of rebel groups members for the safe of my own protection.’²²⁸

Thus a clear definition of the Brigade mandate and its fulfilment could impede the population mistrust of MONUSCO and its Brigade and ensure the effectiveness of measures related to civilian protection.

4.1.2.C. The Brigade outcome from March 2013 up to March 2018

The Brigade outcome is concerned with its impact analysis on ground in terms of reduction and attenuation of civilian attacks by rebel groups which have been perpetrated attacks since the Resolution adoption in the period stretching from March 2013 up to March 2018 in Rutshuru territory.

Figure 2: Link between other Rebel Groups neutralisation by the Brigade and its Outcome Lukewarm



²²⁸Interview with a member of human rights commission, Rutshuru 8th March 2018.

Source: Primary Data 2018

On a total of 30 respondents 20 (67%) agreed that there is no significance security context change in Rutshuru territory since the Resolution 2098 adoption (March 2013) up to March 2018. 7 (23%) respondents said that there is some change in the territory security context and only 3 (10%) argued that there is an improved security context in Rutshuru territory since March 2013 and March 2018.

The fact that the Brigade intervened only for the neutralisation of M23 and adopted other intervention mechanisms for all other rebel groups has been a sign of the lukewarm character of its outcome. The intervention mechanisms consistency (in the same context) is an important element which could make the civilian protection an easier task in Rutshuru territory.

“They intervened with FARDC in the field for the neutralisation of M23. However, for other rebel groups present in Rutshuru, they decided to assist FARDC with the needed equipment”

²²⁹Pursuant to another respondent: “The Brigade mandate is different from ours. When they intervened to overcome the M23 menace, they had been engaged. But when it is about Maimai and Nyatura they are not doing the same. I don’t know the real motivation for their attitude change from one group to another and therefore, before March 2013 equal today.”²³⁰

However, if the context not the same, where a rebel group has controlled ¼ of the North-Kivu province within its capital, on the one hand and on the other, some rebel groups that are controlling only some villages and that are organised; the human rights violation risk and their consequences remain the same. In addition a respondent stated: “There were no more human rights violation during the M23 Rutshuru occupation than what we are facing today, as kidnapping, rape,....”²³¹

The consistency in the Brigade interventions when it is about civilian protection without minding the organisational structure of the concerned rebel group is a core element in the good execution of its mandate stipulated in the 2098 Resolution.

²²⁹Interview with an officer of PNC, Rutshuru 9th march 2018

²³⁰Interview with an officer of FARDC, Rutshuru 10th march 2018

²³¹Interview with a chief of locality, Rutshuru 9th March 2018

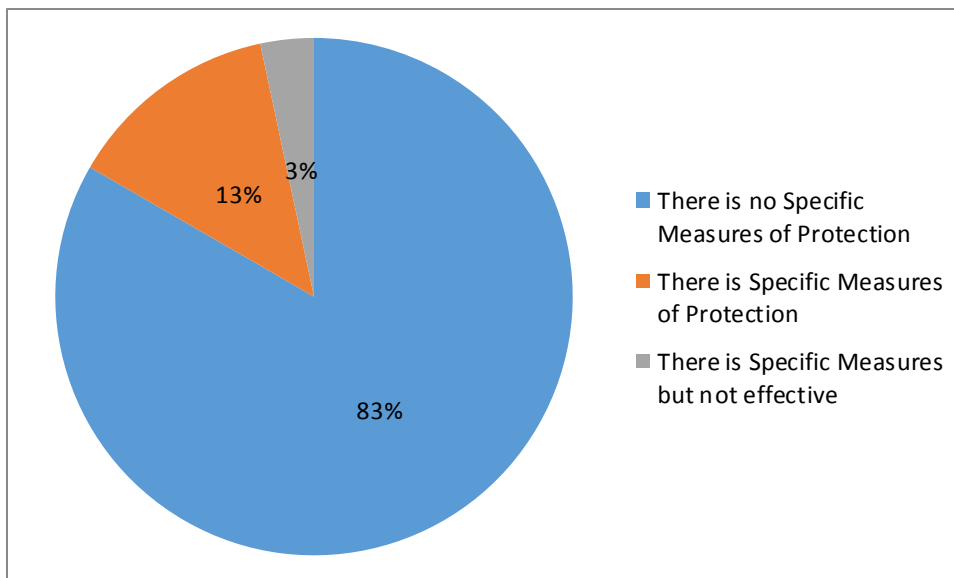
4.2 Mechanisms for Protection of Civilian

This section is the analysis of protection mechanisms provided in the Resolution and their implementation by the Brigade. To assess the Resolution effectiveness on civilians' protection an analysis of its protection mechanisms is done through their existence, the responses to rebel groups attacks and their implications.

4.2.1 Existence of Civilian Protection Mechanisms

The existence or not of specific civilian protection measures implemented by the Brigade is an element of the Resolution examination effectiveness.

Figure 3: Link between the Existence of specific protection mechanisms and the Resolution 2098 effectiveness



Source: Primary Data 2018

On a total of 30 respondents 25(83%) argued that there are no specific civilian protection measures implemented by the Brigade to deal with an effective civilian protection in Rutshuru, 4(13%) respondents said that there were specific measures in the M23 invasion period and 1(3%) estimates that there are specific measures to protect civilians in Rutshuru but they are not effective.

It is thanks to the existence of the specific protection measures that we can evaluate the effectiveness of the Brigade interventions in the field. The inexistence of those measures could be at the base of the Brigade failure in protecting civilians in Rutshuru Territory.

‘Honestly, the Brigade did the best for the withdrawal of M23 but as a chief of a village, I do not know which specific measures took the Brigade to attenuate Maimai attacks against my village.’²³²

On the other hand, a chief of a village said: ‘I remember that I have seen MONUSCO drones overnight. I heard that it was for making the information collection easier and the perception amelioration of situations which could rapidly orient the decision-making. Nonetheless, my village has been attacked by a rebel group which has taken it under control for 4 days without the Brigade or FARDC intervention.’²³³ A real and effective civilian protection against imminent attacks or risk of attacks could be dealt with pass through specific mechanisms, well determined and provided for the Resolution implementation.

The term: ‘all necessary means’ used in the 2008 Resolution, term in vogue in the UNSC system, includes measures or mechanisms which could make the Brigade mandate implementation easier. However, nothing has been specified and clarified as regards the expression: ‘to take all necessary measures’ in order to ensure civilian protection against physical attacks during and after attacks and to mitigate the risk of human rights violation before, and after all military intervention. To reach a high performance level of the Brigade interventions effectiveness in protecting civilians on the basis of the 2008 Resolution, could be better if the Resolution provided itself clear mechanisms and the term ‘all necessary measures’ definition.

4.2.2 Responses to Rebel Groups Attacks

Talking about the Brigade responses to rebel groups attacks means an analysis of the link between the Brigade responses to attacks and the Resolution effectiveness. The effectiveness of the Resolution 2008 depends to some extent on the Brigade responses to rebel groups attacks. With respect to its mandate, the way the Brigade reacts to the menace or risk of attacks determine the level of civilian protection

²³²Interview with a chief of village, kalengera –Tongo, Tongo , 10th march 2018.

²³³Interview with a chief of village/ Rutshuru territory, Lusogha, 10th march 2018.

Table 3: *Link between the Brigade responses to rebel groups attacks and the 2098 Resolution effectiveness.*

Response	Frequency	Percentage
Yes	26	86.67
No	4	13.33
Total	30	100

Source: Primary Data 2018

As shown in table 3 above, 86.67% of the respondents agreed that the Brigade responses to rebel groups attacks is a measure of civilian protection highlighted in the 2098 Resolution. 13.33% said there is no link between the 2098 Resolution mandate and the Brigade responses mandate.

As a measure of ensuring civilian protection against physical violation, rape, etc., the responses and the risk mitigation of attacks is a means of the 2098 Resolution effectiveness by the Brigade interventions in the field. These responses to attacks guaranteed civilian protection as if the Brigade reacts at all attacks based on what it has as equipment and human capital²³⁴, the possibility of withdrawing and neutralising enemies is high and consequently mitigates the risk of rebel groups defeat and/or possible rebel groups that will be aware of what has been done in the field.

Argued by Paul D. Williams, all peacekeeping mission effectiveness passes through the conflict resolution²³⁵ what we could qualify here as responses to attacks and mitigation of risk of attacks for the best civilian protection, the Brigade has the results-obligation and not a means obligation.

In paragraph 11 of the 2098 Resolution is provided by action verbs, the civilian protection in Rutshuru passes through the neutralisation of all rebel groups. This protection could be evaluated via the Brigade reserved responses to all attacks against the civilian population in Rutshuru and all measures provided for the attenuation of human rights violation within the territory.

²³⁴ See The Brigade equipment at <https://monusco.unmissions.org>.

²³⁵ D. Paul Williams, *Enhancing Civilian Protection in Peace Operations: Insights from Africa* (Washington DC: National Defense University, 2010).

As stipulated earlier, the Brigade deals only with ‘organised’ rebel groups like M23, ADF and FDLR.²³⁶ Unfortunately, in Rutshuru territory, the Brigade did the best only for the neutralisation of M23 whereas there were other rebel groups such as Maimai, FDLR,... and left all other ‘small’ rebel groups which have guerrilla as operational mode against the FADRC responses.²³⁷ Therefore, the security context itself could be the base of the non-execution of the Brigade mandate.

4.3 The Attacks Risk Mitigation to Civilians by the Brigade

The Mitigation of civilian attacks depends on the Brigade’s base location and the time of interventions and their impacts on civilians’ protection in Rutshuru.

4.3.1 The Brigade Base Location

The proximity or distance between the Brigade base location and the population is a relevant determinant element of human rights violation which could arise such as a mechanism of protection before, during and after any military operation.

Table 4: Link between the Brigade Base location and human rights violation arise.

Response	Frequency	Percentage
Yes	23	76.67
No	7	23.33
Total	30	100

Source: Primary Data 2018

According to table 4 above, it is shown that 76.67% of the respondents agreed that there is a link between the Brigade base location and the mitigation of human rights violation. 23.33% said there is no link between the Brigade base location and human rights violation arise

The Brigade Base Location (BBL) has a link with the extent of Human Rights and International Human Rights Violations (HRV). “The Brigade was located at Kiwanja. They could come once a while for information and go back the same day without checking the received information. Therefore, when they went back rebel groups supposed that they could attack and that made vulnerable my locality to Maimai and Nyatura attacks.”²³⁸

²³⁶Interview with a member of the Brigade, Goma, 13th March 2018.

²³⁷Interview with a FADRC officer, Goma, 12th February 2018.

²³⁸Interview with a chief of locality, Binza, 9th March 2018.

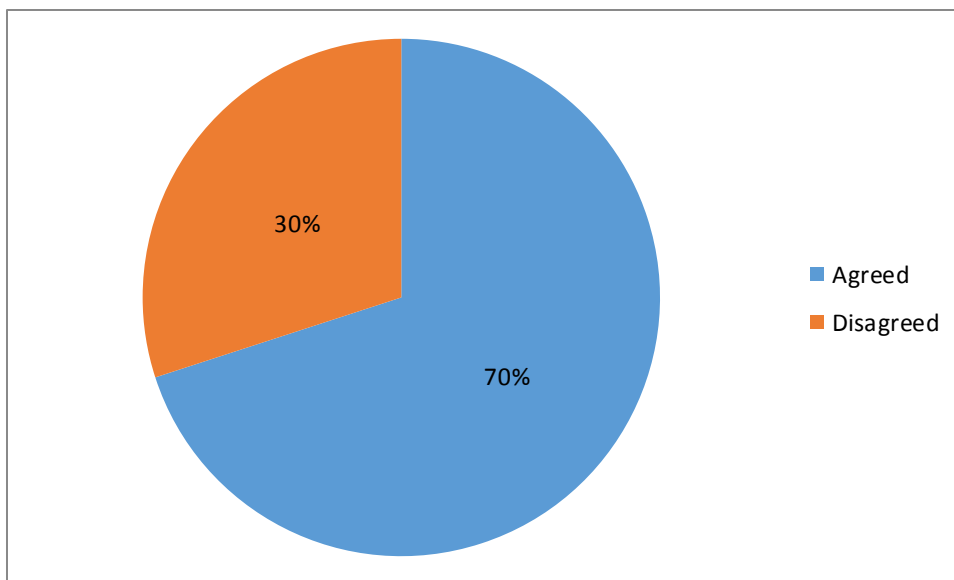
The Brigade distance is a determinant factor of the extent of human rights and international human rights violations. The extent could be wide or minimised based on the base location. So long as the Brigade is near, this could facilitate its interventions and therefore mitigate risk of attacks and protect civilian rights.

Nowadays, the Brigade base location is no longer in Rutshuru territory while the latter remains under rebel groups menaces and attacks such as Maimai and FDLR identified in the 2098 Resolution as rebel groups to be neutralised. Therefore, the brigade location could determine its responses to rebel groups attacks and respect its civilian protection mandate provides by the Resolution. As an element of the Resolution impact on civilian protection, the nearness of the Brigade location is a core element in the Resolution implementation.

4.3.2 The Interventions Time and its Implications

The time which the Brigade takes for its interventions has the implication on civilian protection mandate in the sense that it determines the level of relief and reduction of attacks risk and menace.

Figure 4: Link between intervention time and mitigation, reduction of attacks



Source: Primary Data 2018

On a total of 30 respondents 21(70%) argued that there is a link between intervention time and mitigation, reduction of rebel groups attacks. 9(30%) respondents said that there is no link between intervention time and mitigation, reduction of attacks.

The Attenuation and Mitigation of Attacks Risks and Menaces depend on the intervention time. If the Brigade intervenes late, there will be more damage in terms of human rights violation whereas its interventions on time is an effective means of civilians' protection and their objects. Therefore, the intervention time is an indicator of the Brigade effectiveness in implementing the 2098 Resolution.

When answering a question about the Brigade interventions time in protecting civilians against physical attacks or against whatever menaces, a chief of village said: **'I acknowledge the Brigade effectiveness in defeating M23. However, about all Nyatura attacks against my village, it has never intervened. It just comes after the rebel group attacks to ask for some information.'**²³⁹ Furthermore, other chiefs answered that they cannot talk about the Brigade intervention time in places where it has never been to protect civilians against Nyatura or Maimai.

As regarding the intervention time, the Brigade could protect civilian in the way that rebel groups would be aware of the Brigade quick reaction against civilians' attacks. The delay in intervention is a factor which caused human rights violation. This would never happen if the Brigade intervened on time. Thus, the rapidity in intervention could intimidate rebel groups and protect human rights against all kind of their violation by Maimai or Nyatura in Rutshuru territory. The effectiveness of the Brigade operations in protecting civilians passes through its interventions on time.

4.4 Factors Affecting the 2098 Resolution on Civilian Protection

The Brigade collaboration with DRC army forces is an important factor which affected the implementation of the UNSC Resolution 2098.

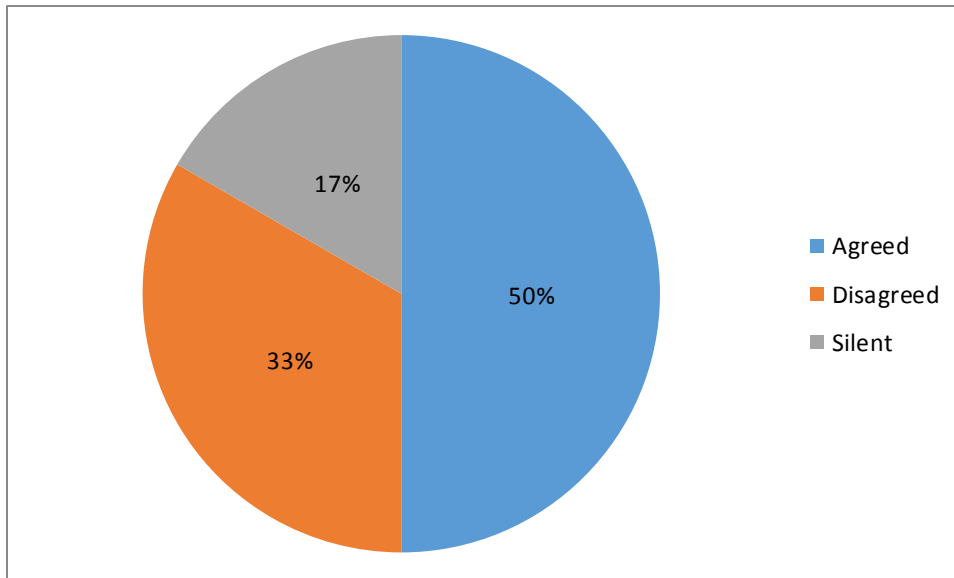
4.4.1 The Brigade collaboration with DRC Army Forces (FARDC) in the implementation of the Resolution 2098

This section approaches the collaboration between the Brigade and FARDC as a factor of the Resolution 2098 effectiveness on civilian protection. It scrutinises on the implications of the collaboration based on its success and challenges.

²³⁹Interview with a chief of village, Binza 9th march 2018

Following the link between the Brigade collaboration and the FARDC is to provide the Resolution effectiveness through that collaboration.

Figure 5: The link between the Brigade-FARDC collaboration and the effectiveness of the 2098 Resolution.



Source: Primary Data 2018

On a total of 30 respondents 15 (50%) argued that there is a link between the Brigade-FARDC collaboration and the effectiveness of the 2098 Resolution, 10 (33%) said that there is no link and 5 (17%) remained silent to the question.

As provided by the 2098 Resolution, in its mandate implementation the Brigade should collaborate with FARDC. The good or bad collaboration influenced the civilian protection quality in Rutshuru. This collaboration means that either the Brigade intervenes in the field with FARDC for responses to attacks or launched by rebel groups base, or the Brigade assists FARDC with ration or equipment for the same purpose. Therefore, the nature of that collaboration is an important element in determining the 2098 Resolution effectiveness on the civilian protection and the results could change depending on the degree of collaboration between the two forces (the Brigade and FARDC).

In the interview with FARDC members, one officer said :‘ I recognise that without the Brigade interventions against M23, the chance of neutralising it was small’.²⁴⁰This implies the fact that the Brigade assistance nature depends on a good collaboration between them and could have an impact on civilian protection in the territory. ‘When we wanted to intervene in an attacked village and needed equipment, for instance fuel, i had to call Kinshasa which could take time to respond and at the same time could say that there is no money for it. But the MONUSCO through its Brigade, is always ready to assist the DRC government by meeting our needs’.²⁴¹ During the mandate execution, the Brigade suspended its collaboration with FARDC based on some exactions committed by some FARDC officers, the necessity of that collaboration was felt as regarding to civilian protection in Bwito where a FARDC officer in the field needed fuel for patrol but due to the need non-fulfilment, there was a village arson perpetrated by rebel groups.²⁴²

Therefore, the collaboration between the Brigade and FARDC, could impact on civilian protection by making FARDC interventions easier in the field.

²⁴⁰Interview with a General of FARDC, Goma 12th February 2018.

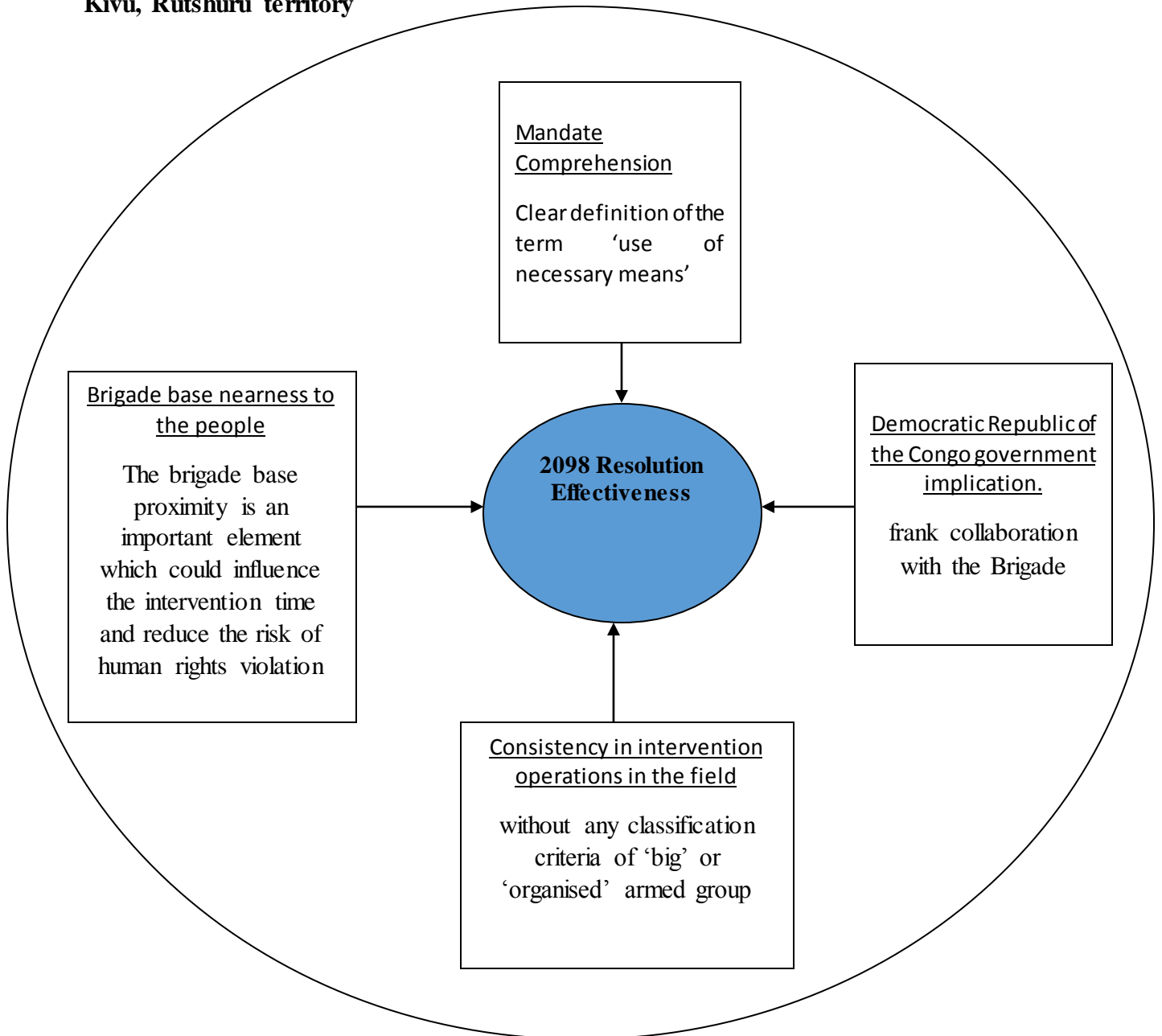
²⁴¹Interview with an officer of FARDC, Goma, 12th February 2018

²⁴²Interview with an officer of FARDC, Kiwanja, 10th March 2018

4.4.2 Towards a new mechanism of civilians' protection in North-Kivu, Rutshuru

For the effectiveness of the 2098 UNSC Resolution in DRC, following are variables which must be taking into account:

Figure 6: Variables of the 2098 Resolution effectiveness on civilian protection in North-Kivu, Rutshuru territory



Source: Modified by Researcher 2018

It is not time here to prove the opportunity of the Resolution 2098 on the protection of civilians in North-Kivu, DRC. The section aims at providing, based on data collection, a new mechanism of civilians' protection in Rutshuru territory according to its context.

- **Mandate comprehension:** The term ‘use of all necessary means’ for the purpose of civilian protection must be clearly defined in the Resolution so that those who are in charge of its implementation can have a good comprehension of the mandate which could lead to an effective protection.
- **Consistency in intervention operations in the field:** An effective civilian protection in Rutshuru depends on the consistency in the brigade interventions operations when it regards every rebel group without any classification criteria of ‘big’ or ‘organised’ armed group because civilians’ harm does not depend upon that classification of armed groups. Therefore, consistency in brigade’s interventions could have an impact on civilian protection in term of reduction of physical violence and mitigation of attacks risk during and after any military operation.
- **Brigade base nearness to the population:** The brigade base proximity is an important element which could influence the intervention time and reduce the risk of human rights violation within Rutshuru territory. This nearness plays an intimidation role as regards armed groups as long as at every time they can be neutralised.
- **DRC government implication:** The effectiveness of the 2098 Resolution depends on the Congolese government goodwill. Based on Rutshuru territory context, wherein the conflict contour is really known by political actors²⁴³, their frank collaboration with the Brigade could sort out the conflict in Rutshuru and lead to the success of peacekeeping operations in that area of DRC.

²⁴³The conflict in Rutshuru faced ethnic armed groups, based on data collection in Rutshuru territory there are some political actors who could fuel the conflict by using those armed groups against other communities. The implication of DRC government is welcomed in investigation and if proved trail the perpetrators to court.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The article 24(1) of the Charter provides that: 'In order to ensure prompt and effective action by the United Nations, its members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the security council acts on their behalf'. Thus, the UNSC in its mandate has the right to decide on "investigate any dispute or situation which leads to international friction"²⁴⁴, establish peacekeeping missions, create tribunals to try persons accused of war crimes, and in extreme cases declare a nation to merit corrective action by other state members. Therefore, the Security Council has the ability and authority to exercise powers from existing international law by creating binding resolutions. The UNSC, under Chapter VII, deals with existence of threat, breach of the international peace and security and aggression and has the power of determining of such threat or breaches.

The UN has taken many measures for the DRC stabilization through peacekeeping missions from 1960 up to date, from MONUC to MONUSCO. As the result of recurrent conflicts in Eastern DRC, in March 2013, the UNSC adopted the Resolution 2098 for the purpose of maintaining peace and security in DRC with the creation of a Force Intervention Brigade 'the Brigade' within MONUSCO and provides that the Brigade should take any necessary measures to ensure, within its area of operations, effective protection of civilians under imminent threat of physical violence, and mitigate the risk to civilians before, during and after any military operation and neutralize armed groups and to protect civilian; neutralisation of armed groups, monitoring the implementation of the arms embargo and provisions of support to national and international judicial process.

The study based on qualitative approach as it was to collect the respondents' opinions and views on the impact of the UNSC Resolution 2098 on civilian protection in North-Kivu. Chiefs of localities/ villages in Rutshuru territory, some elements of DRC armed forces (FARDC), elements of police (PNC) and elements of the 'Brigade' were selected as key respondents. Data collected were analysed in accordance with the 'Grounded theory' technique.

²⁴⁴Article 34 of the Charter.

Based on data collection analysis, following are the results:

- The security context in Rutshuru territory justified the opportunity of the UNSC Resolution 2098;
- The lack of the Interventions Brigade promptness and completeness has the outcomes on civilian attacks and human rights violation by rebel groups. This has been evaluated due to the fact that the brigade base location was not near the population in village; it was located in a town far from other villages. Thus, the intervention Brigade delay in time did not mitigate the risk of civilian attacks, kidnapping and other human rights violation as provided by the 2098 Resolution;
- The mandate implementation is lukewarm as it was not comprehensive on the meaning of ‘use of all necessary means’ to protect civilians. The mandate has been implemented only in the neutralisation of M23 rebel groups ignoring others like Maimai which are disturbing the population in Rutshuru by kidnapping and rape of civilians. Therefore, the situation created mistrust of the brigade in particular and all the UN Peacekeeping mission in general by the population of Rutshuru;
- Absence of specific civilian protection mechanisms in Rutshuru is an indicator of ineffectiveness of the Resolution as regards its civilian protection objective. Non-existence of such mechanisms has the consequence of so many human rights violation, arson of villages, kidnapping of civilians and humanitarian personnel, killing of civilians and some of the Brigade members themselves;
- The collaboration between the Brigade and FARDC was remarkable as the Brigade became part in the fighting between M23 and FADRC-Brigade which resulted the neutralisation of the famous M23 rebel group.
Nevertheless, terms of their collaboration are not Clearly defined as it is the Brigade which decided either to intervene in the field or to assist FADRC in improving their facilities, ration and when there was need of moving to a conflict zone, ...
- Absence of the DRC government implication to make easier the implementation of the Resolution. As DRC has the primary responsibility for protecting civilians within its territories by making tremendous effort of recognition of the UN peacekeeping

missions and of the trial to the court of all criminals before the court could be a bridge from conflict context to peace time.

- The outcome of the Resolution 2098 through its Brigade is lukewarm. Against the context background of Rutshuru territory, before 2013 is equal to after 2013 as the same rebel groups which were supposed to be neutralised, except M23, are still acting against civilians' rights in the territory.

5.2 Recommendations

Based on what is dissected above, following are the recommendations for an effective civilian protection in North-Kivu in general and Rutshuru territory in particular:

5.2.1 United Nations Security Council

The charge to maintain international peace and security is the UNSC responsibility. There is no need of adopting Resolutions which, at the end of the day, will not sort out the conflict and restore peace and security in the country or region concerned with those UNSC Resolutions. Therefore, to come back to the effectiveness of the Resolution 2098 based on its purpose of civilian protection in North-Kivu, DRC, the UNSC firstly the UNSC should elaborate specific mechanisms of civilian protection, thus the Brigade should not dither over what measures to take when there is the need of its intervention. Therefore, the Brigade will be consistent its actions not based on the nature of rebel groups but on the civilian protection context. Secondly, the UNSC should create a monitoring and evaluation Brigade interventions commission which could determine how far the Brigade is implementing the Resolution 2098 with regard to civilian protection. As a result, it will develop appropriate mechanisms to protect civilians in North-Kivu. By doing so the UNSC will protect civilians in North-Kivu against rebel groups attacks and will ensure the protection of their human rights.

5.2.2 The Brigade

As the implementation tool of the UNSC 2098 Resolution, the Brigade must follow the guidelines provided by the UNSC on civilian protection task. Firstly, the Brigade should locate its base near the population to facilitate the interaction between the population and the Brigade on the security issues exchange. Secondly, the Brigade must be able to respond within the due intervention time; avoiding delay in interventions will mitigate the risk of civilian attacks,

kidnapping and other human rights violation as provided by the Resolution. Therefore, the Brigade intervention will be prompt and thorough.

5.2.3 The Democratic Republic of the Congo

DRC as a country has the primary Congolese protection responsibility. The latter must be against physical attacks and all kind of human rights violation. As the UNSC decided to intervene in the same matter of the DRC Obligation, its collaboration is most welcomed to ensure the effectiveness of the Resolution 2098. Firstly, DRC should set in an appropriate manner the insecurity context and its incapacity to sort out the conflict, then together with the UNSC they will elaborate specific mechanisms of civilian protection. Secondly, it should take in to consideration the UN efforts to restore peace and security within its territories in finding the latest solutions to its eastern part.

Following are the actions which should be taken: to reform FARDC and the police as its instruments of civilian protection by their training in human rights and international humanitarian law courses; to provide a specific budget to FADRC so that they can be able to intervene on time against rebel groups which are disturbing the sovereignty of the Republic; to trial before courts and tribunals all human rights violation perpetrators such as members of rebel groups; to reform the juridical system in order to ensure that those who have been convicted of human rights violation are not released because of the intervention of some political actors; to arouse in North-Kivu population the feeling of being citizen of one country while communicating in different languages in the way to eliminate ethnic rebel groups in the province; to create jobs so as to enable all those rebel groups members to leave the bush and earn money and take care of their families. Last but not least, the DRC government must respect and implement democratic principles. Consequently, most of rebel groups will disappear based on the fact that all Congolese will get the opportunity of being part of the decision-making system for the well-being of the Republic.

BIBLIOGRAPHY

Books

- De Wet E., *The Chapter VII Powers of the United Nations Security Council* (Hart publishing, Oxford and Portland Orgeon,2004).
- Dinstein Y., *War, Aggression and Self-defence*, 5th ed. (Cambridge University Press, 2011).
- Fenton N., *Understanding the UN Security Council*. (Aldershot: Ashgate, 2004). 31.
- Hilderbrand R.C., Dumbarton O.,*The Origins of the United Nations and the Search for Postwar Security* (Chapel Hill: University of North Carolina Press, 1990).
- House A., *The UN in the Congo: The Civilian Operations* (University Press of America, 1978).
- Kaczorowska-Ireland A., *Public International Law*, 5th ed. (Routledge, New York 2005).
- O'Connell M., E., *International Law and the Use of Force: Cases and Materials, University Casebook Series* (New York: Foundation Press; Thomson West, 2005).
- Orakhelashvili A., *The Interpretation of Acts and Rules in Public International Law* (Oxford University Press Inc., NewYork,2008).
- Peters A., *The responsibility to protect and the Permanent Five: the obligation to give reasons for a veto* in *Responsibility to protect: from principle to practice*, Hoffmann, Julia, André Nollkaemper, and Isabelle Swerissen, (Eds). (Amsterdam University Press, 2012).
- UN, *The Blue Helmets: A Review of United Nations Peace-keeping* (3rd ed., New York 1996).
- Wood M., Peace, Breach of, in *The Law of Armed Conflict and the Use of Force, The Max Planck Encyclopaedia of Public International Law*, F. Lachenmann, R. Wolfrum (Eds) (Oxford University Press, New York 2017).

Journals

Adjovi R., “Introductory Note to the United Nations Security Council Resolution 2093 on the situation in Somalia”, in *International Legal Materials*, [2013].

Agada S.,” The Challenges of United Nations Peacekeeping in Africa: Case study of Somali”, in *peace operations Training Institute*, [2008].

Audu B. N.,” Aspects of Peacekeeping and Peace-Enforcement in Conflict Resolution: West Africa and the Congo”, in *Journal of Humanities and Social Science (IOSR-JHSS)* [Sep. 2014], Volume 19, Issue 9, Ver. VI

Bellamy A. J.,” The ‘Next Stage’ in Peace Operations Theory?” In *International Peacekeeping*. [2004] Vol. 11, No. 1

Beswick D., “Unpacking Rwanda’s Involvement in DR Congo and the International Response” in *E-international Relations*, [Dec 19 2012] available at <http://www.e-ir.info> accessed on 18th march 2018.

Blyth F. and Cammaert P., “The UN Intervention Brigade in the Democratic Republic of Congo,” in *International Peace Institute Issue Brief*, [July 2013] available at <https://www.ipinst.org/wp-content/uploads/publications> accessed on 21 September 2017

Bosco D., “Assessing the UN Security Council: A Concert Perspective”, in *Global Governance* 20 (2014), 545 –561.

Boulden J.,” Peace Enforcement: The UN experience in Congo, Somalia and Bosnia” in *Library of congress catalog* [2001]

Boutellis A.,” Can the UN Stabilize Mali? Towards a UN Stabilization Doctrine Stability” in *International Journal of Security and Development*, [2015], 4(1)

Case S. and Sheeran S., “The Intervention Brigade: Legal Issues for the UN in the Democratic Republic of Congo,” in *Protection of Civilians*, Oxford: Oxford University Press [2016].

Chu B.,” The Forgotten Chapter: The legality of peacekeeping, peace enforcement, and military intervention under chapter VII of United Nations Charter” in *Journal of international law*, GONZAGA university. [January 2017]

David S., ‘The Authority of SC under Chapter VII of the UN Charter: Legal Limits and the Role of the International Court of Justice.’ In *Kluwer Law International*, The Hague, Netherlands [2001] .

De Wet E., "The Security Council as a Law Maker: The Adoption of (Quasi)-Judicial Decisions", in *Wolfrum, Rüdiger and Röben*,

Diehl P., “With the Best of Intentions: Lessons from UNOSOM I and II,” in *Studies in Conflict and Terrorism*, [2006]

Dominick D., “Neutrality, Impartiality and UN Peacekeeping and the Beginning of the 21st Century”, in *International Peacekeeping*, [2002] 9:4, 21-38 available at <http://www.dx.doi.org> accessed on 6th December 2017.

Ebegbulem J. C., “The Failure of Collective Security in the Post World Wars I and II International System”, in *Transience* [2011] Vol.2, Issue 2.

ECOWAS and the Sub regional Peacekeeping in Liberia’, *The Journal of Humanitarian Assistance* [2012] available at <https://sites.tufts.edu/jha/archives/66> accessed on 8 November 2017.

Goodrich LM., "From League of Nations to United Nations", in *International Organisations*[1947] Vol.1 Issue 1 available at <http://www.jstor.org> accessed 1 November 2017.

Goodrich LM., Simons AP., "The United Nations and maintenance of International Peace and Security", in *The American Political Science Review* [1956] Vol 50, NO I.

Jakdson P. V., "National interest, Humanitarianism or CNN: What triggers UN Peace Enforcement After the cold war?" In *Journal of peace Research*, 1996, P.4

Jakdson P. V., "National interest, Humanitarianism or CNN: What triggers UN Peace Enforcement After the cold war?" In *Journal of peace Research*, [1996]

Karlsrud J., "The UN at war: examining the consequences of peace- enforcement mandates for the UN peacekeeping operations in the CAR, the DRC and Mali", in *Third World Quarterly* [2015], 36:1

Kasaija P. A., "The United Nations' Mapping Exercise Report and Uganda's involvement in the Democratic Republic of Congo conflict from 1996 to 2003", in *African Human Rights Law Journal* [2011] 11.

KenKe K. M., "Five generations of peace operations: from the "thin blue line" to "painting a country blue", in *Rev. Bras. Polít. int.* [2013] 56 (1)

Kok N., "From the International Conference on the Great Lakes Region-led negotiation to the Intervention Brigade", *African Security Review*, vol. 22, issue 3, 2013, 175-180.

Langenhove L.V. et al, "The UN and regional organizations for Peace: Tracking a Slippery Partnership" in *The United Nations and the Regions* (Dordrecht: Springer, 2012).

Menodji M.H.A., "Problematic Peacekeeping in DRC: From MONUC to MONUSCO" in *think Africa Press*, [February 4, 2013] available on <http://thinkafricapress.com> accessed 15 September 2017

O'Connell ME., "The United Nations Security Council and the Authorization of Force: Renewing the Council Through Law Reform", in *The Security Council and the use of force, theory and reality-a need for change* [2005].

Okhovat S., "The United Security Council: Its Veto Power and its Reform", *Centre for Peace and Conflict Studies* [2011] No 15/1.

Ouko S.J, Kiguta T., Nthiga C., Muthui C., Gachoki E.K, Ngeno K.W.A.," Financing of Armed Groups in Sub-Saharan Africa: A Review of Literature on Armed Group Financing in the Democratic Republic of Congo", in *Journal of Social Science and Humanities Research*, [July - September 2016], Vol. 4, Issue 3.

Raphael Janik R. A.," Putting Security Council Resolution 2098 on the Democratic Republic of Congo in Context: The Long Way of Peacekeeping", in *10 Human Security Perspectives* [2014].

Solhjell R., &Rosland M.," Stabilisation in the Congo: Opportunities and Challenges" in *Stability: International Journal of Security and Development*, [2017]. 6(1).

Stephen Z., "International law, the UN and Middle Eastern conflicts". *Peace Review*, Volume 16, Issue 3 [September 2004], pages 285 – 292:291.

Williams C., "Explaining the Great War in Africa: How Conflict in the Congo Became a Continental Crisis"; *The Fletcher Forum of World Affairs*, Vol. 37, No. 2, 81-100 [2013].

Williams P., "Fighting for Peace in Somalia: AMISOM's Seven Strategic Challenges," *Journal of International Peacekeeping*, 17, 2013, p. 228.

Williams P., "The African Union Mission in Somalia and Civilian Protection Challenges," *in Stability: International Journal of Security & Development*, [2013] 2(2): 39, available at <http://www.stabilityjournal.org> accessed on: 29 September 2017

Wood M., "International law and use of force: What happens in practice?" *In Indian journal of international law* [2004] Vol. 53

Zunes S., "International law, the UN and Middle Eastern conflicts". *Peace Review*, Volume 16, Issue 3 [September 2004], pages 285 – 292:291.

Articles

Schott J., Chapter VII as Exception: Security Council Action and the Regulative Ideal of Emergency, [2008] 6 *Nw.J. Int'l Hum. Rts.* 24.

Reynaert J., NONUC/MONUSCO and civilian protection in the Kivus, *in Interns and Volunteers series*, IPIS [2010].

Ponthieu A., Vogel C., Derderian K., Without Precedent or Prejudice? UNSC Resolution 2098 and its potential implications for humanitarian space in Eastern Congo and beyond, [January 21, 2014] available on <http://sites.tufts.edu> accessed on 24 September 2017.

Mixon J., Why did the League of Nations fail?, available on <https://www.quora.com> accessed on 1 November 2017.

Nantulya P., A Medley of Armed Groups Play on Congo's Crisis [2017] available at <https://reliefweb.int> accessed on 18 March 2018.

Johannessen A-M, *Neutrality and Impartiality of the United Nations Peacekeeping Operations*,
Research essay about the UN in International Conflict Resolution and Peacekeeping,
[12 June 2007].

Johansson P., *Equivocal Resolve? Toward a Definition of Chapter VII Resolutions*, Working
Papers in Peace and Conflict Studies, [2008] no 7.

Boulden J., *United Nations Operation in the Congo (ONUC)*, in the Oxford Handbook of
United Nations peacekeeping Operations [April 2015] available
at <http://www.oxfordhandbooks.com> accessed on 12th January 2017.

Boulden J., *Mandates Matter: An exploration of Impartiality in United Nations Operations*,
[2005] *Global Governance* 11, 147-160 available at <http://www.atypon-link.com>
accessed on 13th December 2017.

Beck K., *The Challenges of Consent: Policy Recommendations for Maintaining Host State
Consent for United Nations Peacekeeping Missions*, *Diplomacy and World Affairs*
[2011], available at <http://www.scholar.oxy.edu> accessed on 6th December 2017.

White N.D, *The UN Security Council and the settlement of disputes*, available at
<http://www.plane-truth.com> accessed 4 November 2017

Alwihda, *La RD Congo, victime d'un complot international ?* [5 July 2014] available at
<https://www.alwihdainfo.com> accessed on 18 March 2018.

Reports

Bestdelegate, *United Nations Peacekeepers: Which Countries Provide the Most Troops and
Funding?* [2017] Available at <http://bestdelegate.com> accessed on 18 March 2018

Council on Foreign Relations, *violence in the Democratic Republic of the Congo in Global
Conflict tracker*, September 2017 available on <https://www.cfr.org> accessed on 28th
September 2017;

DPKO, United Nations Peacekeeping Operations – Principles and Guidelines, 2008 (Capstone Doctrine).

Gambino T., Democratic Republic of the Congo, World Development Report[2011] available at <http://web.worldbank.org> accessed on 18 march 2018.

Human Right Watch, Attacks of rebel groups reported, December 16, 2014;

Human Right Watch, DRC: Bodies of two experts found, reported on 28 March 2017.

International Community on Intervention & State Sovereignty, The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty (2001) Para 6.21, available at <http://www.iciss.ca/pdf/Commission-Report.pdf> accessed on 8 November 2017.

International Crisis Group, After MONUC, Should MONUSCO Continue to Support Congolese Military Campaigns? [19 July 2010] Available at <https://www.crisisgroup.org> accessed on 18th March 2018.

IRIN, Armed groups in Eastern Democratic Republic of the Congo available on <http://www.irinwes.org> published on 5/10/2013 accessed on 27 September 2017;

MONUC, Public Information Division, 2009a; UN Security Council, March 2010.

MONUSCO in DRC available at <https://monusco.unmissions.org> accessed on 18th March 2018.

Myanmar refuses visas to UN team available at <http://www.theguardian.com> accessed on 6 November 2017.

OCHA, DRC : Population Movements in Eastern DR Congo, July 2008;

OCHA, DRC: Aid workers need access and funding in North Kivu, June 2012;
Organisational Chart of DPKO available at http://www.un.org/en/peacekeeping/documents/dpkodfs_org_chart.pdf accessed on 13th December 2017.

Repertoire of the Practice of the Security Council, available at <http://www.un.org> accessed on 6 November 2017.

Role of UN General Assembly in peacekeeping operations available at <http://www.un.org> accessed on 13th December 2017.

Secretary-General Agenda for peace A/47/277 of 17 June 1992.

Sida, Democratic Republic of the Congo: Humanitarian crisis and analysis, 2016 available on <http://www.sida.se> accessed 27 September 2017;

Special report of the Secretary-General on the Democratic Republic of the Congo and the Great Lakes Region, UN Doc S/2013/119, para 60-64 167.

United Nations Peacekeeping Operations Principles and Guidelines, 2008;

United Nations, United Nations Department of Peacekeeping Operations and Department of Field Support, Civil Affairs Handbook, New York [2012].

United Nations, United Nations Peacekeeping Essential, But Success Not Guaranteed Because Peacekeepers Work in Most Demanding Physical, Political Environments, [2010] available at <http://www.un.org> accessed on 18 March 2018.

UNSC 7659th Meeting on 30 March 2016 available on <https://www.un.org> accessed 28th September 2017;

UNSC Subcommittee on the Spanish questions, 1 June 1946 available at <https://www.digilibary.un.org> accessed on 4 November 2017

Thesis

Kahama D., Responsibility to protect: Analysis of whether Pillar Three of the Responsibility to Protect doctrine obliges the Security Council to act in cases of mass atrocities such as those in Syria, Masters dissertation, University of Pretoria ,2015.

Nystrom D., The UN Mission in Congo and the Basic Principles of Peacekeeping- Revolution or Evolution, Thesis in Public International Law, Stockholm University, Faculty of Law, 2015.

Uwimana I., The United Nations Peacekeeping mission in Eastern Democratic Republic of Congo: Prospects and challenges, Master Dissertation, Kampala International University, 2010.

APPENDICES

Appendix I: An Interview Schedule for Military Officers, Police Officers and Monusco Personnel in Eastern Congo, DRC

Dear Respondent,

I'm Mugombozi Akonkwa Félicité, a postgraduate student of Kampala International University(Uganda) pursuing a Masters of Law in Public International Law. As partial requirement for the completion and award of the foregoing degree, am required to carry out a research and write a thesis on **Examination of the Impact of the United Nations Security Council Resolution 2098 on Protection of Civilians in North-Kivu, Democratic Republic of The Congo**

The purpose of this interview is to kindly request you to spend some of your valuable time and help me in answering the asked questions. This research is purely for academic purposes, and rest assured your responses will be kept confidential.

You therefore don't need to disclose your name and/or identity.

1. In your opinion, how do you consider peacekeeping operations in eastern DRC, North- kivu? Is it an easy task or a difficult one? Tell us why?
2. In your view, do you think the UNSC Resolution 2098 was opportune? Explain
3. Do you think that the Intervention Brigade fulfilled its mandate? If yes or not, explain
4. Is the intervention Brigade affect the protection of civilians Rights in North-Kivu? In which manner?
5. Is the Intervention Brigade destroyed armed and rebel groups in eastern DRC? How?
6. Do you think that the Resolution 2098 was a solution to the conflict faced the eastern DRC, Rutshuru especially?
7. At what level that the intervention Brigade sort out the conflict in North-kivu, Rutshuru territory?
8. What do you think could be the better way to sort the conflict in DRC in general and Eastern DRC in particular?
9. What are opportunities the UN mission can exploit in order to fulfil its mandate?

Thank you very much for your responses, time and cooperation.

Appendix II: An Interview Schedule for Chiefs of Rutshuru Localities and Villages

Dear Respondent,

I'm Mugombozi Akonkwa Félicité, a postgraduate student of Kampala International University(Uganda) pursuing a Masters of Law in Public International Law. As partial requirement for the completion and award of the foregoing degree, am required to carry out a research and write a thesis on **Examination of the Impact of the United Nations Security Council Resolution 2098 on Protection of Civilians in North-Kivu, Democratic Republic of The Congo**

The purpose of this interview is to kindly request you to spend some of your valuable time and help me in answering the asked questions. This research is purely for academic purposes, and rest assured your responses will be kept confidential.

You therefore don't need to disclose your name and/or identity.

1. In your view, do you think the UNSC Resolution 2098 was opportune? Explain
2. In general, how do you estimate the Brigade protection effectiveness?
3. A. Can you identify failures/ challenges of the Brigade on its civilian protection in your village or locality?
B. Can you give examples?
4. A. Can you identify the Brigade positive points regarding civilian protection in your village/ locality?
B. illustrate?
5. In your view, what is the Brigade Challenges base in protection civilians in your village/territory
6. Is there any possible solution to improve civilian protection in your village/territory?
7. What is your conclusion?

Thank you very much for your responses, time and cooperation.