

MILITARY NECESSITY, MILITARY OCCUPATION AND THE USE OF FORCE IN INTERNATIONAL HUMANITARIAN LAW: AN EXTRAPOLATIVE APPRAISAL

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Abstract

Military Necessity, basically, borders on International Humanitarian Law, and it entails the principle that a belligerent may apply only the quantity and/or amount and kind of force necessary to defeat an enemy. It demands that a party to an armed conflict may resort only to the means and methods that are necessary to achieve the legitimate goals of the armed conflict. Military necessity is only limited by the principle of humanity. A territory, on the other hand, is considered as occupied the moment it is placed under the power and authority of the hostile army or belligerent. Under International Humanitarian Law, there are rules that govern not just military necessity and military occupation, but also the use and\ or application of force during armed conflict. This Article explored the principles of military necessity, military occupation, use of force and the rules governing their application in the prosecution of war. The study adopted a doctrinal research methodology for interrogating the existing legal structures available for these principles, their uses and the abuse thereof. The paper also looked at the cases of authorized use of force by the United Nations' Security Council. Findings from the study revealed both positive and negative strides. The paper ended with recommendations centered around strict compliance to the rules amongst other things.

Keywords: Military, Necessity, Occupation, Force, International Humanitarian Law.

1.0 Introduction

The Lieber Code¹ (named after Francis Lieber) serves as one of the first national codifications of the military. The code allowed only the use and application of military force justified by "Military Necessity", described as such "measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war".² In Article 16 of the Lieber Code, it is clearly stated that "Military necessity does not admit of cruelty – that is, the infliction of suffering for the sake of suffering or for revenges, nor of maiming or wounding except in fight, nor of torture to extort confessions. It does not admit of the use of poison in any way, nor of the Wanton devastation of a district". It was this historical precedent that inspired the emergency of military manuals of other nations, and the latter codifications of International Humanitarian Law.

Military necessity is only limited by the principle of humanity. The principle of military necessity demands that a party to an armed conflict may resort only to the means and methods that are necessary to achieve the legitimate goals of the hostility or armed conflict. The International Criminal Tribunal for the former Yugoslavia (ICTY) in *Prosecutor v Blaskic*³ states that: "The question of military necessity refers to rules of International Humanitarian Law and the principle that a belligerent may apply only that amount and kind of force necessary to defeat the enemy. The unnecessary or wanton application of force is therefore prohibited".

As a matter of fact, any violence or destruction that is not justified by military necessity is prohibited by International Humanitarian Law (IHL). The IHL not only provides for military necessity, but also the rules governing or regulating occupation and the use of force which can be

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¹ The Lieber Code was adopted in 1863 to regulate the conduct of Union Soldiers during the United States of America Civil War.

² Article 14 the Lieber Code.

³ Case no. IT-95-14-T, Judgement, 3 March, 2000. Para. 157.

found in the Hague Regulations of 1907⁴, and the fourth Geneva Convention⁵, as well as certain Additional Protocol 1 and Customary International Humanitarian Law. This research interrogates these legal structures, their applications and practice by belligerents.

2.0 The Notion of Military Necessity

The notion of military necessity is, like the related principle of proportionality, an essential component of International Humanitarian Law it entails that a belligerent may apply only the amount and kind of force necessary to defeat the enemy.⁶ Military necessity enjoins combatant forces to take on only those acts essentials to realize a legitimate military objective. It also permits armed forces to engage in conduct even when such action will result in destruction and harm. It clashes most with humanitarian protection. Attacks are expected to be limited stringently to military objectives only. It does not give the armed forces the freedom to ignore humanitarian considerations altogether and do what they want. Concerning military necessity to targeting, strict application standards may differ.⁷ Military necessity must be interpreted in the context of specific prohibitions and in line with the other principles of International Humanitarian Law.

The Lieber Code describes military necessity as:

Military necessity admits of all direct destruction of life or limb of armed enemies, and of other persons whose destruction is incidentally unavoidable in the armed contests of the war; it allows of the capturing of every armed enemy, and every enemy of importance to the hostile government, or of peculiar danger to the captor, it allows of all destruction of property, and obstruction of the ways and channels of traffic, travel, or communication, and of all withholding of substance or means of life from the enemy; of the appropriation of whatever an enemy's country affords necessary for the subsistence and safety of the army, and of such deception as does not involve the breaking of good faith either positively pledged, regarding agreements entered into during the war, or supposed by the modern law of war to exist. Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God.⁸

The principle of military necessity confines aerial attack to lawful military targets only.⁹

Military necessity also applies to weapons review.¹⁰ Even lawful weapons may require some restrictions on their use in particular circumstances to increase compliance with the laws under the

⁴ Articles 42-56.

⁵ G C iv, Articles 27-34 and 47-78.

⁶ <https://guide-humanitarian-law.or>>

⁷ The United States Military may target those facilities, equipment and forces which, if destroyed, would lead as quickly as possible to the enemy's partial or complete submission. As an example of compliance with the Principle of Military necessity during Operations Desert Storm, we considered our targeting and destruction of Iraq SCUB Missile batteries and of Iraqi army and these forces locating these nations quickly achieved his superiority and hastened the Iraqi military defeat.

⁸ Article (15) Humanitarian consideration.

⁹ Military targets are those that by their own nature, location, purpose, or use make an effective contribution to an enemy's military capability and whose total or partial destruction, capture, or neutralization in the circumstances existing at the time of an attack enhance legitimate military objective.

¹⁰ AF 51 – 402, Weapons Review, requires the Air Force to perform a legal review of all weapons and weapons systems intended to meet a military requirement. These reviews ensure the United States complies with its international obligations, especially those relating to the LOAC, and it help military planners ensure military

International Humanitarian Law. Serious violation or abuse of military necessity will result to war crime under International Humanitarian Law and will incur individual criminal responsibility.

a) Military Objectives During Military Necessity

Military objectives are objects that shall be the targets of a direct attack or bombardments during military necessity hence the trite rule that military operations must be directed at them. They are objects that can be lawfully targeted. Article 52 of Additional Protocol 1 to the Geneva Convention provides a widely-accepted definition of military objective:

In so far as objects are concerned, military objectives are limited to these objects which by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

Establishments or institutions dedicated to peaceful purposes are accorded a general immunity from direct armed attack. Medical units or establishments; means of transports for wounded and sick personnel; military and civilian hospitals ships; places established under the Geneva Conventions as safety zones such as religious, cultural, and charitable buildings, monuments, and Prisoners of War Camps fall under this description. Subject however to if these objects are located near lawful military objects, they may suffer collateral damage and under the principle of *Volenti Non Fit* medical aircraft is generally not an object of attack.¹¹

1. The Principle Military Occupation

Belligerent occupation otherwise called military occupation or simply occupation, refers to a temporal hostile control exerted by a ruling power's military apparatus over a sovereign territory which is outside of the legal boundaries of that ruling power's own sovereign territory.¹² The territory so occupied, is known as the occupied territory, while the ruling power occupying it is called the occupant.¹³

A territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends to the territory where such authority has been established and can be exercised.¹⁴ Any territory occupied during international hostilities qualifies as occupied territory. Occupation is different from annexation and colonialism in the sense that it is a power structure that the occupant intends to retain only temporarily.¹⁵ They also apply in situations where the occupation

personnel do not use weapons or weapons systems that violate international law. illegal arms for combat include poison weapons and expanding hollow point bullets in armed.

¹¹ The exception to the rule however are: (1) Initiates an attack (2) is not exclusively employed as a medical aircraft (3) Does not bear a clearly marked Red Cross, Red Crescent, or other recognized symbol and is not otherwise known to be an exclusively medical aircraft (4) Does not fly at heights at times, and on routes specifically agreed to by the parties to the conflict and is not otherwise known to be an exclusively medical aircraft (5) Flies over enemy territory or enemy-occupied territory (unless otherwise agreed upon before parties) (6) Approaches its enemy's territory or a combat zone and disregards a summons to land.

¹² J Bracka, *Transitional Justice for Israel/Palestine: Truth-Telling and Empathy in Ongoing Conflict*, Spring Series in Transitional Justice, (Springer International Publishing AG, 2021).

¹³ F Cecile, "Living with the Enemy: The Ethics of Belligerent Occupation". Achieved from the original on 26/07/2024. Retrieved 26/07/2024.

¹⁴ Article 42 of the 1907 Hague Regulations (HR).

¹⁵ D M Edelstein, "Occupational Hazards: Why Military Occupations Succeed or Fail", *International Security* (2004) 29(1): 49-91.

of state territory meets with no armed resistance.¹⁶ Laws governing occupation is regulated by the United Nations Charter and the law of *jus ad bellum*,¹⁷ and once a situation exists which literally amounts to an occupation, the law of occupation applies-whether the occupation is considered lawful or unlawful sanctioned by the Security Council, whatever its aim, whether of “Liberation”, “administration” or “occupation”. The facts on the ground determine the application of military occupation. Military Occupation is largely provoked by humanitarian considerations, and since the World War II and the establishment of the United Nations, it has been the practice for occupied territory to continue to be widely recognized as such. Any country that engages in military occupation and breaches internationally agreed rules runs the risk of criticism, censure or condemnation.

a. The Rules Governing Occupation

The rules governing occupation are basically delineated in various international agreements such as the Hague Regulations of 1907¹⁷ and the fourth Geneva Convention,¹⁸ as well as certain provisions of Additional Protocol I and Customary International Humanitarian Law. These of legal instruments cannot be modified or altered by whatever local International Humanitarian Law Provisions¹⁹ and protected persons themselves can in no circumstance renounce their rights.²⁰ The applicable core rules of the law in case of occupation are trite.²¹ The rights the occupying power has regarding property and natural resources in the occupied territory are as to private property²² and public property.²³

b. Commencement of Military Occupation

The law of occupation basically becomes applicable whenever a territory comes under the “effectual control” of hostile foreign armed forces, even if unarmed, neither resistance, nor fighting is involved but must operate under International Humanitarian Law. “Effectual Control” manifests in two levels,²⁴ namely:

¹⁶ Common Article 2, the four Geneva Conventions of 1949.

¹⁷ (Article 42 – 56)

¹⁸ (GC iv, Articles 27-34 & 47-78).

¹⁹ (GC iv, Article 47)

²⁰ GC iv, Article 8)

²¹ GC iv, Article 55)

²² (1) The occupant does not acquire sovereignty over the territory; (2) Occupation is only a temporary situation, and the rights of the occupation are limited to the extent of that period; (3) The occupying power must respect the laws in force in the occupied territory unless they constitute a threat to its security or an obstacle to the application of the international law of occupation. (4) The occupying power must take measures to restore and ensure as far as possible public order and safety. (5) To the fullest extent of the means available to it, the occupying power must ensure sufficient hygiene and public health standards, as well as the provision of food and medical care to the population under occupation. (6) The population in occupied territory cannot be forced to enlist in the occupier’s armed forces. (7) Collective or individual forcible transfers of population from within the occupied territory are prohibited. (8) Transfers of the civilian population of the occupying power into the occupied territory, regardless whether forcible or voluntary, are prohibited (9) Collection punishment is prohibited. (10) The taking of hostage is prohibited. (11) Reprisals against protected persons or their property are prohibited. (12) The confiscation of private property by the occupant is prohibited. (13) The destruction or seizure of enemy property is prohibited. (14) Cultural property must be respected. (15) People accused of criminal offences shall be provided with proceeding respecting internationally recognized judicial guarantees (for example, they must be informed of the reason for there are rest, charged with a specific offence and given a fair trial is quickly as possible. (16) Personnel of the International Red Cross/Red Crescent Movement must be allowed to carry out their humanitarian activities. The ICRC, in particular, must be given access to all protected persons, whether they are, whether or not they are deprived of their liberty.

²³ (HR, Article 53) and (HR, Article 55)

²⁴ ICRC’s commentary to the Fourth Geneva Convention (1958).

1. Whenever a party to a conflict asserts some level of control outside of its territory e.g. advancing troops could be considered bound by the law of occupation in place during the invasion phase of belligerence.
2. Alternatively, and in a more restrictive sense, once a party to a clash exercises sufficient authority over enemy and to enable it to discharge the entire obligation obligatory by the lover of occupation. Military manuals often times adopt this approach.

c. The End of Occupation

The end of occupation is predicated upon the occupying powers withdrawal or they be driven out of it, plus or minus the continued presence of foreign troops. A transfer of authority to native government with exercise of sovereignty will normally amount to end the state of occupation. Change of situation may necessitate a re-occupation and the territory again becomes actually placed under the authority of the hostile army²⁵ and not essentially with the consent of the local authorities. Should violence continue after the end of occupation, the ICRC's and other NGO protection activities may be predicted on legal back ground based on if the crisis is a non-international armed conflict.²⁶ Article 3 confers on the ICRC right to render relief action and visit persons detained for reasons related to the conflict.

Geneva Convention²⁷ applies to captured members of armed forces, Prisoners of War (POW) and associated militias. Prisoners Of War (POW) and civilian internees must be immediately released after the end of hostilities, save for those who are accused of an indictable offence which their fate is subject to the outcome of their trial and²⁸ until their release, in so far as they remain under the authority of the occupant remain protected by IHL.²⁹

2. Use of Force under International Humanitarian Law

Use of Force generally in a humanitarian intervention. It is an intervention in the sense that it entails interfering in the internal affairs of a state of sending military forces into the territory or airspace of a sovereign state that has not committed an act of aggression against another state.

States, most times, are always faced with circumstances in which their officials have to use force to maintain or restore public security, law and order in armed conflicts or situations of violence that do not meet the threshold of applicability of International Humanitarian Law. Force can be applied by persons who exercise state powers, in particular, police and military forces; such use of force is mainly governed by international human rights law and domestic law. The use of force has to strictly regulated by states. As a matters of law, states must ensure that national legislation is brought into line with their international obligations and sanction their officials if they have used force in excessive of otherwise arbitrary manner.

a) Some United Nations Charter and Resolutions on the use of Force: Article 1.1,2(4), Article 24 (1-3), Article 25, Article 35(2), Article 41 and Article 51

It is the honest desire of the United Nations for there to be a peaceful and conflict free world. This desire was evidence from the outset of the purpose and principles of United Nations Charter thus:

²⁵ (HR, Article 42)

²⁶ Common Article 3 to the four Geneva Conventions (and Additional Protocol II, where applicable).

²⁷ GC III, Article 4A (2)

²⁸ (GC III, Article 119 (5) GC IV, Article 133 (2)

²⁹ GC III, Article 5 (1) and GC IV Article 6 (4).

...for the prevention and removal of threats to peace, and for the suppression of acts of aggression or other breaches of the peace and to bring about by peaceful means...³⁰

It came after the World War II and it was informed by the reactionary realization of the limits afforded by the provisions of the League of Nations concerning war which was discernible from the outset as contained in Articles (1) and followed it up in Article 2(4).³¹ This desire, going further, becomes even more evident by the concession granted to non-state members by the provisions of Article 35(2)³². It was however, unmistakable before the United Nations that wars constituted an attribute of mankind as manifested in the pages of history books as shall be seen below.

The Security Council was conferred the “primary responsibility for the maintenance of international peace and security” and requires the Security Council to act in accordance with the United Nations purposes and principles and prescribed a method of feedback to the General Assembly thus:³³

1. 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.
2. In discharging these duties, the Security Council shall act in accordance with the purpose and principle of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in chapter VI, VIII and XII.
3. The Security Council shall submit annual and, when necessary, special reports to the general Assembly for its consideration.

Article 25 requires members to “accept and carry out the decisions of the Security Council”. World Court, also, has a similar provision requiring states to accept and carry out decisions once a country has accepted its jurisdiction.³⁴ This responsibility, the members have agreed to accept and carry out. More so, the Security Council was conferred with the powers to decide measures not involving use of force to give effect to its decisions and it may call upon United Nations member states to apply such measures in Article 41.³⁵

³⁰ Article 1(1): To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international laws adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

³¹ Article 2(4): is to the effect 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 purpose of the United Nations.

³² A state which is not a member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is party if it accepts an advance, for the purpose of the dispute, the obligations of pacific settlement provided in the present charter.

³³ Article 24 (1-3)

³⁴ Article 36 (5)

³⁵ The Security Council may decide what measures not involving the use of armed force 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 include complete or partial interruption of economic relations and of air, sea, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations.

The United Nations provisions are clear on its attempts to have a world free from Wars and conflict by the safeguards provided above. However, perhaps envisaging that such measures free from armed force may fail, it went further to provide in Article 42 what some analysts consider as an ambiguous loophole “use of force”.³⁶ The Article 51 was clear on its stipulation which forms an exception in the United Nations Charter authorizing the use of force.³⁷ United Nations General Assembly (UNGA) has also overtime made a number of resolutions pertaining the legal use of force for which two of them are outstanding. Firstly, the declaration on the principles of International Law concerning Friendly Relations and Co-operation Among States and³⁸ secondly, the Definition of Aggression.³⁹ The Declaration on the principles of International Law Concerning Friendly Relations and Cooperation Among States restate the UN charter provisions that:

States refrain from the threat or use of force and that International disputes be settled peacefully. States have a duty to refrain from forceful acts of reprisal and that of wars of aggression and crimes against peace.

Since 1947, the International Law Commission (ILC) commenced working on an acceptable definition of the word “Aggression”⁴⁰ and finally arrived at a universally accepted piece. The definition listed specific acts that qualify as aggression. While no act of aggression is justifiable, only a war of aggression amounted to a crime against international peace. Hence while an aggressive act short of war violates international law, it is not necessarily a crime against international peace according to some legal pundits. Article 7 recognizes the right to self-determination, freedom and independence of peoples forcibly deprived of those rights to wage wars of aggression so to speak. It also recognizes the right of any such peoples to struggle to achieve the rights, assuring support if sought by such people so fighting. This article appears to legalize use of force in wars of national liberation and for purposes of “humanitarian intervention”. Same Article 7 stipulated and confined such struggle for self-determination to conform to the prescription of the United Nations Charter on the Definition of Aggression thus:

Nothing within the Definition” shall be construed as enlarging or diminishing the scope of the charter, including its provisions concerning cases in which the use of force is lawful.⁴¹

³⁶ Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate; it may take such action by air, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operation by air, sea, or land forces of members of the United Nations.

³⁷ Nothing in the present charter shall impair the inherent of collective or individual self-defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by members in exercise of this self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and Security.

³⁸ Declaration of principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nation, 24 October, 1970, G.A. Res. 2625 (xxv). U.N. G.A.O.R. 25th Session. Supp. No. 28 U.N. Doc. A/8028 (1971). Reprinted in (1971) 65.A.I.I.I. 243.

³⁹ Definition of Aggression, 14 December 1974. G.R. Res. 3314 (XX DQ. U.N. 29th Session, Supp. No. 31. U.N. Doc. A 19631 (1975) 142. Reprinted in (1975) 69 A.I.I.I., 480 [hereinafter Definition of Aggression]

⁴⁰ “Aggression is the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any manner in consistent with the charter of the United Nations, as set out in this definition”.

⁴¹ Article 6

Arguable, there is no seeming exemption herein. The use of independent or collective force in instances of self-determination thus, must still be grounded in self-defense or authorized by the United Nations Security Council.

b) Instances of Authorized use of Force by the United Nations Security Council

In the year 1950, the Security Council for the very first time in history, authorized the use of force to secure North Korean withdrawal from South Korea. This was otherwise described as the “UN War”. The prosecution of the war was an important one to the United Nations as it came barely five years after the inauguration of the “test run” of the adherence or otherwise to the applicability of or to the implementability of the new United Nations Charter by member nations. About a million South Korean civilian were killed and several other million were made homeless. Additionally, about 580,000 United Nations and South Korean troops and about 1,600,000 communist troops were killed or wounded or were reported missing.⁴²

The Security Council did not permit the use of armed force again until the invasion of Kuwait by Iraq in the 1990. After passing resolutions demanding that Iraq withdraw from Kuwait, Iraq refused to heed to that order. The Security Council again passed Resolution 678, which then authorized the use of force and requested all member states to provide the necessary support required, in corporation with Kuwait people and government to make certain the withdrawal of Iraq forces. In 2003, the Security Council also passed Resolution 1441, which both recognized that Iraq’s illegal acquisition of weapons of mass destruction which according to that resolution, constituted enough threat to international peace and security. Resolution 678 was then invoked which earlier authorized the use of force to restore peace and security. In 1970, the General Assembly adopted the Declaration on principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations.⁴³ This resolution was adopted without vote by consensus. It is considered an authoritative declaration on the interpretation of certain provisions of the United Nations Charter. The Declaration reaffirmed article 2(4) and detailed upon the occasions when the threat or use of force is forbidden but it does not address the question of whether force includes non-military force within the scope of the Charter. Article 2(4) does not use the term “way” but rather refers to “the threat or use of force”. Although clearly encompassed by the article, it is ambiguous whether the article refers to military force or economic, political, ideological or psychological force. Viewed from the other side of the coin, a careful look at the provision when read inclusively has provided for non-military intervention with the word such as “... such action may include demonstration, blockade...”. It further provides for what could be deemed military action thus:

‘...and other operations by air, sea, or land forces’.

The word “other” connotes a situation where an alternative exists, creating an option so to speak. Demonstrations and blockade are connotations of civil actions while operations by air, sea, or land forces many of them to qualify for itself enough as pure military action as air, sea, or land forces cannot be used to achieve or implement demonstrations and perhaps blockade which are ostensibly civil and economic actions respectively.

5. Use and Abuse of Military Necessity, Military Occupation and Force

There exist several use and abuse of military necessity, occupation and force by the so-called Super Powers, and other states alike. Often, untenable justifications such as promotion of self-

⁴² Gardner L.C Ph.D. Ibm 1999 World Book Contributor, Rutgers The State University of New Jersey.

⁴³ (<http://www.gibnet.com/library/un625>)

determination, anticipatory self-defense,⁴⁴ the protection of nationals,⁴⁵ just reprisal response to terrorism,⁴⁶ national liberation, humanitarian intervention,⁴⁷ etc have been adduced.⁴⁸ Sometimes, States abuse the principles just to punish. For example, the Operation Desert Fox against Iraq in 1998 employed a modest amount of air power for a short or arbitrary period of time with no goal other than to punish and weaken the adversary's strength to some unspecified degree. Such an action raises serious questions about the use of punitive attacks. On other times, the abuses occur when some of the super powers decide to "show force" or kind of gunboat diplomacy. Dispatching a carrier task force to the Taiwan Straits in 1996 by the United States of America was a classical example of gunboat diplomacy or show of force to deter any action by china.

6.0 Conclusion and Recommendation

This research, no doubt has done justice to the notion and principles of military necessity, occupation and the use of force under International Humanitarian Law. the study examined the legal structures providing for these notions and also x-rayed their applicability during armed conflict. The research, more so, highlighted the instances of authorized use of force by the United Nations' Security Council, pointing out that the first time in history when such happened was in the year 1950 when the Council authorized the use of force to secure North Korean withdrawal from South Korea. It also discussed the uses and abuses of the principle of military necessity, occupation and force by the so called super powers as well as other states. It is recommended that:

- a) Military necessity, occupation and force should only be used or resorted to when they are extremely necessary. Doing otherwise would result to abuse of International Humanitarian Law. They should be resorted to sparingly and the use should be to restore peace and not as a means to punish the adversary.
- b) States and the super powers should ensure that they observe and comply to the rules governing the use and application of military necessity, occupation and force whenever they resort to such.
- c) States at all times should consider humanity first before hostility. It is the basis of International Humanitarian Law. armed conflict must be prosecuted in line with the provisions of International Humanitarian Law.

⁴⁴ Caroline Affair and Upper Canadian Rebellion of 1837. In 1842, U.S. Secretary of States Daniel Webster polluted out that the necessity for forcible reaction must be "instant overwhelming, leaving no choice of means, and no moment for deliberation". Germany's invasion of pol and which actually triggered the outbreak of World War II.

⁴⁵ Instances include intervention by the U.K in Suez (1956), Israel in Entebbe (1976) and the USA in the Dominican Republic (1965), Grenada (1983) and Panama (1989).

⁴⁶ U.S Led Invasion of Iraq in 2004.

⁴⁷ Kosovo crisis in 1999, NATO Used Military Force Against the Yugoslav State.

⁴⁸ Browulie, *The Current Legal Resolution of the Use of Force* (Dorrecht: Martinus Nuhoff, 1986)