terrorist acts committed specifically by ISIS, also known as Daesh as well as ANF, and all other individuals, groups, undertakings, and entities associated with Al Qaeda … ."

The Security Council calls upon states to deal with ISIS, does not expressly authorize force, and does not invoke Article 51 of the UN Charter. Nevertheless, the resolution seems to have shaken loose some resistance about using force against ISIS in Syria. Shortly after Resolution 2249 was adopted, a number of states, particularly in Europe, invoked the combination of Article 51 of the UN Charter and UN Security Council Resolution 2249 to justify using force in Syria.

The question we have before us is, how should we use this incident to get a sense of the law on defensive force against non-state actors? This area of law that has been contentious and uncertain. Our goal here today is to try to tease out both areas of agreement and areas of disagreement.

We thought we would structure the panel more as a conversation than as a series of presentations, so we will start by asking the panelists a few questions and having a conversation amongst ourselves, and then we will open it up to questions.

Without further ado let me introduce our panelists.

Ambassador Katrina Cooper is the Deputy Head of Mission for Australia and a former Senior Legal Advisor at the Department of Foreign Affairs and Trade. Paul McKell is the Legal Director at the UK Foreign & Commonwealth Office; his portfolio includes national security, Europe and human rights and foreign relations, and in those buckets falls the ISIS situation. Asif Amin is the head of the International Law Department at the Denmark Ministry of Defense. And last, but certainly not least, is Patrick Luna, who is the Legal Advisor at the Permanent Mission of Brazil to the United Nations.

To begin, I think it would be helpful to ask each of the panelists to lay out his or her state's position on whether, and if so when, states may use defensive force against non-state actors, and then to explain a little bit how that position on the law tracks or is consistent with the sequence of events that we have seen in Syria.

So, Ambassador, why do not we begin with you.

Remarks by Katrina Cooper*

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Thank you very much, Monica, and thank you very much for the invitation to speak on the panel. I was a senior legal advisor in Australia from 2013 to 2017, so, in fact, during this time. I think it is a terrifically conceived panel because it is one of the most pressing and problematic issues with which we have to deal, I think, as international legal advisors.

But Australiav's position on this is quite clear and quite well articulated, and that is that our view and our interpretation of Article 51 of the UN Charter is that the inherent right of self-defense applies to armed attacks from both state and non-state actors. And we think that Resolutions 1368 and 1373 make that quite clear too. That is our quite clear position.

In terms of non-state actors, too, we do subscribe to the unwilling and unable approach that you outlined, Monica. We think that where there is a non-state actor operating in the territory of another state, and there is a reasonable and objective basis for concluding that that other state is unwilling or unable to halt or repel attacks emanating from its territory that you can act in self-defense against that non-state actor. That does not mean, of course, that you can act against the third state, but specifically, and limited to, the non-state actor.

* Government of Australia Department of Foreign Affairs and Trade.

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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*

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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

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