The conflicts you have identified, Iraq and Syria, are the most obvious recent conflicts to discuss when we are talking about this particular issue. In the case of Iraq, it is probably a more straightforward analysis, legally, because, of course, Iraq invited other countries to help it defend itself against attacks from Daesh. There was express invitation there and the consent of the country was quite clear, and the basis was self-defense. Australia, like many other countries, operated in Iraq against ISIL, at the request of Iraq, for the collective self-defense of Iraq.

Of course, the situation in Syria is less clear-cut in that the attacks were on Iraq coming from the territory of Syria, so a non-state actor in this case, Daesh, ISIL, was operating from a safe haven in Syria, attacking Iraq. Iraq did make that clear and Iraq did ask the international community for help. Australia chose to take action in Syria, based on the collective self-defense of Iraq, following Iraq's request, and on the basis that it was our objective assessment that Syria was unable or unwilling to repel or halt those attacks. And that assessment was an objective, fact-based assessment, by looking at what was happening on the ground at the time.

That decision pre-dated Resolution 2249. In fact, our letter to the Security Council, under Article 51, was done in September and the resolution, as you say, was in November, so it pre-dates it by two months. I do have our letter here so I just might—as you say, all of the letters are slightly different. We can come back to this. I was the Senior Legal Advisor at the time that this was drafted and sent so I am very familiar with the letter and the rationale and the internal conversations we had around it.

But it is a very clear letter, I think, setting out, deliberately so, the legal basis for our activities in Syria. I will not read it all because you can all find it easily enough, but it explicitly states, in paragraph one, that our action is collective self-defense of Iraq as part of the international efforts led by the United States, and recall that Iraq requested the United States to lead those efforts. We then refer, in paragraph two, to those requests by Iraq, again, to highlight that there were requests from Iraq for international action. And we note that those attacks are coming from safe havens in Syria, so we established, if you like, the factual situation.

We then state, quite clearly what our interpretation of Article 51 of the UN Charter is, and then say, quite explicitly, that the government of Syria has, by its failure to constrain attacks upon Iraqi territory originating from ISIL bases within Syria demonstrated that it is unwilling or unable to prevent those attacks. We very explicitly lay out our legal basis for that. And then, for good measure of course, we throw in, as a reminder that this is an unconstrained right, but rather, of course, any military action that is undertaken must be necessary and proportionate. That, I think, is from the Australian perspective, a very clear, we hope, articulation of our position.

Remarks by Paul McKell*

doi:10.1017/amp.2019.96

Thank you, and thanks again from me, also, for the invitation today. This is a topic which is extremely topical and extremely important.

I will start from the same position that the prohibition on the use of force is a fundamental rule of international law and that there are limited exceptions to that rule, the right of self-defense being one which, in Article 51, is recognized as an inherent right.

On the question of whether self-defense can be used in defense against non-state actors, the UK's position on that is the clean answer is yes. And I could say that even back to 1837. Why 1837? Well, those who remember their days as international law students will recall that was the date of the

* United Kingdom Foreign & Commonwealth Office.

https://doi.org/10.1017/amp.2019.96 Published online by Cambridge University Press

Caroline incident, and it is worth recalling that the *Caroline* was a steamboat that had been commandeered by a group of American sympathizers with the Canadian rebellion against British rule at that time. In other words, a group of non-state actors. This is something that goes back deeper than Daesh in Iraq and Syria.

When can force be used against non-state actors? Well, again, I think it is worth repeating at the outset that the UK will only use armed force in self-defense where it is consistent to do so with international law, and Article 51 itself talks about the inherent right of individual or collective self-defense, so it can be used in the individual—defense of the United Kingdom or in the defense of our friends and allies.

Like many other states, the longstanding United Kingdom view is that Article 51 does not require that a state passively awaits an attack, but includes the inherent right to use force in self-defense against an imminent armed attack. And like Katrina said, any use of force must, of course, be both necessary and proportionate to the threat, and a part of that assessment of necessity where an attack has not yet taken place is the attack must be imminent for states to take action. And no doubt we can get into the concept of imminence as we discuss issues further.

Dealing with non-state actors, the sort of group that we are dealing with here, Daesh, the ideal paradigm is to deal with terrorist groups through a law enforcement criminal justice paradigm, but that is not always possible, particularly where attacks are planned outside of our territory and where the host state is unable or unwilling to act, so that concept which we have heard about already from Ambassador Cooper. And lethal action, of course, will always be a last resort when there is not an option to defend against an attack and not a means to deter, disrupt, or otherwise prevent those plotting acts of terror.

Before turning to the specific situation of Daesh in Iraq and Syria, I, too, like Ambassador Cooper, would like to refer briefly to Resolution 1368 and 1373, because we are so close in the wake of the 9/11 attacks, those resolutions adopted by the Security Council recognized both that large-scale terrorist action could constitute an armed attack—that would give rise to the right of self-defense—and that force might, in certain circumstances, be used in self-defense against those who plan and perpetrate such attacks, and against those harboring them if that was necessary to avert further such terrorist attacks.

Turning now to the specific situation of Daesh in Iraq and Syria, where the UK has been taking action on the basis of self-defense, we have already had mention made to the letter from Iraq in September 2014, where Iraq sought additional international support and assistance for the specific purpose of fighting ISIL, setting out the background of the threat posed by ISIL, its gratitude for international help provided so far, and the need to respect Iraqi sovereignty. They made a request, of course, for assistance in the following terms: "It is for these reasons that we, in accordance with international law and the relevant bilateral and multilateral agreements, and with due regard for complete national sovereignty and the constitution, have requested the United States of America to lead international efforts to strike ISIL sites and military strongholds with our expressed consent. The aim of such strikes is to end the constant threat to Iraq, protect Iraq's citizens, and ultimately arm Iraq's forces and enable them to regain control of Iraq's borders." And like Australia, my government was satisfied that that was consent from Iraq in those terms, in a clear and unequivocal way, providing a legal basis for the deployment of UK forces and military assets to take military action to strike ISIL sites and military strongholds in Iraq.

In addition, in 2014, we took the view that there was a solid basis of evidence on which to conclude that there was a direct link between the presence and activities of ISIL in Syria and the ongoing attacks on Iraq, and that the Assad regime was unwilling and/or unable to take action necessary to prevent ISIL's continuing attacks on Iraq.

https://doi.org/10.1017/amp.2019.96 Published online by Cambridge University Press

Finally, I wanted to refer to the fact that the threat from ISIL continued to evolve from 2014, to the extent that it went beyond the borders of Iraq and Syria. And in August of 2015, the United Kingdom carried out a precision strike against Reyaad Khan, a British national, who was a member of Daesh, and that action was taken on the basis of both the collective self-defense of Iraq, on the basis of the threat that he posed through his actions and activities as a member of Daesh in relation to Iraq, but also on the basis of individual self-defense, due to the threat that he posed to the United Kingdom in planning and directing imminent armed attacks in the United Kingdom. And our Article 51 letter, in addition to the letter that was sent in 2014, in similar terms, legally at least, to the Australian letter, was followed up at the time of the Reyaad Khan precision strike with a letter indicating and notifying the Council that action had been taken on both of those legal bases, individual and collective self-defense.

Remarks by Asif Amin*

doi:10.1017/amp.2019.97

Well, two previous speakers already laid out everything so maybe I will just pass now. No, I will continue here.

Just to let you know that Denmark has also been very active in the military campaign and we have to go to Parliament every single time that we deploy our troops in combat situations. According to our constitution we have to get consent by Parliament, by simple majority. This means that there is a lot of focus on our legal basis, and we have to adhere to international law.

In general, we have a couple of justifications, like Paul just said, Article 42, the provision of use of force, is, of course, the ultimate extent of that we have, and then there are exceptions. We have identified so far four exceptions. One is consent. It is a case of invitation. You also have self-defense, collective self-defense, Article 51. You have, of course, the UN Security Council resolutions that can authorize use of force. And then we actually also look at other bases of international law. We have, as one of the few countries also adhering to the doctrine of humanitarian interventions. That might not be, I think, applicable in the case of non-state actors, but just so you know where Denmark stands on this.

And on Iraq, to make it quite short, when we entered, in 2014, with our military forces into Iraq, that was based on the consent and the invitation by the Iraqi government. We came, I think as the third country in the coalition, together with our British colleagues, in the northern part of Iraq, to do capacity training there. We later on also had our F-16s bombing in Iraq. That was also based on consent.

Later on, though, actually when we were closer to the border of Syria, at the Al Asad base, we had a radar there, which meant that the radar actually goes 360, so we also had images in Syria. At that point all the information was then sent to the coalition. That meant that legally we felt the need to go to the Security Council with our Article 51 letter, since we were then supporting the campaign in Syria. Later on, we also had F-16s in Syria, but the Article 51 letter, if I can just read out a little bit from that, is that we write in accordance with Article 51, and we mentioned the exercise of inherent right of collective self-defense. We highlighted what is mentioned in Resolution 2249. That states some of the things Paul also mentioned, but especially that ISIL has the capacity and capability to carry out further attacks, and the Security Council call upon its own member state to eradicate the safe haven ISIL has established over significant parts of Iraq and Syria, and that, hence, we are there in accordance with Article 51 and we are taking measures against ISIL in support of this cause.

* Kingdom of Denmark, Ministry of Defense, International Law Department.

https://doi.org/10.1017/amp.2019.96 Published online by Cambridge University Press