United Nations Security Council Open Arria Formula Meeting

Upholding the collective security system of the UN Charter: the use of force in international law, non-state actors and legitimate self-defense

Date: Thursday 24 February 2021

Time: 3:00 – 6:00 p.m.

Venue: VTC

Participation: All UN Member States, Permanent Observers and non-governmental organizations are invited to attend. Speaking possibilities for UN Security Council members and other UN members time permitting. Participants are encouraged to limit their interventions to 3 minutes.

Objective:

The objective is to analyse the legal scope of Art. 51, in particular, the obligations derived from it, and to discuss the interpretation that has been given to this provision of the Charter against non-state actors, in particular in the context of counter-terrorism, and regarding the precedents that the aforementioned actions could set for other cases in the future.

Background:

One core purpose of the United Nations is to maintain international peace and security. To that end, in Article 2(4) of the Charter establishes the principle that Members of the Organization “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”. Under the legal framework of the Charter, there are two exceptions to the prohibition of the use of force between States: (i) when it is authorized by the Security Council, on the basis of Article 42; and (ii) in the exercise of the inherent right of individual or collective self-defence provided for in Article 51.

Article 51 of the Charter reads as follows: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence 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.”

The following have been identified as elements of self-defence: (i) there has been a prior armed attack; (ii) the response to the armed attack is necessary and proportional; and (iii) the Security Council is notified immediately of measures taken in self-defence and such measures are halted when the Security Council takes the necessary action, if any.

In recent years, however, there have been some cases where the right to self-defence enshrined in Article 51 of the Charter has been invoked to justify the use of force in the territory of another State, allegedly in response to – or in the most extreme cases, to prevent – armed attacks by non-State actors, in particular terrorist groups.

It is worth noting that the members of the Community of Latin American and Caribbean States (CELAC), in their joint statement to the Sixth Committee on 3 October 2018, during the seventy-third session of the General Assembly, stated the following:

“We take note with concern of the increase in the number of letters to the Security Council under Article 51 of the Charter submitted by some States in order to have recourse to the use of force in the context of counter-terrorism, most of the time ex post facto. We reiterate that any use of force which is not in compliance with the Charter of the United Nations is not only illegal but is also unjustifiable and unacceptable. Furthermore, consideration should be given to the possibility of convening an open and transparent debate on the topic.”

Similarly, at the fourth informal meeting of Latin American Legal Advisors (AJL) on international public law, held on 26 October 2018, it was made clear, following a presentation entitled “Reflections on recent invocations of Article 51 of the Charter of the United Nations”, that there was agreement with regard to the scope of self-defence under the Charter; the importance of transparency; and the need for the international community to address terrorism, a serious threat to international peace and security, through strong action firmly grounded in international law and carried out with respect for international human rights law, international humanitarian law and refugee law. At that meeting, there was general consensus on the particular relevance of the topic and on the advisability of taking measures to ensure that it was adequately considered within the United Nations.

As part of these efforts for opened discussions, during the 30th Informal Meeting of Legal Advisers, held on 28 and 29 October 2019, in the context of the Program of Work of the Sixth Committee during “international law week”, delegations had an informal discussion
on the topic “The use of force in international law: non-state actors and legitimate self-defense”. Furthermore, and with a view to establishing a space for open and transparent discussion among all Members of the United Nations, Mexico submitted a working paper, entitled “Analysis of the application of Articles 2(4) and 51 of the Charter of the United Nations”, for the consideration of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization.

This Arria Formula meeting of the Security Council would complement these efforts and offer another opportunity for Member States to continue their consideration of this issue, reflecting on its challenges and taking into consideration the competence of the Council on this matter. It would also help to provide a clearer understanding of the positions of Member States with regard to the operation, scope and limits of the right to self-defence, not only with regard to recent cases but also in relation to other situations involving non-State actors that may arise in the future, while recognizing at all times the gravity of terrorist acts, their high humanitarian, political and social cost and the threat they pose to international peace and security.

Guiding questions:

(a) Substantive issues: What elements should be included in reports submitted to the Security Council under Article 51? How should Article 51 be interpreted with regard to attacks perpetrated by non-State actors, in particular, but not exclusively, terrorist groups?

(b) Procedural issues: How should immediacy be interpreted for the purpose of submitting reports under Article 51 to the Security Council? How could the lack of action by the Security Council following receipt of a report under Article 51 be interpreted, in particular with regard to recurring reports concerning the same situation?

(c) Transparency and publicity issues: How can the transparency and publicity of reports submitted under Article 51 be improved? What can the Security Council do to facilitate the access of all Member States to these reports and to any responses thereof?

Briefer:

Prof. Naz K. Modirzadeh, Director of the Harvard Law School Program on International Law and Armed Conflict.
Logistics:

The meeting will take place via video conference and will be streamed live and opened to public. Further technical details will follow. The meeting will be held in English and no simultaneous interpretation is offered. To register as a SPEAKER please fill the following form: [http://bit.ly/ARRIASPKLIST](http://bit.ly/ARRIASPKLIST). For any questions, please use the following email address: missionmxny@gmail.com.

There will be a statement by the briefer followed by the UN Security Council members wishing to do so, as well as by other UN member states. In order to allow as many participations as possible, each intervention will be limited to 3 minutes. The list of speakers closes on 23 January at 6:00pm. A Chair’s Summary will be prepared reflecting the interventions of the briefer and speakers. To that end, speakers are encouraged to send their statement to the email address: missionmxny@gmail.com.