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.2019.97 Published online by Cambridge University Press

I think that is where we are right now. We, of course, evaluate the situation all the time, but we will see what happens.

Remarks by Patrick Luna*

doi:10.1017/amp.2019.98

Good morning. I would like to start by thanking, of course, Monica for the privilege of participating in this panel. I am certainly willing and hopefully able to present an alternative view to those that have been presented by the speakers before me.

I would like to start by sharing four assumptions that would inform a Brazilian perspective on the subject, and the first one is that for us, the starting point on this debate is a bit further upstream. It is not necessarily Article 51. It is rather Article 2(4) itself. After all, when we state that the general prohibition of the use of force is a centerpiece of modern international law, this is more than a political statement. It has hermeneutic meaning. It points, after all, to an understanding that there is a relationship between these two norms and a relationship of a hierarchical nature.

It is undisputed that Article 51 is an exception to Article 2(4), and this matters because we should not lose sight, from a general principle of law, according to which exceptional rules must be interpreted restrictively. Article 51 has, therefore, to be read in light of Article 2(4), so as not to undermine it, rather to reinforce it. After all, Article 51 exists precisely to allow states to react immediately to violations of Article 2(4), until the Security Council has taken the necessary measures.

When we are examining the wording of Article 51, some have argued that the lack of a reference to the word "state" as the origin of the armed attack could be read as an implicit recognition of the possibility of evoking self-defense against non-state actors. But this is not the conclusion that we reach through a joint reading of Articles 2(4) and 51. Since 2(4) does mention state, and 51 has to be read in conjunction with this, it leads us to understand that self-defense can only be a response to an armed attack, either undertaken directly by a state or somehow attributed to the state.

The second assumption that informs the Brazilian perspective on this is the existence of International Court of Justice (ICJ) jurisprudence on this matter. The Court has repeatedly stated that self-defense cannot be applied against non-state actors unless they act on behalf or under control of another state, and, of course, the first case in point to be mentioned here is the Nicaragua case, in which the ICJ underscored that only attacks by a state or attributed to one could trigger the right of force in self-defense. The Court understood that a territorial state would have to be either sending or have substantive involvement for this right to emerge. And the Court further clarified that some kinds of assistance through regular forces might amount to legal intervention or legal use of force, but not to an armed attack for the purposes of self-defense.

Of course, a second step in the ICJ's construction on this is evidently the *Wall* advisory opinion, in which the Court stated, "Article 51 of the Charter recognizes the existence of an inherent right of self-defense in the case of an armed attack by one state against another state." And this sentence—it is important to put it in context—reflects the Court's rejection of Israel's invocation of Resolutions 1368 and 1373.

A third step in the ICJ's construction of its jurisprudence is, of course, also the case *Armed Activities*, *Congo v. Uganda*, in which the factual situation surrounding the case actually made it unnecessary for the Court to judge whether self-defense against non-state actors is permitted or not. So, therefore, the judgment there did not affect the state-centric approach to self-defense that was constructed by the court in the previous cases.

* Permanent Mission of Brazil to the United Nations.

https://doi.org/10.1017/amp.2019.97 Published online by Cambridge University Press