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Генеральная Ассамблея
Совет Безопасности

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Генеральная Ассамблея
Семьдесят пятая сессия
Пункт 128 а) повестки дня
Укрепление системы Организации Объединенных Наций

Совет Безопасности
Семьдесят шестой год

Письмо Постоянного представителя Мексики при Организации Объединенных Наций от 8 марта 2021 года на имя Председателя Совета Безопасности

Настоящим имею честь препроводить составленное Председателем резюме заседания по формуле Аррии, которое созывалось Мексикой, было посвящено теме «Поддержание системы коллективной безопасности, предусмотренной в Уставе Организации Объединенных Наций: применение силы в международном праве, негосударственные субъекты и законная самооборона» и состоялось 24 февраля 2021 года (см. приложение I), а также копии заявлений, сделанных государствами-членами и докладчицей заседания профессором Наз К. Модирзаде, которая работает директором программы «Международное право и вооруженный конфликт» в Гарвардской школе права (см. приложение II)**.

Убедительно прошу распространить настоящее письмо вместе с приложениями к нему среди всех государств-членов и выпустить его в качестве документа Генеральной Ассамблеи (по пункту 128 а) повестки дня) и Совета Безопасности.

(*Подпись*) Хуан Рамон **де ла Фуэнте**
Посол
Постоянный представитель Мексики
при Организации Объединенных Наций

* Переиздано по техническим причинам 18 августа 2021 года.
** Приложение II распространяется только на том языке, на котором оно было представлено.

Приложение I к письму Постоянного представителя Мексики при Организации Объединенных Наций от 8 марта 2021 года на имя Председателя Совета Безопасности

Составленное Председателем резюме заседания Совета Безопасности по формуле Аррии на тему «Поддержание системы коллективной безопасности, предусмотренной в Уставе Организации Объединенных Наций: применение силы в международном праве, негосударственные субъекты и законная самооборона», состоявшегося 24 февраля 2021 года

Мексика созвала заседание Совета Безопасности по формуле Аррии с целью транспарентным образом обсудить вопросы, связанные с применением силы и законной самообороной. В частности, на заседании были разобраны охват и толкование статьи 51 Устава Организации Объединенных Наций применительно к негосударственным субъектам, главным образом в контексте контртеррористических действий и с учетом потенциальных прецедентов, которые такие действия могут создать для других случаев в будущем. Заседание состоялось в виртуальном формате.

Заседание проходило под председательством Постоянного представителя Мексики при Организации Объединенных Наций Хуана Рамона де ла Фуэнте и было открыто для всех государств-членов, постоянных наблюдателей и неправительственных организаций. Велась также прямая веб-трансляция заседания на платформе «Интернет-ТВ Организации Объединенных Наций» и на YouTube-канале Представительства Мексики. Прямая веб-трансляция позволила повысить транспарентность прений, а также охватить более широкую аудиторию. Запись заседания выложена в Интернете.

Заседание началось с доклада профессора Наз К. Модирзаде, которая работает директором программы «Международное право и вооруженный конфликт» в Гарвардской школе права. Она подчеркнула, что как Генеральной Ассамблее, так и Совету Безопасности важно безотлагательно заняться затрагиваемыми вопросами, поскольку правовые нормы, регулирующие самооборону, формируются и применяются в контртеррористическом контексте без активного и регулярного участия подавляющего большинства государств. Докладчица указала, что, по ее мнению, для эффективного поддержания международного мира и безопасности всем государствам следует в приоритетном порядке разобрать вопрос об охвате статьи 51 и ее толковании.

Профессор Модирзаде привлекла внимание к дебатам вокруг того, может ли молчание государств или Совета Безопасности превращаться (легитимным образом или нет) в своего рода негласную поддержку определенных утверждений, касающихся правового регулирования самообороны. Она отметила особую значимость этих дебатов в таком аспекте, как совершение государством военной акции против негосударственного субъекта на иностранной территории без согласия территориального/принимающего государства или без санкции Совета Безопасности. Докладчица предложила всем государствам поразмыслить над этим вопросом и проанализировать, устраивает ли их ситуация, когда без учета их мнений и без надежного и своевременного доступа к соответствующей информации происходит возможный сдвиг одного из краеугольных камней уставной системы.

Выступивший затем посол де ла Фуэнте вновь заявил об озабоченности Мексики тем фактом, что в последние годы право на самооборону использовалось для оправдания применения силы на территории другого государства без согласия последнего, предположительно в ответ на вооруженные нападения со стороны негосударственных субъектов, и указал, что эту практику можно

рассматривать как злоупотребление статьей 51. Он подчеркнул, что Мексика отвергает аргументы, допускающие применение силы на основании так называемой «доктрины нежелания или неспособности» или со ссылкой на неосуществление эффективного контроля.

Посол де ла Фуэнте заявил, что эта практика порождает различные последствия как с материально-правовой, так и процедурной точки зрения, и подтвердил необходимость проявлять больше транспарентности и следить за тем, чтобы сообщения, направляемые Совету Безопасности согласно статье 51, не превращались в «карт-бланш» на применение силы. В заключение он призвал все государства-члены придерживаться Устава и совместно обсуждать наилучший способ устранения нынешних угроз международному миру и безопасности в полном соответствии с принципом верховенства права.

Наряду с Мексикой свои позиции выразили в общей сложности 33 государства-члена, в том числе 13 членов Совета Безопасности[1]. Государства-члены поделились своими соображениями относительно различных аспектов темы.

В целом все государства акцентировали важность поддержания диалога относительно толкования статьи 51 Устава, а также его прямое касательство к системам индивидуальной и коллективной безопасности и поблагодарили Мексику за организацию этой важной встречи. Кроме того, в своих толкованиях статьи 51 участники подчеркивали, что точные пределы, устанавливаемые ее формулировкой, не всегда ясны. Актуальность темы проистекает отчасти из ее тесной связанности с другими принципами международного права, включая невмешательство и мирное разрешение споров.

Широко упоминалась также роль Совета Безопасности. Участники обращали внимание на важность транспарентности сообщений о самообороне, представляемых согласно статье 51. Было отмечено, что, хотя эти сообщения предаются в итоге огласке, порядок, в котором они обрабатываются и распространяются, затрудняет их идентификацию, их поиск и своевременный доступ к ним. Все участники указывали, что готовы изучать варианты, обеспечивающие транспарентность и доступность таких сообщений.

Большинство государств-членов, принявших участие в заседании, отмечали, что молчание международного сообщества не должно трактоваться как признание ссылок на самооборону. Они подтвердили важность диалога для устранения неопределенности, которая характеризовала до сих пор некоторые аспекты сообщений, предусмотренных статьей 51. Было отмечено, что статья 51 обязывает сообщать Совету Безопасности о мерах, принимаемых членами при осуществлении права на самооборону, но не предписывает содержания, которое должны иметь такие сообщения. Кроме того, несколько участников напомнили об обязательстве следовать во всех мерах самообороны принципам необходимости и соразмерности.

Значительное число участников согласились с необходимостью обсуждения вопроса о том, может ли право на самооборону оправдывать в исключительных обстоятельствах военные акции против негосударственных субъектов, таких как террористические группы, — и этот вопрос показал себя явно

[1] Члены Совета Безопасности (в порядке их участия): Вьетнам, Российская Федерация, Ирландия, Китай, Франция, Соединенные Штаты Америки, Норвегия, Тунис, Кения, Эстония, Индия, Сент-Винсент и Гренадины и Соединенное Королевство Великобритании и Северной Ирландии. Не члены (в порядке их участия): Лихтенштейн, Эквадор, Пакистан, Исламская Республика Иран, Армения, Катар, Дания, Перу, Сирийская Арабская Республика, Австрия, Шри-Ланка, Финляндия, Турция, Бразилия, Азербайджан, Нидерланды, Грузия, Австралия, Украина и Бельгия.

полемичным. Если одни участники ссылались на «доктрину нежелания или неспособности», то другие отвергали ее действительность, ссылаясь, в частности, на принцип невмешательства и на то, что любая военная акция на территории другого государства будет требовать согласия этого государства или санкции Совета Безопасности. Было очевидно, что единого мнения по этому вопросу пока нет и что сохраняются существенные разногласия.

Делегации останавливались на некоторых конкретных вопросах, включая соображение о том, что нарушения суверенитета государства могут представлять собой преступления агрессии, наказуемые по международному праву. Другие государства-члены занимали такую позицию, что статья 51 неверно истолковывалась как оправдание для того, чтобы вторгаться в другие государства и вмешиваться в их внутренние дела. Были прямо упомянуты некоторые двусторонние споры.

В своем заключительном слове профессор Модирзаде настоятельно призвала государства-члены продолжить этот ценный разговор, сделав, возможно, упор на том, как Совет Безопасности получает сообщения о самообороне, которые сугубо важны для международного сообщества, реагирует на эти сообщения и обнародует их.

Поблагодарив все участвовавшие государства-члены и профессора Модирзаде, посол де ла Фуэнте закрыл заседание.

Приложение II к письму Постоянного представителя Мексики при Организации Объединенных Наций от 8 марта 2021 года на имя Председателя Совета Безопасности

Draft • Professor Naz Modirzadeh • Check against delivery • February 24, 2021

Excellencies, distinguished representatives, ladies and gentlemen,

I am grateful to the Permanent Mission of Mexico for inviting me to brief this timely Arria-formula meeting on a vitally important topic. Over the next fifteen minutes, I will seek to shed light on the implications of State silence concerning the right of self-defense in counterterrorism contexts.

My core message is that, despite the significant stakes in this debate for *all* members of the international community, the law governing self-defense is being shaped and applied in counterterrorism contexts without the active and routine participation of the vast majority of States. From my perspective, this situation is unsatisfactory. To effectively maintain international peace and security, all States should address it as a matter of priority.

Not participating in these debates comes with a cost. Intentional or otherwise, State silence contributes to normative uncertainty. Further, in practice, silence might function, legitimately or not, as a kind of tacit support for particular claims in the law of self-defense. All Member States — all of you in the room and those *not* participating in today's meeting — should be aware of the potential effects of silence as you deliberate on whether to weigh in or remain on the sidelines.

Let me explain.

Over the last several decades, numerous debates concerning the legal regulation of the threat or use of force in international relations have generated volumes upon volumes of wide-ranging arguments. These debates, which often entail life-and-death stakes on an enormous scale, go to the heart of the collective-security regime.

Draft • Professor Naz Modirzadeh • Check against delivery • February 24, 2021

One of the issues that has rightly generated extensive commentary relates to military action by a State against a non-state actor in foreign territory without the territorial-host State's consent or the Security Council's authorization. Numerous strands of the debate and the practice underlying it can be traced back several decades, if not longer. That practice includes an evidently growing number of purported exercises of the right of self-defense against those non-state groups. This part of the self-defense debate has gained particular attention and heightened relevance as more of the States taking military action against these groups characterize the situations as counterterrorism contexts. Many of these specific claims to self-defense assert that the territorial-host State is "unable or unwilling" to obviate the threat posed by the non-state group.

Undoubtedly, these questions involve core matters of State sovereignty, not least for territorial integrity and security. Some international actors believe that the States engaging in these types of military action should be heard most loudly in this conversation and that the law should, first and foremost, take account of those States' concerns. Yet, from my perspective, the prohibition on the threat or use of force in international relations and the collective-security system ought to be safeguarded by all States for the interests of all States. Indeed, in designing the Charter system, States put the principle of sovereign equality front and center. Moreover, States are the primary international actors responsible for forming, identifying, modifying, and terminating legal rules.

Despite this primary responsibility, it seems that today, in practice, a handful of scholars who invoke perceived silence in this area may be exerting more significant influence than many States in shaping this part of the self-defense debate. Scholarly discourse certainly has a vital role

to play here. Yet I believe that this discussion needs to move from the pages of academic volumes to the Chamber of the Security Council and the Hall of the General Assembly.

Bear in mind that today's specific debate is not the first, nor will it be the last, topic concerning the prohibition on the use of force where State silence might be accorded legal effects. For example, at least for certain international actors, State silence may also play a role in debates over so-called "anticipatory self-defense," "humanitarian intervention," and rescue of nationals abroad.

In a 2019 report for the Harvard Law School Program on International Law and Armed Conflict titled "Quantum of Silence: Inaction and *Jus ad Bellum*," my co-authors, Professor Gabriella Blum and Dustin Lewis, and I sought to help raise awareness of the consequences of silence as an international-law argumentative technique in the law governing the use of force. In the report, we take no position on the substantive merits of the various, and often opposing, legal views elaborated in the contemporary debates. Nor do we take a position on whether there is any reasonable room for such debate at all. Instead, we take the existence of these debates as a given and focus on how international actors have sought to use State silence as purported proof of tacit support for their respective positions. From our perspective, the questions of what silence means as a matter of international law and under what conditions it may and should be relied upon merit closer attention and discussion. That is especially the case, in my view, concerning the scope of the contemporary right of self-defense.

To be certain, a State may intend for its silence to have legal effects. But State silence may, alternatively, result from lack of awareness or from diplomatic, political, strategic, or other non-legal considerations. Indeed, it may very well be that States do not mean for their silence to

signify support or objection to any particular legal viewpoint. Nevertheless, State silence concerning relevant self-defense claims is being imbued with legal significance by various international actors. And, more often than not, those invocations are made in favor of broad claims to resort to force.

Whether or not silence has or should have legal significance in this area is a complex question. I do not have time this afternoon to elaborate on its various nuances. The short version is that, arguably, State silence may be capable, under strict conditions, of contributing to an interpretive agreement of a Charter provision or the identification of a rule of customary international law. But even those limited forms of qualified silence ought not to be lightly presumed. Instead, we argue, there is a strong, if rebuttable, presumption that silence alone does not constitute acceptance of a self-defense claim. Be that as it may, States and other international actors should be aware that, as a practical matter, their silence might play a role in identifying and developing the legal rules.

States that *do* want to participate actively in this debate do not currently have reliable access to all relevant information, even self-defense-related information that Member States are obliged to report immediately to the Security Council. Since the advent of the United Nations, a number of avenues have been pursued to make it possible for Member States to obtain information relevant to these "Article 51 self-defense communications." To date, however, none of these efforts has resulted in a timely and authoritative system to identify and evaluate those communications. For example, the Repertoire of the Practice of the Security Council and subsequent Supplements thereto provide a record of the evolving practice and procedure of the Council. In the 2019–2020 period, for the first time in the Repertoire's 68-year history, the Secretariat adapted its working methods to enable contemporaneous coverage of the Security

Council's practice. Yet the Repertoire does not necessarily reflect the Security Council's views regarding what qualifies as an "Article 51 self-defense communication." Perhaps more to the point, it is far from clear that the Security Council itself determines which communications qualify in the first place. Partly as a result, there remains no single place to turn — whether on the Security Council website or in any Council document — to find all qualifying self-defense communications, let alone responses to them by the Council or Member States.

In light of this situation, alongside the HLS PILAC report on silence, our research team created a catalogue of apparent "Article 51 self-defense communications" from 1945 through 2018. Our researchers identified over 430 apparent self-defense reports made to the Council in that period. The researchers also recorded whether or not the Security Council responded — in the sense of a provision in an act of the Council — to those communications. According to our analysis, the Security Council reacted formally to about one-tenth of the identified self-defense communications.

The lack of an accessible, comprehensive catalogue of contemporaneous self-defense reports raises technical burdens and interpretive challenges for Member States attempting to contribute to today's debate. It seems that a State seeking to be aware of "Article 51 self-defense communications" in real-time needs to consult the full text of all Security Council documents to identify candidate reports. The State then needs to determine whether a particular communication qualifies as an "Article 51 self-defense communication," and it must do so without authoritative guidance from the Security Council or Member States writ large. In terms of scale, hundreds of communications are made to the Security Council annually. For example, in 2018, over a thousand documents were given an S/ document symbol. In comparison, the HLS PILAC catalogue records that, in 2018, only four apparent "Article 51 self-defense

communications" were submitted to the Council. Self-defense reports are effectively needles in a haystack.

In the current context, States are not made aware of which communications count, in the eyes of the Security Council, as "Article 51 self-defense communications." In these circumstances, it would seem difficult to consider a State's lack of reaction to the legal claims made or the actions described in those reports as deliberate or even conscious.

With this in mind, I would like to close with three questions for Member States' consideration as they reflect on these issues.

First, what are the key legal, political, and strategic issues for Member States in deciding whether or not to take part in the substantive and procedural debates on the contemporary right of self-defense?

Second, should State silence or inaction have a role in identifying and modifying the legal rules on the right of self-defense?

And third, what steps would be necessary to provide all Member States with systematic and timely access to qualifying "Article 51 self-defense communications"?

Excellencies, in conclusion, Member States ought to consider whether they are comfortable with a cornerstone of the Charter system possibly shifting without their views being taken into account and without reliable access to relevant information. Much hangs in the balance, including whose voices will be heard in developing the law.

I look forward to this critical conversation.

Thank you.

ARMENIA

UN Security Council VTC, 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-defence"

Statement of H.E. Mr. Mher Margaryan, Permanent Representative of Armenia
24 February 2021

Mr. President,

I would like to thank the Delegation of Mexico for organizing this Arria Formula meeting on upholding the collective security system of the UN Charter as well as Professor Modirzadeh of Harvard Law School Program on International Law and Armed Conflict for her very informative briefing. We appreciate Mexico's efforts to promote dialogue on this important topic, also in the framework of the Special Committee on the Charter, through submission of the working paper on "Analysis of the application of Articles 2(4) and 51 of the Charter of the United Nations".

In discussing the scope of the right to self-defence, an essential point of reference is the framework of the UN Charter, as Article 2 (4) clearly stipulates inadmissibility of threat or use of force in any manner inconsistent with the purposes of the United Nations. The issue of invocation of Article 51 needs to be addressed in the context of obligations *erga omnes* arising from the peremptory norms of general international law, such as the right to self-determination, prohibition of genocide and crimes against humanity.

In a world, where conflicts and disputes, in their various forms, regrettably continue to persist, prohibition of the use of force and a strict adherence to peaceful settlement of disputes are indispensable to the maintenance of international peace and security. Nothing in the UN Charter or the general international law can justify instances of instrumentalization of the concept and practice of self-defence as a cover-up for military action in an effort to resolve an international dispute by use of force.

In this regard, to put the issue into context, I want to bring to your attention the premeditated armed aggression of Azerbaijan against the people of Nagorno-Karabakh (Artsakh) unleashed in September 2020 which comes as a dangerous precedent of violating the pre-eminent obligation to strictly adhere to the principles of non-use of force or threat of force and the pacific settlement of disputes by opting, instead, for instigation of violence, conflict, atrocity crimes and involving terrorist fighters.

A country, that over the years has been consistently rejecting the peace process and the proposals for the settlement of the conflict put forward by the mediators, has launched the biggest military escalation in times of the COVID-19 pandemic, with direct and unrestricted military support of another country - Turkey and involvement of thousands of foreign terrorist fighters and mercenaries from the Middle East. Given the nature and the scope of Azerbaijan's violent conduct, resulting in the loss of thousands of lives and widespread destruction in the midst of a global health crisis, it is clear that such actions have been aimed not at defence but at an intentional infliction of maximum casualties on the Armenian side.

Such actions, have, in fact, demonstrated that not only this country was not acting in self-defence, but also that it had no intention of complying with the purposes and principles of the Charter of the United Nations. This was further evidenced by its failure to adhere in good faith to the trilateral statement on the establishment of ceasefire in the area of the Nagorno-Karabakh conflict, which stipulates, among other provisions, for the release of all prisoners of war and other detained persons. To this date, this key provision remains unimplemented by Azerbaijan, despite the calls of the international community, including the UN human rights experts, who have appealed for the prompt release of all prisoners of war and other captives from the Nagorno-Karabakh conflict.

Mr. President,

On a final note, I want to emphasize the importance of the efficient utilization of the prevention toolbox of the United Nations and regional organizations for timely identifying of and adequately responding to the warning signs of gross violations of humanitarian law and human rights law, which if not addressed properly can lead to serious threats to the international peace and security.

Thank you.

AUSTRALIA

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UN SECURITY COUNCIL 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-DEFENCE'

24 February 2021

Statement by Dr Fiona Webster, Deputy Permanent Representative of Australia to the United Nations

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Thank you Mexico for convening this important meeting today, and to Professor Modirzadeh for your briefing.

Australia welcomes the opportunity to address this Arria-formula meeting on the use of force under international law, including the application of Article 51 of the UN Charter.

The obligation in Article 2(3) of the UN Charter to seek the peaceful settlement of disputes, and the prohibition on the use of force in Article 2(4), are key pillars of the international rules-based order and essential to maintaining international peace and security.

States' inherent right of individual and collective self-defence is reflected in Article 51 of the Charter. It is one of the limited exceptions to the

prohibition on the use of force against the territorial integrity or political independence of another State.

Australia recognises that the right of self-defence is available in respect of an actual or imminent armed attack. The right of self-defence is not unconstrained: force used in self-defence must be necessary to address the threat or use of force and it must be proportionate to the threat that is faced.

Australia recognises that the right to exercise individual or collective self-defence is available against non-state actors in the territory of another State, where those actors are involved in carrying out an actual or imminent armed attack, and where the territorial State is unwilling or unable to prevent such attacks originating from its territory.

We note that, in the wake of the 9/11 attacks, the UN Security Council adopted resolutions 1368 and 1373 of 2001, which recognised the right to exercise self-defence against non-state actors in the territory of another State.

Finally, we refer to the important requirement in Article 51 that measures taken in exercising the right of self-defence 'shall be immediately reported to the Security Council'. Australia underscores the importance of States complying with this obligation.

Thank you.

United Nations Security Council Open Arria Formula Meeting, 24 February 2021

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

Statement by Austria

Mr. Chair,

I would like to thank Mexico for convening this meeting and Prof. Modirzadeh for her briefing.

Austria has noted with concern the increasing number of cases where armed force is applied unilaterally, invoking the right of self-defence pursuant to Article 51 of the UN Charter. These cases, the lack of action by the Security Council following the receipt of reports pursuant to Article 51 and the fact that other UN Member States do not publicly express their legal views on each and every case may not be interpreted as an expression of a new State practice or *opinio iuris* that might lead to the erosion of Article 2 paragraph 4 of the UN Charter, which the International Law Commission has determined to be a peremptory norm (*ius cogens*).

Article 51 of the UN Charter obliges all Member States to immediately report to the Security Council the measures taken in the exercise of their right of self-defence. These reports should not only describe the measures taken, but should also contain all relevant information about the factual background in order to enable the Security Council to assess whether the legal requirements for the exercise of the right of self-defence such as necessity, imminence and proportionality are met.

According to the prevailing view and practice, which is shared by Austria, also acts of non-state actors can amount to an armed attack in the sense of Article 51, provided that the following two conditions are fulfilled:
(1) There is a "transboundary element", e.g. the non-state actor operates from the territory of another State; and
(2) The other State is harbouring or otherwise substantially supporting the operations of the non-state actor on its territory, or is unable, as a consequence of the complete absence of State authority and effective control over the respective territory, to prevent or suppress such operations.

Otherwise, armed attacks by non-state actors have to be dealt with in the framework of law enforcement or the rules pertaining to non-international armed conflicts. Of course, as in any other case, acts of individual or collective self-defence against such attacks must be necessary and proportionate.

On procedural issues, Article 51 of the UN Charter states that the measures taken in the exercise of the right of self-defence shall be immediately reported to the Security Council. The immediacy of the reports must be such as to enable the Security Council to make a swift assessment and exercise its authority and responsibility under the Charter to take any action, as it deems necessary, in order to maintain or restore international peace and security. The reports are thus a matter of hours, not days or weeks. Given the importance of these instances for all Member States, it would be desirable and necessary for the Security Council to discuss, examine and consider reports submitted under Article 51 on a regular basis.

Finally, I would like to stress that Austria supports all efforts to improve the transparency and publicity of the reports submitted to the Security Council under Article 51 of the UN Charter. In this vein, we would welcome the swift distribution of all reports to all UN Member States as documents of the Security Council as soon as they are received as well as online accessibility of the reports and any responses and reactions to these reports in a consolidated and systematic manner, in addition to their publication in the annual reports on the activities of the Security Council

I thank you Mr. Chair.

Remarks by Tofig Musayev, Deputy Permanent Representative of the Republic of Azerbaijan to the United Nations, at the UN 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", 24 February 2021

- The Charter of the United Nations addresses the prohibition of the use of force, in Article 2(4), in terms of inter-State force.

- As one of the two exceptions to this prohibition, the exercise of the right of self-defence is permitted in Article 51 of the Charter in response to an armed attack.

- Undeniably, invasion or attacks by the armed forces of a foreign State, military occupation and bombardment – the highlights of the 1974 Definition of Aggression, including in indirect ways by the use of subordinate irregular forces, – constitute armed attacks, triggering the right of self-defence in accordance with Article 51 and customary international law.

- Article 51, in laying the ground for the right of self-defence, mentions a State only as the potential target of an armed attack. At the same time, the perpetrator of that armed attack is not identified necessarily as a State. By implication, an armed attack can therefore be carried out by non-State actors, including terrorist groups.

- It is for every State to judge for itself, in the first instance, whether a case of necessity in self-defence has arisen. The acting State is the one to determine when, where and how to employ counter-force in response to an armed attack.

- Article 51 requires that the self-defence measures be reported immediately to the Security Council. The Council may adopt a binding decision, either endorsing the invocation of self-defence or rejecting it. Alternatively, the Council may do nothing, either by choice or by force of a political reality. A third option is the adoption by the Council of a non-binding recommendation as to what it thinks should be done.

- Basically, it is for the State acting in self-defence to evaluate whether the Council's efforts have been crowned with success. Short of an explicit decision by the Council to desist from any further use of force, the State acting in self-defence retains its right to proceed with the forcible measures that it has chosen to pursue in response to the armed attack.

- The duration of the right of self-defence is determined by the armed attack and its continued effects, such as occupation. As long as the attack lasts, the victim State is entitled to react.

- Yet in 1993, the Security Council adopted four resolutions (822, 853, 874 and 884), condemning the use of force against Azerbaijan and the bombardment and occupation of its territories and reaffirming respect for the sovereignty and territorial integrity of Azerbaijan, the inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory.

- The attacks against Azerbaijan are imputable to a foreign State, namely, they are attributed to Armenia.

- As a result of the counteroffensive operation undertaken and successfully accomplished by the armed forces of Azerbaijan, in the exercise of the inherent right of self-defence, the territories of Azerbaijan were liberated from occupation, the enemy's military capability in the occupied territories of Azerbaijan was destroyed and Armenia was enforced to peace.

- The end of aggression and occupation has become a triumph of justice and international law and underlined again the necessity of strict compliance by States with their international obligations.

KINGDOM OF BELGIUM

Statement by H.E. Ambassador Karen VAN VLIERBERGE, Deputy Permanent Representative of Belgium to the United Nations

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"

New York, 24 February 2021

Mister President,

I would like to thank Mexico for organizing this meeting as well as Pr. Naz K. Modirzadeh for her comprehensive briefing to the Security Council. Belgium welcomes this opportunity for the Council and the wider membership to discuss the interrelation between Article 51 and Article 2(4) of the Charter of the United Nations.

At the outset, I would like to reiterate that, for my country, international law is more than ever the cornerstone of our multilateral system. By joining the United Nations and with the aim of bringing an end to the scourge of war, all Member States have made the clear choice of an international order based on the rule of law as a major factor of international stability, democracy and prosperity. Among a few key general rules, the Charter has notably established that relations between States are governed by the principle of the peaceful settlement of disputes and the corollary prohibition of the use of force.

At the same time, the Charter has also recognized the inherent right of individual or collective self-defense as provided for in its Article 51. Yet, the use of force in case of self-defense must remain exceptional since it constitutes an exception to the general rule mentioned above. For these reasons, it is subject to the specific conditions enshrined in the Charter that must be strictly interpreted.

Let me now turn to the guiding questions mentioned in the concept note. Firstly, from a substantive point of view, State practice varies regarding the information to be contained in a report submitted under Article 51. Some give sufficient

details to better justify the legitimacy of their action. Additionally, since 2001 and Security Council resolutions 1368 and 1373 adopted in reaction to the September 11 attacks, the practice is that States can have recourse to self-defense in case of attacks perpetrated by non-State actors – including terrorist groups – that are located on the territory of a sovereign State.

Secondly, the central idea of Article 51 is that actions of self-defense can be taken while waiting for the Security Council to take the measures it deems necessary for the maintenance of international peace and security. Procedurally, this implies that the Council must be informed immediately and that it should consider the matter referred to it by the report submitted under Article 51.

Finally, the transparency of States' communications relating to Article 51 is important for Belgium. We would therefore analyze with interest any suggestion that goes in the direction of greater transparency and publicity of past and current reports.

Thank you.

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NEW YORK

Security Council

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
24 February 2021

(check against delivery)

Mr. President,

Brazil thanks Mexico for organizing this meeting, and Professor Modirzadeh for her excellent briefing.

Brazil also welcomes the topic chosen for this Arria Formula Meeting. The prohibition to the use of force is a cornerstone of contemporary international law and a source of stability in a wavering world. It is a peremptory norm, to which only two exceptions are permitted: self-defense and authorization under Chapter VII of the Charter.

The world has witnessed the devastating consequences of abuses to the exceptions to the prohibition to use force. Throughout the years, armed conflicts were initiated on the basis of uncertain facts and questionable interpretations of applicable law. Uncertainty in this realm may lead to more than violations of international law; it might escalate conflicts and generate serious humanitarian consequences. Hence, as a matter of law and of policy, exceptions to Art 2(4) of the UN Charter must be interpreted restrictively.

The right to self-defense, in particular, has clearly defined boundaries established in Article 51 of the Charter. It must be read in line with Article 2(4) so as not to undermine it. Since Article 2(4) does mention "States" and Article 51 must be interpreted in that light, the right to self-defense is only triggered by an armed attack undertook by or somehow attributable to a State. It is not possible to invoke self-defense as a response to acts by non-State actors.

This view is in line with the case law of the International Court of Justice, which has made it clear that the territorial State would have to be "sending" or have "substantial involvement" in the acts of the non-State actor for the conditions for self-defense to arise. The Court has repeatedly indicated that self-defense is a right that only applies between States on the international plane.

Non-state actors are not located in a vacuum. They are located in the territory of a State, whose sovereignty must be respected. States do have an obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States. If that happens, international law provides avenues to address the matter. Resort to force is generally not one of them.

In conclusion, Mr. President,

Due to the fundamental importance of the prohibition to the use of force to the international community, all countries have a stake on the issue, hence the importance of transparency. Brazil calls on this Council to promptly make public the reports submitted to it under Article 51 of the Charter. Being the primary guardian of international peace and security, this Council should act, in a transparent manner, as a steadfast defender of the integrity of the norms that form our collective security system, as the full respect of international law is the only way to achieve peace and sustain it.

Thank you.

PEOPLE'S REPUBLIC OF CHINA
MISSION TO THE UNITED NATIONS

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Statement by Ambassador GENG Shuang at the 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" (24 February 2021)

Mr. Chair,

China welcomes this Arria Formula meeting organized by Mexico on the use of force in international law and thanks Professor Modirzadeh for her briefing.

Maintaining international peace and security is the primary purpose of the United Nations, as is stated in the preamble of the Charter of the United Nations, "We the peoples of the United Nations determined to save succeeding generations from the scourge of war". The use of force relates to the purposes and principles of the UN Charter, the international order based on international law and has great impact on international peace and security. It is of great concern to all parties. In this regard, China would like to share the following points:

First, the principle of non-use of force must be firmly safeguarded. "All Members shall refrain in their international

relations from the threat or use of force". This is a norm of international relations and a fundamental principle of international law established by the UN Charter. It is interrelated with other principles established by the UN Charter, including sovereign equality, non-interference in internal affairs and peaceful settlement of disputes. All these principles together constitute the cornerstone of international consensus on the maintenance of international peace and security. At the High-level Meeting to Commemorate the 75th Anniversary of the United Nations, Secretary-General Guterres noted that a great achievement of the United Nations was avoiding a third world war and military confrontation between the major powers. The principle of non-use of force has made significant contributions in this regard.

Second, the right of self-defense must be exercised in strict accordance with international law. Self-defence is an exception to the principle of non-use of force. The provisions on the right of self-defence in Article 51 of the UN Charter should be interpreted faithfully and in good faith, and should not be abused. The exercise of the right of self-defense shall be in strict compliance with the provisions of the UN Charter and relevant rules of customary international law. The use of force against non-state actors in the territory of another state, which is for the purpose of self-defence, shall be subject to the consent of the state concerned. No state should interfere in other's internal affairs under the cloak of "counter-terrorism" or use force arbitrarily in the name of

"preventive self-defence".

Third, the integrity and authority of the Security Council must be firmly upheld. The Security Council has the primary responsibility for maintaining international peace and security, and plays as the core of the international collective security mechanism. In exercising the right of self-defence, Member States should fulfil their reporting obligations to the Security Council in accordance with the UN Charter. On major issues concerning international peace and security, Member States should respect the authority of the Security Council, support its work and implement its resolutions. No country is allowed to bypass the Security Council or pursue a selective approach to advance its own interests.

Mr. Chair,

As a founding member of the United Nations and a permanent member of the Security Council, China is ready to work with the international community to uphold multilateralism, pursue the rule of law, oppose the unlawful use of force, defend the collective security mechanism, and safeguard the international order and the international system centered on the purposes and principles of the UN Charter.

Thank you, Mr. Chair.

Statement by the Permanent Representative of Denmark on the occasion of The United Nations Security Council Open Arria Formula Meeting on "Upholding the collective security system of the UN Charter: the use of force in international law, non-state actors and legitimate self-defense" 24 February 2021

Your Excellences,

Members of the Security Council,

Allow me firstly to thank Mexico for convening this meeting and providing the opportunity to have a debate on such a significant topic. I would also like to thank professor Naz Modirzadeh for her briefing, which provided a useful introduction.

Mr. Chair,

The maintenance of international peace and security lies at the core of the UN Charter. Denmark is a strong proponent of a rules-based international order and multilateral cooperation based on international law, coherence, and transparency.

In our view, reports to the Security Council under Article 51 of the UN Charter are both important and useful. While there is no automaticity in the Security Council addressing these reports, they are a means to help ensure that the Council may speedily take such action as it deems necessary in order to maintain or restore international peace and security. That said, lack of action by the Council following receipt of an article 51-report, should not be seen as an endorsement or acceptance of the legality of that particular act of purported self-defense. The reports, furthermore, create a public record which allows the international community to understand and engage with the positions of states exercising their right of self-defence.

Mr. Chair,

Notwithstanding the importance of article 51-reports, we would note that Denmark does not consider such reports as a precondition for legality of an act in self-defense. The requirement is procedural rather than substantive. A state's failure to report measures of self-defense to the Security Council shall not in itself affect the legality of the self-defense act in question. That being said, the

requirement to submit a report under Article 51 must be taken seriously and complied with at all times.

As noted in the concept note for this meeting, we agree that transparency and accessibility of these reports are of importance. In our view, current practice of publication provides a sufficient basis for most stakeholders. But we have noted with interest the various proposals and share the view that there may be room for improving easy access. We look forward to further debate on such initiatives that increase transparency and accessibility to state practice.

As to recent practice of Denmark, Mr. Chair, allow me to mention our letter under Article 51 to the Security Council dated 11 January 2016. In this letter it was reported to the Council that Denmark, with reference to resolution 2249 (2015) and as a response to the request by the Iraqi Government, was taking necessary and proportionate measures against ISIL in Syria in exercise of the inherent right of collective self-defence of Iraq. Said practice was in agreement with – and has later been confirmed by – several delegations.

Mr. Chair,

The concept note for this Arria Formula Meeting reflects on "the gravity of terrorist acts, their high humanitarian, political and social cost and the threat they pose to international peace and security." It also notes differing approaches among states to certain legal aspects of the fight against terrorism and to article 51-specifically. As we have heard in today's debate these differing approaches persist which only underscores the usefulness of further discussion.

Thank you, Mr. Chair

Permanent Mission of Ecuador
to the United Nations

Statement by Ambassador Cristian Espinosa
Permanent Representative of Ecuador to the UN,

United Nations Security Council Open Arria Formula Meeting on:

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

24 February 2021 – 3:00-6:00 pm

Excellencies, ladies, and gentlemen

1. I thank Mexico for organizing this timely Arria Formula Meeting which provides us the opportunity to further analyze the scope of article 51 of the United Nations Charter. I also wish to acknowledge Mexico's leadership on this regard.

2. This discussion is even more relevant for Ecuador as we continue commemorating the 75 years of the Charter, and considering that our former president Camilo Ponce Enriquez co-chaired the committee responsible for the drafting of Chapter VII, from articles 39 to 51.

3. Off course it is important that we consider and discuss the implementation that has been given to different provisions of the Charter, against non-state actors, in particular in the context of counter-terrorism. It is also important for my delegation not to reinterpret any provision of the Charter. The right of individual and collective self-defense exists, and for its exercise it shall be immediately reported to the Security Council.

4. I wish to reiterate the full commitment of Ecuador on the fight against terrorism. As I stated at the Security Council open debate held on 12 January 2021, in light of Resolution 1373 (2001), adopted by the Security Council 20 years ago, we must continue to strengthen our global efforts to prevent and counter terrorism. For this, it is essential to also address the causes and factors that facilitate acts of terrorism, including its financing as well as political, ethnic and religious intolerance, among others.

5. At the same time, I wish to reiterate my delegation's concern about the increase in the number of letters addressed to the President of the Security Council under Article 51 of the Charter with regards to military actions, in the context of the fight against terrorism.

6. Ecuador, as a member of the Community of Latin American and Caribbean States (CELAC) has also expressed its concern due to the fact that most letters under Article 51 in order to have recourse to the use of force in the context of counter-terrorism, where submitted to the Security Council ex post facto.

7. We need to guarantee that action is taken in compliance with all the obligations established in the Charter. Nothing justifies limiting the principles of transparency, accessibility and information for every Member State, including those that are not occupying a seat in the Security Council.

8. Efforts to close the existing gaps of information in the Repertoire of the Practice of the Security Council should be supported. Ecuador further calls on the Security Council to improve the publicity of the reports and to facilitate access for all Member States on a timely manner.

9. I wish to recall that as principle, Ecuador values all subjects put forward by Member States for discussion. In this vein, Ecuador supports a comprehensive approach and greater synergies by all United Nations organs for any element related to peace and security.

10. At the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization we confirmed our support for the exchange of views on the limits of the use of military force in the fight against terrorism; in full compliance with the provisions established by the UN Charter.

11. Finally, the best way to implement the United Nations Charter is by ensuring a World free of violence, and for that purpose we need to strengthen the United Nations efforts on international peace and security.

12. On this regard I wish to reiterate once again the need for the Security Council to establish a mechanism to facilitate the implementation of Resolution 2532, in particular on the global ceasefire, which could be a first step for a permanent peace in many places.

Thank you very much,

Ambassador Jeffrey DeLaurentis
Acting Alternate Representative for Special Political Affairs
United States Mission to the United Nations
New York, New York
February 24, 2021

AS DELIVERED

Good afternoon, colleagues. I would like to thank the Mexican Mission for hosting this meeting. I would also like to join others in thanking Professor Modirzadeh for her presentation. We read with great interest her and Dustin Lewis's 2019 study on Article 51 of the UN Charter.

The inherent right to use force in the exercise of individual or collective self-defense against non-state actors is well-established. For centuries, States have invoked the right of self-defense to justify taking action on the territory of another State against non-State actors. Since the terrorist attacks on September 11, 2001, 19 different States have identified or referred to non-State actors in their Article 51 notifications.

But the United States agrees that the doctrine of self-defense is not a license to wage war globally or to disregard the borders and territorial integrity of other States.

In particular, the exercise of the inherent right of self-defense is subject to the customary international law requirements of necessity and proportionality. "Necessity" requires States to consider whether actions in self-defense that would impinge on another State's sovereignty are necessary – that is, whether measures short of force have been exhausted or are inadequate to address the threat posed by the non-State actor emanating from the territory of another State.

This consideration entails an assessment of whether the territorial State is able and willing to mitigate the threat emanating from its territory and, if not, whether it would be possible to secure the territorial State's consent before using force on its territory against a non-State actor. But this legal standard does not dispense with the importance of respecting the sovereignty of other States.

Applying the standard ensures that force is used on foreign territory without consent only in certain exceptional circumstances. Specifically, those in which a State cannot or will not take effective measures to confront a non-State actor that is using the State's territory as a base for attacks and related operations against other States. This leaves a law-abiding nation only the choice to respond in self-defense.

Turning to the content of Article 51 notifications, Article 51 does not impose any requirement on what, specifically, must be included other than a description of

the measures taken in self-defense. State practice has varied with respect to the content of Article 51 notifications.
Although the Article 51 notification may include a detailed legal justification for the measures taken, this is not required; the notification is intended only to put the Security Council on notice of the measures taken.

Finally, the United States favors transparency. The United States submits Article 51 notifications with the expectation that they will be publicly available. We note that all Article 51 notifications are electronically available on the UN's documentation website, to all UN Member States and the public at large in addition to being noted in the Repertoire of the Practice of the Security Council as that publication is updated.

We are prepared to work with other Council Members through the Informal Working Group on Documentation and Procedure and with the UN Secretariat to explore ways to make such letters more easily accessible.

Thank you.

PERMANENT MISSION
OF ESTONIA TO THE UN

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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, 24 February 2021
Statement by the Deputy Permanent Representative of Estonia to the UN, Mr Gert Auväärt

Mr Chairman,
Allow me to thank Mexico for convening an Arria on the topic of Article 51 of the UN Charter, and Professor Naz K. Modirzadeh for her intervention.

I would like to start my intervention by reaffirming Estonia's unwavering commitment to promoting respect for international law and **rules-based international order**.

In general, use of force in international relations goes against the principles enshrined in the Charter of the United Nations, as all States shall refrain from the threat or use of force against another State. Exceptions for the legal use of force are limited to specific cases mentioned in the Charter. The first such exception is when the UN Security Council so decides in order to maintain or restore international peace and security. The second is **self-defence**.

Article 51 of the Charter as well as customary international law grant States the inherent right of individual or collective self-defence. The Charter does not delimit the right of self-defence to cases where an armed attack is organized by a State. The right of self-defence must also exist against **non-state actors**.

The host State has the primary obligation to ensure that its territory is not used to breach international peace and security. However, the activities of the host State are often not sufficient to prevent non-state actors from organizing attacks.

In such a case, as the right to self-defence is "**inherent**" according to Article 51, it exists also against non-state actors operating in the territory of another State. This has come up in Security Council practice since 2001. Denying States the right of self-defence against non-state actors operating in the territory of another State in principle would otherwise place the victim State in an impossible position.

Even so, we need to emphasise that the use of self-defence against non-state actors as well as against any other imminent attacks must remain **exceptional** and strictly correspond to the principles of necessity and proportionality. The Charter furthermore requires that the notifications be made immediately.

We also note that according to the Charter States have the right of self-defence until the Security Council itself takes measures necessary to maintain international peace and security. However, the Security Council has not always adequately responded to such breaches and States have therefore retained their right to self-defence in default of Security Council involvement.'

Finally, let me also assure you that Estonia is open to discuss the ways to enhance the **transparency** and availability of notifications made under Article 51, and related correspondence.

Thank you.

Statement by Finland

United Nations Security Council Open Arria Formula Meeting

New York, 24 February 2021

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

Statement by

H.E. Mr. Jukka Salovaara

Ambassador

Permanent Representative of Finland

to the United Nations

Finland would like to thank Mexico for its continued efforts to bring to discussion pertinent questions relating to the United Nations Charter. Initiatives of this kind should not be seen as threats to or deviations from how the collective security system of the UN Charter is supposed to work, but rather as contributions to its continued validity and relevance.

We are pleased with the inclusive format of this discussion and the opportunity to offer a few remarks. Last time we had the occasion to speak at this forum was in December when the Nordic countries took part in the debate relating to the cooperation between the Security Council and the International Court of Justice. Finland welcomes opportunities to reflect on the functioning and cooperation between the main bodies of the UN in the fulfilment of their Charter-based mandates.

We would also like to thank Prof. Modirzadeh for his useful insights.

Finland is a strong proponent of a rules-based international order and multilateral cooperation based on international law. We are committed to the UN Charter and its collective security system. Regarding the questions outlined in the concept note, we tend to believe that there is a need to discuss how to accommodate extraterritorial responses to terrorism with the use of force regime of the UN Charter. We continue to hold the view that any measures against terrorism must be in accordance with international law, including international humanitarian law, refugee law and human rights law.

The need to discuss how the existing framework of international law applies in modern contexts such as in the cyber realm and outer space has also been recognized, and efforts to find common ground are ongoing in the General Assembly.

The significance of the Article 51 reports for the use of force regime of the UN Charter cannot be overestimated. Importantly, the reports also help to increase understanding of the positions of the states involved in the relevant operations. Finland supports efforts to enhance the transparency and accessibility of these reports.

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ARRIA SUR LE RECOURS À LA FORCE ET LA LÉGITIME DÉFENSE

ÉLÉMENTS DE LANGAGE - 24 FÉVRIER 2021

- *Merci beaucoup. En l'absence d'interprétation, je prononcerai mon intervention en anglais. We thank Mexico for convening this meeting and Mrs. Modirzadeh for her insightful briefing.*

- *France is resolutely committed to the system of collective security established by the United Nations Charter, on which all contemporary international law is based. The prohibition of the threat or use of force is a cardinal principle, with two exceptions also provided by the Charter: on the one hand, Security Council decisions authorizing the use of force; on the other hand, the right of self-defense.*

- *In this respect, article 51 of the Charter allows each state victim of an armed attack to take, individually or collectively, measures to repel that attack. Under international law, measures taken in self-defense action must meet a number of criteria. In particular, they must be proportionate and not go beyond what is necessary to stop the attack.*

- *While the victim of attack must be a State, according to Article 51, the status of the aggressor is not delimited or defined. Unfortunately, some non-state groups, particularly terrorist groups, now have the means to commit acts that amount to armed attack against States. Needless to recall that, as we have all witnessed, international terrorism is one of the greatest threats to international peace and security today. And this threat is still growing.*

- *France joined in August 2014 the International Coalition against Daesh, which brings together more than 70 States, with the aim of supporting the Iraqi authorities engaged in the fight against the terrorist group. After the Paris attacks in November 2015, France's military action against Daesh's targets, which was justified by collective self-defense could also be based on individual self-defense, in accordance with Article 51 of the Charter.*

- *In its fight against terrorism, France attaches paramount importance to the protection of civilian populations and to respect in all circumstances international law, in particular international humanitarian law, the law relating to the protection of civilians and international human rights law.*

- *As a permanent member, France ensures that the Security Council acts as the guarantor of international legality when exercising its primary responsibility for the maintenance of international peace and security. To achieve this, it is crucial that the Security Council be immediately informed of measures taken under Article 51. The Charter does not impose any particular formalism, but it should be noted that, in practice, such measures are most often notified in the form of a letter to the Presidency of the Security Council. Experience shows that the format and wording used differ substantially from one notification to another, and it is not always easy to determine whether such notifications fall within the scope of Article 51. The full and timely*

information of all Member States of these notifications also contributes to the transparency and inclusiveness of the Security Council.

 I thank you./.

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

Statement by the Deputy Permanent Representative of Georgia, Ms. Elene Agladze

24 February 2021

Mr. Chair,

Allow me to sincerely thank Permanent Mission of Mexico for convening today's Arria-Formula Meeting on Upholding the collective security system of the UN Charter. I also thank Professor Naz Modirzadeh for her insightful presentation today.

Today's discussion is particularly timely given the increased number of communications to the Security Council on the use of Article 51..

. The UN Charter, together with the wider body of international instruments, provides us with the blueprint for conducting international relations by peaceful means, without threat or use of force. The legitimate right of self-defence and authorization under Article 51, is the only exception embedded in the Charter, which, must be exercised in line with Charter's provisions.

Mr. Chair,

Collective security system of the UN Charter works only if every member fully abides by the Charter's tenets. This is especially true in light of my country's experience, which is a victim of the full-scale military aggression and subsequent illegal occupation of its two regions by the permanent member of the Security Council. Notably, following the aggression, in blatant disregard of the need to advance the peace process and ensure an international presence on the ground, the Russian Federation used its veto power to dismantle the United Nations Observer Mission in Georgia in order to avoid any type of international engagement on the ground.

We continue to face illegal Russian military presence in the two occupied regions in blatant violation of Article 2(4) of the UN Charter, inflicting a heavy toll on humanitarian and human rights situation on the ground. Even in the times of global pandemic, Russia continuous its illegal practice of arbitrary detentions of civilian population; kidnappings; grave violations of human rights of the conflict-affected people; and erection of so-called "border" signs at the occupation line, in manifest breach of the UN Charter and the EU-mediated 12 August 2008 Ceasefire Agreement.

In contrast, Georgia is using every peaceful means at its disposal, including international legal remedies. After years of dedicated strive of Georgian side for Justice and accountability, the European Court of Human Rights in its historic ruling of 21 January 2021, confirmed *that the Tskhinvali region and Abkhazia are integral parts of Georgia's territory and are occupied by Russia. The Court ruled that Russia exercised effective control over these regions and therefore, it was responsible for the mass violations committed against the Georgian population.*

Against this background, let me reiterate that any use of force has to take place in full compliance with the UN Charter and we thus are committed to continue engagement in the discussions on the upholding of international law including on the use of Article 51..

Thank you!

Arria Formula meeting organized by Mexico

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

Statement by Ambassador K. Nagaraj Naidu
Deputy Permanent Representative

24 February 2021

Mr. President,

Let me begin by thanking Mexico for organizing today's meeting on an important topic and Prof Naz Modirzadeh for her briefing. We would like to, however, place on record our reservations against the Arria format of meetings, since there have been occasions in the past when this format has been misused.

Mr. President,

2. The theory and practice of the use of force during the 19th and early 20th centuries legitimised, in some ways, the "resort to war" in international law as a procedure of self-defence as long as certain criteria were met. The Covenant of the League of Nations represented a first significant break with the traditional theory and practice and rendered the "resort to force" as unlawful in certain specific circumstances. While the spirit of the Covenant has been incorporated in the various articles of the UN Charter, the customary right of self-defence has remained unimpaired.

3. Article 2(4) of the UN Charter requires that states refrain from the use of force. However, the drafting history of Article 51 of the UN Charter and the relevant San Francisco Conference Report of June 1945 that considered Article 2(4) of the UN Charter mentions that "the use of arms in legitimate self-defence remains admitted and unimpaired."Article 51also explicitly acknowledges the pre-existing customary right of self-defence, as recognized by the International Court of Justice and the UN Security Council by stating that "nothing in the present Charter shall impair the inherent right of individual or collective self-defence."

Mr. President,

4. Customary international law has long recognized the principles governing the use of force in self-defense. Exercising self-defense is a primary right of States to be exercised whenthe situation is imminent and demands necessary, immediate, and proportionate action.

5. Furthermore, Article 51 is not confined to "self-defense" in response to attacks by states only. The right of self-defense applies also to attacks by non-state actors. In fact, the source of the attack, whether a state or a non-state actor, is irrelevant to the existence of the right of self-defense.

6. Non-state actors such as terrorist groups often attack states from remote locations within other host states, using the sovereignty of that host state as a smokescreen. In this regard, a growing number of States believe that the use of force in self-defense against a non-state actor operating in the territory of another host State can be undertaken if:

i. The non-state actor has repeatedly undertaken armed attacks against the State

ii. The host State is unwilling to address the threat posed by the non-state actor.

iii. The host State is actively supporting and sponsoring the attack by the non-state actor.

7. In other words, a State would be compelled to undertake a pre-emptive strike when it is confronted by an imminent armed attack from a non-state actor operating in a third state. This state of affairs exonerates the affected state from the duty to respect, vis-a-vis the aggressor, the general obligation to refrain from the use of force.In fact, Security Council resolutions 1368(2001) and 1373(2001) have formally endorsed the view that self-defense is available to avert terrorist attacks such as in the case of the 9/11 attacks.

Mr. President,

8. The 1974 UNGA 'Declaration on Principles of International Law, Friendly relations and Cooperation among States in Accordance with the Charter of the United Nations' requires positive action on the part of a member state so as not to acquiesce or tolerate terrorist activities originating from within its territory, nor allow the territory under its control to be used for terrorism against another state. The Security Council also mandates all States to refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts.

9. Despite this, some states are resorting to proxy war by supporting non-state actors such as terrorist groups to evade international censure. Such support to non-state actors has ranged from providing and equipping the terrorist groups with training, financing, intelligence and weapons to logistics and recruitment facilitation.

10. India for decades has been subject to such proxy cross-border and relentless state-supported terrorist attacks from our neighborhood. Whether it is was the 1993 Mumbai bombings, or the random and indiscriminate firings of 26/11 which witnessed the launch of the phenomenon of lone-wolves or more recently, the cowardly attacks in Pathankot and Pulwama, the world has been witness to the fact that India has repeatedly been targeted by such non-state actors with the active complicity of another host State.

Mr. President,

11. While we believe that instances where states have exercised the right of self-defense to attack non-state actors located in other states must be consistent with Article 2(4) of the UN Charter, preemptive actions taken to fight the menace of terrorism, even without the consent of the state hosting the non-state actors, meets this criterion because such actions are not of

reprisal, since their prime motive is for protecting the affected states' national integrity and sovereignty.

I thank you.

Statement by
H.E. Mr. Majid Takht Ravanchi
Ambassador and Permanent Representative
of the Islamic Republic of Iran to the United Nations
On "Upholding the collective security system of the UN Charter: the use
of force in international law, non-state actors and legitimate self-defense"
At the United Nations Security Council Open Arria Formula Meeting
New York, 24 February 2021

In the Name of God, the Compassionate, the Merciful.

Mr. Chairman,

I thank you for organizing this meeting on the correlation between Articles 2 (4) and 51 of the Charter. I will make a few brief points.

First, prohibition of the threat or use of force, save the two exceptional cases authorized by the Charter, is one of the greatest accomplishments of our Organization. This is a cardinal principle of international law, the preservation and full observance of which is our collective responsibility that must be fulfilled responsibly.

Second, States have intrinsically an obligation to protect their citizens and territories and accordingly, enjoy an inherent right to self-defense. The term "inherent", clearly and adequately reflects the natural foundations and essential importance of this right, which of course, must be exercised only "if an armed attack occurs". These are the well-drafted and well-crafted terms of the Charter. Obviously, it must also meet the criteria of necessity, proportionality and immediacy.

Third, there is, however, a growing tendency by some States to resort to the threat or use of force through abusing the inherent right to self-defense. For instance, when the United States forces, at the direct order of the U.S. President, brutally assassinated martyr Soleimani in Iraq, in gross violation of the basic norms and principles of international law, the U.S. Government, through its communication to the Security Council President, desperately attempted to justify such an obvious act of terrorism through a series of fabrications and an extremely arbitrary interpretation of the

Charter's Article 51. Many international law scholars and practitioners have categorically rejected such an interpretation of the right to self-defense.

Fourth, this alarming trend must be a source of serious concern to all States, and every effort must be made to reverse this extremely dangerous process. If unchecked, the right to self-defense will not only be abused more frequently by such States, but also, they will institute further exceptions to the principle of the prohibition of the threat or use of force.

Fifth, measures taken in self-defense shall be reported to the Council "immediately". Reporting is therefore obligatory and should naturally include the main elements of the measures that the country concerned determines necessary, which might be different from one case to another. It is obvious that Article 51 has not obligated States to observe specific requirements, other than immediacy, in their reporting, and therefore, has left the decision to the discretion of reporting States.

Last but not least, to prevent the progressive erosion of the principle of prohibition of the threat or use of force, any reinterpretation or arbitrary interpretation of Articles 2 (4) and 51 of the Charter must be avoided. This is necessary for the common good.

I thank you, Mr. Chairman.

Statement by Ambassador Byrne Nason at Arria Formula Meeting on Article 51 of the UN Charter Statement

24 February 2021

Thank you very much indeed Mr Chair. I want to congratulate you on your maiden Arria and to say that we are delighted to be with you today. And thank you for bringing such a really interesting issue to our attention.

I would also like to thank Professor Modirzadeh for her enlightening presentation.

As Member States, of course we are each of us aware that the prohibition on the use of force set out in Article 2(4) of the Charter is the starting point for the Council's primary responsibility for maintaining international peace and security. As one of the two exceptions to this fundamental rule, therefore Article 51 clearly deserves serious consideration by the Council.

As identified in the concept note for this Arria meeting, and as you've just set out Professor Modirzadeh, a barrier to informed consideration of Article 51 is States' difficulty in identifying and accessing communications submitted to the Security Council pursuant to that Article.

We believe this is due to two very practical issues. The first relates to content and the fact that States when actually submitting such communications to the Council do not always explicitly state that they are doing so, and I quote, "in accordance with Article 51".

This clearly, undoubtedly makes it difficult for the Secretariat to categorise such communications, while at the same time making it difficult for other States to search for and indeed respond to relevant communications even after they have been published as documents of the Council. Though we accept that the inclusion of such a reference is not a requirement of Article 51, we urge all States to consider adding one to communications submitted under this Article.

The second question I want to point to is how best to bring these documents to the attention and awareness of the wider membership and ensure greater efficiency in their circulation. These communications, we know, are not confidential and are published in the UN's digital library as a document of the Council. However, they are published and circulated without explanation as to their content and so very often may get lost in the flood of communications received and circulated by the Council on a weekly basis.

As a newly elected member of the Security Council, we are acutely aware of the burden this places on States already struggling to keep pace with the high volume of correspondence received on a weekly basis from the Security Council. For those States not on the Council, and without the resources to follow such matters closely, it is even more difficult to keep track of that correspondence.

Ensuring transparency by better publicising documentation received and published by the Council is important to my country – to Ireland - as a member of the Council, the ACT group and as a representative Member State in the wider UN family. Such transparency and openness is vital to

understanding not only how the Council operates, but also, importantly, how States understand their obligations under the Charter.

We therefore urge the Secretariat's Security Council Practice and Charter Research Branch to consider ways to better and more efficiently distribute and highlight communications submitted under Article 51.

We acknowledge that such a request may require additional resources and comes at a time when the backlog in the publication of the Repertoire is still an issue. The Secretariat has worked in recent years to reduce the backlog significantly and Ireland is one of the many contributors of the Secretariat's work in this regard.

However, additional contributions are required to ensure that the Secretariat can complete its work in a timely fashion each year and we call on all Member States to ensure their funding remains available.

If these two simple, pragmatic steps were taken, they would go some way to addressing the gap in information identified by Mexico and ensure that States are fully equipped to consider this issue in the future.

Thank you very much, Mr. Chair.

The Permanent Mission of the Republic of Kenya
United Nations Security Council
2021-2022

STATEMENT BY
AMB. MICHAEL KIBOINO
DURING THE UN SECURITY COUNCIL ARRIA FORMULA MEETING
ON
"UPHOLDING THE COLLECTIVE SECURITY SYSTEM OF THE UN CHARTER: THE USE OF FORCE IN INTERNATIONAL LAW, NON-STATE ACTORS AND LEGITIMATE SELF-DEFENSE"

WEDNESDAY, 24 FEBRUARY 2021(3-6PM)

Thank you Chair

1. I will start by thanking the Permanent Mission of Mexico for convening this meeting under the Arria formula, and for the opportunity to exchange views on such an interesting and complex subject. I also take this opportunity to thank Professor Naz Modirzadeh for the insightful and thought-provoking briefing.

2. What we all may easily agree on, is that this is a rather complex subject, and that we are unlikely to dispose of it, in a single sitting such as this one. However, the reality, and perhaps the beauty of our work today, is that we are building upon blocks of listening to each other, exchanging views, learning from each other and very importantly, pooling views towards the common goal of the United Nations, which is international peace and security.

3. We have listened keenly to the excellent briefing, which we appreciate; as well as to the views made by delegations who have taken the floor before us. My delegation appreciates that even upon complex subjects such as this one, our discussions create bridges of insight, including on issues that otherwise seem rather difficult.

4. For this reason, we wish to observe that although this subject is relevant for discussion in the Security Council, there are other fora that may progress this discussion in a manner that allows for more in-depth engagements. Additionally, such fora could achieve more than an exchange of views and delve into the legal interpretation of its various aspects. In this regard, this meeting counts as a useful block to the aims of such discussion.

5. Consequently, let me underscore Kenya's abiding commitment, to the purposes and principles enshrined in the Charter of the United Nations, which include; the respect for sovereign equality of all States; the maintenance of friendly relations among States; as well as the obligation, to refrain from the threat, or use of force, against the territorial integrity or political independence of other States.

6. These principles and purposes, have served well as a fundamental foundation, in the conduct of international relations, and should continue to inspire and guide future generations.

7. We find them to be as relevant today, in enlightening this discussion, as they were, when the Charter was first drafted in 1945. And it is our duty as all nations to remain steadfastly dedicated to their implementation and adherence, in both letter and spirit.

   I thank you.

PERMANENT MISSION
OF THE PRINCIPALITY OF LIECHTENSTEIN
TO THE UNITED NATIONS
NEW YORK

NEW YORK, 24 FEBRUARY 2021

SECURITY COUNCIL - ARRIA FORMULA MEETING ON 'UPHOLDING THE COLLECTIVE SECURITY SYSTEM OF THE UN CHARTER: THE USE OF FORCE IN INTERNATIONAL LAW, NON-STATE ACTORS AND LEGITIMATE SELF-DEFENSE'

STATEMENT BY H.E. AMBASSADOR CHRISTIAN WENAWESER

PERMANENT REPRESENTATIVE OF THE PRINCIPALITY OF LIECHTENSTEIN TO THE UNITED NATIONS

Mr. President,

Liechtenstein thanks Mexico for convening this meeting and raising this important question. One of the key achievements of the UN Charter is the prohibition on the use of force. When joining the UN, we have all accepted that the use of force is illegal, except when authorized by the Security Council under Chapter VII or carried out in self-defence in accordance with Article 51 of the Charter. However, Article 51 is increasingly invoked as the legal basis for the use of force without the necessary legal justification. Excessively expansive and unchecked interpretations of Article 51 weaken the international rules-based order as foreseen in the UN Charter. A clear and renewed commitment by the membership is needed, with the aim of upholding the Charter's integrity and authority on the provisions governing the use of force.

When invoking Article 51, in particular preventively, States owe the UN membership a thorough and convincing justification. This would, as a minimum, include evidence of the imminence of an armed attack, as well as of the necessity and the proportionality of measures taken in response.

Mr. President,

Liechtenstein agrees that Article 51 reporting also suffers from a significant lack of transparency.

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Given this deficiency, it is our view that any silence cannot be taken as acquiescence to particular Article 51 positions put forth in the reporting. Procedures should be put in place that improve the transparency of Article 51 reporting, so that information is available to all States about relevant communications and positions, enabling States to provide views in response if they so choose. Enabling such an open and transparent exchange on a building stone of the international legal order would enable us to meet the standards we have set ourselves for effective, accountable and inclusive institutions at all levels in the SDGs.

Mr. President,

The UN Charter foresees an enforcement role for the Council with respect to the most serious violations of the relevant rules under international law that amount to acts of aggression. In addition to the tools contained in the Charter, the Council now also has the option of initiating individual criminal responsibility for those who commit the crime of aggression by referring relevant situations to the International Criminal Court. The activation of the relevant law – the Kampala amendments to the Rome Statute – took effect in July 2018, and we welcome the most recent ratifications by Bolivia and Mongolia bringing the total number of ratifying States to 41. We hope that the law consensually agreed by ICC State Parties will guide States in their internal deliberations on the use of force and this Council in assessing the legality of relevant action taken with a view to ensuring accountability for this supreme crime.

I thank you.

MÉXICO
Misión Permanente de México
ante las Naciones Unidas

-COURTESY TRANSLATION-

STATEMENT DELIVERED BY AMB. JUAN RAMÓN DE LA FUENTE ON THE 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"

February 24th, 2021

Excellencies,

75 years ago, a new era of international relations began; an era where peace would be pursued and secured through the rule of law and war would be outlawed once and for all. To ensure this, we established a collective security system in the UN Charter which continues to be the cornerstone for the maintenance of peace and security. This system is relatively simple. It comprises one rule and two exceptions. The rule: the threat or use of force is prohibited between States. The exceptions: when the Security Council decides to take forcible action in accordance with its Chapter VII powers, and when States exercise their inherent right of self-defense, in accordance with Article 51 of the Charter. No more, no less.

In recent years, however, some States have invoked the right of self-defense to justify the use of force in the territory of another State without its consent, allegedly in response to armed attacks by non-State actors. Sometimes, self-defense has been invoked even before an actual attack has occurred. This has been done under the premise that either a State is "unwilling and unable" to take action or that it is not "exercising effective control" over its territory.

Mexico has expressed its concern regarding this practice for several years in different debates both at the Security Council and the General Assembly. Today, we will focus on three main aspects of these controversial practices that deserve an in-depth analysis.

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First, from a substantive point of view, Mexico rejects the propositions of invoking self-defense on the premise of the so-called "unwilling and unable doctrine" or on the lack of effective control as being legally sound. These caveats are not found within Art. 51 and go beyond the scope of this provision which, because of its nature and aim, was carefully and purposely drafted in a narrow way. They also allow for a dangerous and unilateral margin of interpretation, which can have negative unforeseen consequences in different contexts.

Second, from a procedural point of view, we find it troubling that reports submitted in this context have mostly been drafted in general terms and that some have been submitted *ex post facto*, as a justification of military action. This, combined with the absence of a discussion by the Security Council, runs the risk of offering a "blank check" for States to use force as they deem fit, putting at risk the structure of the collective security system.

Thirdly, there is a great need for more transparency regarding this practice. Even though reports submitted to the Security Council under Art. 51 are public, they are not circulated to all UN Member States and they are practically inaccessible. Given the fact that these reports address instances in which force is or will be used, they are of the interest of the entire international community. Given the opacity in which these situations occur, silence by States cannot be considered as a sign of acquiescence.

To conclude, our actions and words matter and they have the power to consolidate international law. Without an inclusive, transparent, and thorough debate on these issues we run the risk of reshaping the law, and thus fracturing our collective security system. This is the time to uphold the UN Charter and to jointly discuss how can we best address current threats to international peace and security, ensuring that, in doing so, we fully adhere to the international rule of law.

Thank you.

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Arria: The use of force in international law, non-state actors and legitimate self-defense

Statement by Deputy Permanent Representative Trine Heimerback in the 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', 24 February 2021.
24. Feb 2021

Norway would like to thank Mexico for this event which sheds light on a complex and important issue of our collective security. Thank you also to professor Naz Modirzadeh for her insightful briefing, giving us a solid introduction to this issue. We welcome the inclusive format of this discussion and the opportunity to offer a few remarks.

Norway's primary foreign policy interest is to prevent any undermining of the international legal order and multilateral governance systems, which are so critical for our security, economy and welfare. Full respect for international law, not least the UN Charter, is the very foundation of our work in the Security Council.

First of all, we agree that it is in our interest that the Security Council is as transparent as possible. Including in the matters before us, as far as it is possible, and that it is necessary to discuss whether more can be done to facilitate this.

We see that the Security Council could, for example, agree that all Article 51 reports should be immediately circulated to all Member States and be made publicly available. And likewise, any response to Article 51 reports should also be circulated and be made publicly available.

In this regard, given that the Security Council often receives a large number of letters for any one conflict, it would also be a useful practice for all Article 51 reports to be clearly labelled as such by the sending Member State.

Any lack of action by the Security Council following receipt of a report under Article 51, should not be interpreted as an acceptance of the legitimacy of the use of self-defence in that particular situation.

And we should also be careful not to interpret a lack of response or objection from other States to an Article 51 report as an acceptance of its legitimacy.

The purpose of Article 51 is first and foremost to ensure that the Security Council is kept duly informed about any use of force and the factual basis for the action taken.

Colleagues, additionally on the substantive side, the concept paper raises the question on how Article 51 is to be interpreted with regard to attacks perpetrated by non-State actors based on the territory of other states.

While Article 51 is focused primarily on attacks committed by other states, we believe there is a basis in international law to a limited right to use force in self-defence against such attacks, in certain exceptional situations.

As one such example of an exceptional situation, would be our own Article 51-letter to the Security Council of 3 June 2016, in which Norway reported to the Security Council that we were taking necessary and proportionate measures against the terrorist organization ISIL in Syria, in the exercise of the right of collective self-defence at the request of and on behalf of the Iraqi people and territory.

Above all, it is important for us to underline that respect for the principles of the UN Charter is vital. The use of force must only be applied as a last resort. The use of military force may sometimes be necessary, but must only be carried out in accordance with international law.

To conclude, we look forward to discussing this further, for example in the Informal Working Group on Documents and Procedures. The discussion here today certainly provides many ideas on how to make necessary improvements.

[check against delivery]

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"

H.E. Mark Zellenrath

Deputy Permanent Representative of the Kingdom of the Netherlands to the United Nations

NEW YORK, 24 February 2021

Mr / Madam President

The Kingdom of the Netherlands would like to express our sincere thanks to Mexico for convening this Arria formula meeting. We welcome this opportunity to have an exchange on the legal scope of article 51, which is a key provision in the UN Charter.

Mr / Madame president,

The Kingdom of the Netherlands believes that as an exception to the prohibition on the use of force, the right of self-defence must not be interpreted too broadly.
At the same time, the very nature of self-defence requires that it is able to deal with contemporary threats.

When assessing self-defence as the legal basis for the use of force, in our view a few topics are important to note.

First of all, it is important to establish the existence of an armed attack or an imminent armed attack. The use of force must have a certain scale and effects in order to constitute an armed attack. It must consist of more than isolated incidents, terrorist or not.

The Netherlands considers it important to stress that an armed attack can also be carried out by organized armed groups such as the terrorist group ISIL. Thus, in our view, under current international law the right to self-defence can also be invoked against non-state actors. This is the case in situations where the state from which the Non-state actors-attack originates is unwilling or unable to stop the armed attack. The use of force in Syria in collective self-defence of Iraq against ISIL is a case in point.

Second, the force used in self-defence should be necessary to counter the armed attack and be proportionate in relation to this attack. In addition, the force used in self-defence should be in accordance with human rights and international humanitarian law, as applicable.

Third, the end of self-defence as a legal basis for the use of force is also an important topic. In principle, the same criteria apply to establishing the end of an armed attack as to the beginning. We are of the view that a State has some margin of appreciation to determine whether the armed attack has really ended, or whether there is merely a temporary lull.

Lastly, the Netherlands attaches great value to the requirement under article 51 of immediate reporting to the Security Council. We did so before we started to use force in collective self-defence of Iraq in 2016. In this regard we note that the Charter does not specify how to notify or what to include in a notification under Article 51. In our view, if possible, notifications should precede the actual use of force and contain sufficient information on the intended use of force.

Based on the practice of notifications so far, The Netherlands would welcome more transparency and discussion within the Security Council on the notifications received. In that regard, we are grateful that Mexico organized this Arria Formula meeting to discuss this important topic in the right forum.

Thank you.

INTERVENTION OF PERU
THE USE OF FORCE IN INTERNATIONAL LAW, NON-STATE ACTORS AND LEGITIMATE SELF-DEFENSE

New York, February 24, 2021

I would like to congratulate the Permanent Mission of Mexico on convening this important meeting, and to thank Professor Naz Modirzadeh for her briefing, which allows us to exchange views about the use of force in international law, particularly in accordance with Article 51 of the UN Charter. This subject-matter was addressed during the Fourth Informal Meeting of Latin American Legal Advisers on Public International Law, organized by Peru in October 2018.

In this respect, allow me to briefly share with you the national perspective of Peru regarding the use of force, which was also put forward by my delegation during our recent membership in this Security Council:

- The most fundamental of all obligations under present international law derives from the principle of the non-use of force. In 1988, Ambassador Javier Pérez de Cuéllar pointed out that the commitment assumed by the States in Article 2 of the United Nations Charter to resolve their disputes by peaceful means and not to resort to "*the threat or use of force*", unequivocally consecrated the principle of the illegality of the war of aggression. Likewise, he stressed that the acceptance of this principle confers on the Charter its unique character in the history of public international law.
- The Charter establishes two exceptions to the general rule of the non-use of force. First, forcible measures may be taken or authorized

by the Security Council, pursuant to Chapter VII of the Charter. Second, force may be used in the exercise of the right of individual or collective self-defense, as acknowledged in Article 51.

- The delicate balance between the illegality of war and the right to legitimate defense makes it necessary for the international community to monitor and reflect on the scope and implementation of these norms, which have been incorporated into international law, in favor of the supreme objective of peace.
- Nowadays there is serious concern to respond adequately to modern security threats, such as terrorism or the proliferation of weapons of mass destruction. In relation to counter-terrorism, we are aware that in recent years the right to self-defense has been invoked to justify the use of force in the territory of another State.
- We deem that any use of force needs to be exercised in accordance with the Charter of the United Nations and international law. Furthermore, with regards to procedural issues and transparency, we believe that communications to the Security Council, under Article 51, justifying certain actions in the fight against terrorism must be published and brought to the attention of the larger membership. Otherwise, there might be a risk of distorting the restrictive meaning that should be given to self-defense.
- Peru is convinced that, in order to maintain international peace and security, it is important to take actions for the proper consideration of this issue within the Organization, including in the Security Council. A significant and permanent global effort is needed to strengthen the collective security system. You may count with my delegation in that endeavor.

Thank you

Statement of

Her Excellency Ambassador Alya Ahmed Saif Al-Thani
Permanent Representative of the State of Qatar to the UN

At

The Arria meeting of the UN Security Council

On

Upholding the collective security system of the UN Charter:
the use of force in international law, non-state actors and legitimate self-defence
(Organized by Mexico)

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Permanent Mission of the State of Qatar to the United Nations
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Mr. Chair,

At the outset, I would like to express appreciation to Mexico for taking the initiative to convene this Arria formula meeting, and we also thank Prof. Naz Modir-zadeh, Director of the Harvard Law School Program on International Law and Armed Conflict, for her briefing. We are glad to participate in this discussion as we share the organizers' keen desire to understand and adhere to the provisions and purposes of the United Nations Charter.

Excellencies,
Ladies and Gentlemen,

In its foreign policy, the State of Qatar is well-known to emphasize many of the principles that have come up repeatedly in today's discussion, including first and foremost, that all Member States should uphold their obligations in accordance with the UN Charter, and shall refrain in their international relations from the use of force in a manner inconsistent with the purposes of the United Nations.

In its commitment to contribute to efforts to achieve peace, security, stability and development in our region and around the world, the State of Qatar proceeds from the recognition that peaceful means are the best means to achieve these goals.

At the same time, one must recognize that certain situations necessitate the use of force, notably in application of the inherent and legitimate right to self-defense, and to counter the serious threat posed by terrorist acts. There is indeed consensus that terrorist acts do pose serious threats to peace and security and have caused grave human suffering and social and economic impacts. Therefore, many Member States, including the State of Qatar as a responsible member of the international community, has taken part in collective action to fight common threats posed by UN designated terrorist groups, including firm and decisive action as necessary. But again, we must reiterate here that – as a matter of principle – the use of force should only be a last resort, and limited as necessary and in a proportional and responsible manner.

It is worth reemphasizing that the right to act in accordance with the privileges afforded by certain Charter provisions, does not absolve one from obligations per other provisions. Indeed, international law, international humanitarian law and international human right law are always applicable and must be respected.

Excellencies,

Finally, in matters involving regional and international peace and security, we should remember the primary role of the Security Council in accordance with the Charter. This role needs to be undertaken in a responsible manner and strictly in accordance with the relevant provisions of the Charter. In this respect, initiatives such as this meeting, which highlights the primacy of the Charter and commitment to its principles are welcomed and encouraged.

Thank you.

UK Statement – Arria meeting on Article 51 of the UN Charter, 25 Feb 2021

[Check against delivery]

Let me start by thanking the delegation for Mexico organising this event, and the opportunity to discuss some of the broader aspects of the right of self-defence, as well as focusing on the reporting requirement under Article 51 of the Charter.

The starting point of any discussion on the right of self-defence must be the prohibition of the use of force in Article 2(4) of the UN Charter and under customary international law. That is a fundamental tenet of the post-1945 international order, although there are certain exceptions to that prohibition. One such exception is recognised in Article 51 of the Charter, which states that "nothing in the present Charter shall impair the inherent right of individual or collective self-defence". This reference to the inherent right of self-defence is important, because it preserves the long-standing customary international law right of self-defence. It is well-established that measures taken pursuant to the right of self-defence are limited to those that are necessary and proportionate to averting the armed attack that has triggered the right.

Like many other States, the UK's long-standing view is that a State is not required to wait passively until an armed attack has actually been launched before the right to use force in self-defence arises. Customary international law has for centuries provided a right to use force in self-defence against an imminent armed attack. The diplomatic correspondence following the so-called *Caroline* incident of 1837 contains the classic exposition of this right. [In that case it was accepted that in taking measures against an imminent armed attack a State must be able to demonstrate "a

necessity of self-defence instant, overwhelming, leaving no choice of means, and no moment of deliberation."]

It has long been the view of the UK and many other States that the right of self-defence can be triggered by armed attacks (whether ongoing or imminent) by non-State actors as well as by States. The *Caroline* incident itself was a case involving a use of force in self-defence against non-State actors. However, the tragic events of 9/11 and the gravity of the threats posed by international terrorism in recent years have necessitated increasing reliance on self-defence measures in response.

The Security Council's unanimous adoption of resolutions 1368 and 1373 recognising the inherent right of self-defence after the 9/11 attacks, clearly demonstrated that the Council deemed those attacks by non-State actors to amount to an armed attack within the meaning of Article 51.

Since 2015, the UK has used military force against Daesh in Syria as part of an international coalition, which has the support, whether military or political, of some 60 States. The legal basis for the coalition's military operations in Syria is the collective self-defence of Iraq in accordance with Article 51. The UK has also invoked the right of individual self-defence in relation to one military operation within this campaign.

[One of the practical legal questions which arises particularly in relation to armed attacks by non-State actors who operate almost wholly covertly, is the question of the standards by which we judge whether an attack is imminent. The UK has sought to be transparent in setting out its position on what imminence means in the context of the current and evolving terrorist threat and I would refer here to a speech by our Attorney General in January 2017 devoted to this subject.]

The procedural requirement in Article 51 immediately to report to the Council measures taken in the exercise of the right of self-defence is mandatory and, as the International Court of Justice has made clear, not without legal significance. While nowadays such notification is often made in a letter to the President of the Council, which may or may not refer to Article 51, the Charter does not lay down any particular form: notification could even be oral, during a Council meeting. And it may be a matter for interpretation whether a written communication is made under Article 51 or not.

Notifications under Article 51 are usually made available promptly to all Members as United Nations documents. Those that expressly refer to article 51 are listed each year in the Repertoire of the Work of the Security Council. Much useful and timely information is available online on websites such as *Security Council Report* and the updates to *The Procedure of the Security Council* by Sam Daws and Loraine Sievers. It is not clear that more is needed or feasible.

Finally, State practice and the work of the Security Council may of course be relevant to the interpretation of the Charter and the development of customary international law. But great care is needed in identifying and assessing such practice. This was clearly stated by the ILC in the two projects it completed in 2018 on subsequent agreements and subsequent practice in relation to the interpretation of treaties, and on the identification of customary international law. Authors sometimes jump to unwarranted conclusions, for example, about the significance of inaction or silence, which should be viewed in their particular context and specific circumstances. That may be regrettable, it is not in itelf a reason for the Security Council to change its practice.

**Постоянное представительство
Российской Федерации
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24 February 2021

**Statement
by Vassily Nebenzia, Permanent Representative of Russia
to the United Nations at the UN SC Members Arria Formula meeting
"Upholding the collective security of the UN Charter: the use of force in international law, non-state actors and legitimate self-defense"**

Mr. Chairman,

Let me first of all express gratitude to the Permanent Mission of Mexico for organizing this important discussion.

In recent years we have witnessed an unprecedented proliferation of notifications to the Security Council under article 51 regarding the use of force allegedly in self-defense by a number of States against terrorists on the territories of Syria and Iraq. At the same time we also saw a number of responses mostly from the Government of Syria, which strongly deny the qualifications used in these notifications and describe the actions of relevant

States in terms of aggression, occupation and other forms of illegal use of force. We also know what happens on the ground and have a chance to compare the situation with the language of notifications, which too often do not coincide.

This situation became an elephant in the chamber of the Security Council that nobody wished to notice. So we congratulate Mexico for its courage to put this elephant in the limelight.

The issue of the use of article 51 against non-state actors is a difficult one, because this article was not intended for this purpose. We must recognize that. It was drafted in order to describe the right of self-defense against armed attacks of States. However the language of this article allows for a broader interpretation. This broader interpretation became practical after 9/11, which demonstrated that an attack of terrorists may rise to the level of an armed attack of a State. It was confirmed in SC resolution 1368 (2001).

However, it does not mean that any terrorist attack in a cross border context gives rise to the right of self-defense. Firstly, the criteria applicable to the definition of an armed attack must be fulfilled, in particular in terms of the magnitude of the event. Secondly, the position of the government of a

State from whose territory terrorists strike must be carefully assessed. It is one thing when a government directs and supports such an attack and another if it uses all available means to fight such terrorists and is open for cooperation with other States. In the latter case it is obvious that cooperation and consent of the government must be requested. The level of bilateral relations or lack thereof may not be the ground for avoiding this requirement.

Going back to the recent notifications circulated in the Council regarding the use of force by a number of States on the territory of Syria, we would highlight a couple of points.

There is no Security Council resolution authorizing use of force on the territory of Syria. In their notifications States refer to collective self-defense of Iraq against ISIL as the legal basis for their actions. However, Iraq itself did not claim self-defense against ISIL on the territory of Syria. Indeed it has asked for assistance in the fight against this terrorist organization, but it did not specify that such assistance should take the form of the use of force on the territory of Syria. Secondly, the Government of Syria is fighting ISIL by all available means. In this regard we do not see any legal ground not to ask for the Government's permission for the use of force on its territory or not to

coordinate the efforts. This is even more relevant in light of the fact that Syria offered cooperation to all States in the fight against ISIL. Thirdly, and even more significantly, armed activities by a number of States on the territory of Syria go far beyond any action, which maybe qualified as self-defense against ISIL. We observe use of force directed against Syrian army or in support of armed groups who oppose the Government and even occupation of parts of the territory of Syria, in particular for the purposes of denying access to oil fields on the territory of the State to its own Government while providing this access to opposing armed groups.

In this regard, we would like to emphasize that circulation of article 51 notifications in the Security Council and the lack of immediate reactions from States does not and should not mean that actions taken in accordance with them gained legality or that such conduct contributes to the formation of a new norm of law.

The legal architecture of collective security, of which article 51 is a part, is the highest achievement of contemporal legal order based on the UN Charter and nobody should be abusing it.

مداخلة ممثل الوفد الدائم للجمهورية العربية السورية

الوزير المستشار قصي الضحاك

The intervention of

the Permanent Mission of Syria.

Minister Counsellor, Mr. Koussay Aldahhak (DPR)

أمام

الجلسة غير الرسمية لمجلس الأمن حول

"نظام الأمن الجماعي لميثاق الأمم المتحدة: استخدام القوة في القانون الدولي والدفاع المشروع عن النفس"

الرجاء متابعة النص عند الإلقاء

نيويورك في 24/2/2021

Mr. President,

I thank you for organizing this important meeting. And I also thank professor Modizadeh for her briefing.

I would like to point out that sparing humanity from the scourge of wars was the supreme goal of the United Nations. However, this goal collided, unfortunately, with the stands of some Members States who prioritized their narrow interests and ambitions at the expense of the values of law, justice, and the suffering of the peoples of many other Member States, including my country, Syria.

Unfortunately, these governments have attempted to cover up their aggressive acts and their gross violations of the principles of international law, IHL, HR instruments, and the provisions of the UN Charter by seeking to distort the charter and tamper with its provisions, and this is what we witnessed when they formed the illegal and illegitimate so-called "international coalition" under the pretext of "combating ISIS" based on Article /51/ of the Charter, without fulfilling the requirements stated in the text of this article, and without obtaining the approval of the Security Council or the consent of the Syrian Government and without coordination with

the concerned party, which is the Syrian government. We informed the Security Council of our position in several official letters, and we called for the establishment of a legitimate coalition to combat terrorism under the umbrella of the UN but some Western Permanent Member in the Security Council opposed that.

The result was that the illegitimate, "US led coalition" destroyed the Syrian city of Raqqa, killed thousands of its residents, attacked the Syrian Army, and set the stage for the American occupation of parts of the northeast of my country. The Turkish regime has also taken a similar approach, using the pretext of legitimate defense and Article 51 to launch aggressive actions against my country, support terrorism, and occupy parts of Syrian territory in north and northwest Syria.

My delegation stresses the need to put an end to all attempts to misuse the provisions of the Charter, and distorted interpretations of Article 51 by some Member States, and calls for the upholding of the principles of international law and the provisions of the Charter that represent the common denominator between us. We support a genuine and objective dialogue on this topic. **Thank you, Mr. President.**

Statement by H.E. Mohan Peiris, Permanent Representative of Sri Lanka at the UNSC Arria Formula Meeting: "Upholding the collective security systems of the UN Charter: the use of force in international law, non-state actors and legitimate self-defense"

https://www.un.int/srilanka/news/statement-he-mohan-peiris-permanent-representative-sri-lanka-unsc-arria-formula-meeting-

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Statement

by

Isis Gonsalves

Political Coordinator

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

Security Council

February 24th, 2021

New York

Check against delivery

Thank you, Chair,

Saint Vincent and the Grenadines welcomes today's discussion and we thank the Permanent Mission of Mexico for hosting this meeting. We also thank our esteemed briefer, Prof. Naz Modirzadeh, for her remarks.

The COVID-19 pandemic has brought into closer focus the intrinsic value of our multilateral system. At a time when many nations, the world over, face alarming uncertainties over the health and well-being of their societies, the norms and rules of international law offer the greatest assurance against disorder.

As a matter of principle, our delegation emphasizes that all states have the right to act in self-defence, as a last resort, if and only when absolutely necessary and with proportionality. Notwithstanding, the fundamental principles of non-intervention, non-interference, and the pacific settlement of disputes, as outlined in the UN Charter, should guide all states in their efforts to cooperate constructively and peacefully coexist.

Any derogation from these universally accepted norms, *wheresoever and by whomsoever committed*, severely undermines the ideals of multilateralism embodied in our United Nations. For this reason, our delegation maintains that all forms of unilateral action, whether through militarism or any other form of coercion, should be abandoned; while dialogue, diplomacy and other participatory tools,

such as mediation, are pursued. These are the primary pathways to peace and security.

To be sure, there are some contexts within which states may be compelled to use force to protect civilians, dispel non-state armed groups, and defend their sovereignty and territorial integrity. However, there can be no viable substitute for collective action in the pursuit of just, lasting and equitable outcomes. To this end, we underscore the important role of regional cooperation in addressing cross-border challenges, such as terrorism, in a manner which privileges the relevant provisions of international law, including international humanitarian, human rights, and refugee law.

To conclude, our delegation underscores that security has always been and will continue to remain a collective project. When parties build trust and mutual respect, guided by the norms and rules of multilateralism rather than by fear or coercion, peace and stability will flourish.

Thank You.

Statement by Ambassador Tarek Ladeb
Permanent Representative of Tunisia to the UN
***
Security Council Arria formula VTC meeting

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

***

New York, 25 February 2021

Thank you, Juan Ramón. I also would like to thank the briefer for her presentation.

We appreciate the leading efforts of Mexico in bringing this topic front and center at both the Charter Committee and the Security Council.

We also welcome the timely legal conversation held over the last few days in the Charter Committee on articles 2(4) and 51 of the UN Charter, which helps inform our present discussion.

At the same time, we would like to underscore the prominent relevance of the Security Council for our topic.

In particular, this Arria meeting allows us to steer an open and practical discussion that situates legal rules in their political context, thus reducing the self-contained character of doctrinal analysis and channeling normative thinking in effective directions.

Mr. President,

The prohibition of the threat or use of force constitutes one of the foundational principles of the UN Charter and a cornerstone of the contemporary international legal order.

Any use of force between states is unlawful, intolerable and unjustifiable outside the framework of collective security and with the exception of individual or collective self-defense, as per article 42 and article 51 of the Charter, respectively.

The recurring invocation and praxis by states of self-defense in reaction to transnational non-state actors, in particular terrorist groups, seen in the growing number of communications to the Security Council under Article 51, reflects not only the interrelation of article 51 with article 2(4) of the Charter, but also tension between the two.

There is therefore a need for clarity, caution and action to avoid any possible abuse of the right of self-defense.

Tunisia's core position is grounded in international legality and international cooperation. It is what constitutes our political, legal and moral compass on this issue. And I would like to further elaborate upon in the following.

Firstly, the importance of upholding international legality.

We underline the fundamental importance of upholding respect for the UN Charter, as well as UN security council resolutions relevant to counterterrorism.

We further stress the purpose of maintaining international peace and security by the United Nations under Article 1(1) of the Charter, with Arab security being paramount.

Secondly, upholding the collective security system for the lawful use of force in accordance with the UN Charter.

It is to underline within this framework the primary role and responsibility of the Security Council as the guardian of international peace and security, with primary international control over the use of force.

The security council authority which is based on the consent of all UN member states must therefore be respected and restored.

Additionally, the Security Council should heed the communications received under Article 51 in a timely manner, considering the potential escalation, lapse or relapse into conflict, and take decisive action, where appropriate, to maintain or restore peace and security.

Thirdly, strengthening international cooperation and coordination on counterterrorism.

The increasing recourse to the transnational use of force in self-defense against terrorist groups reflects the fractured character of the response to terrorism by the International Community.

By virtue of the principle of necessity, the State hosting non-state actors, in particular terrorist groups, should be given the opportunity in the first place to halt and prevent the attacks by the non-state actor through its domestic law enforcement measures and with due observance of the applicable rules of international law.

But there is also a need to promote inter-state cooperation and coordination, particularly in light of the interplay between domestic and international responses to terrorism.

Fourthly, more clarity on the scope and application of the principle of self-defense in counterterrorism contexts.

Legitimate self-defense cannot end on a categorical note or a rhetorical flourish. Rather, its semantic justifiability will continue to be debated in a changing political reality that involves new actors and new challenges.

There is therefore a need for more clarity and predictability in international legal rules through the progressive development of international law and jurisprudence, so as to enhance shared legal norms and understandings and define appropriate forms of state conduct.

In conclusion, Mr. President, while normative understandings vary with historical and political context, it remains that more than 75 years after the signature of the UN Charter, the prohibition on the use of force has established itself as a long-term regularity of law and practice.

The constant drive must nevertheless be that nations remain amenable and committed to international law and to the rule of law in the pursuit of friendly relations and a just and orderly international system.

I thank you.

STATEMENT BY THE REPUBLIC OF TURKEY

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-defence"

24 February 2021

Mr. Chair,

Article 51 of the UN Charter, which embodies the inherent right of self-defence, clearly stipulates to whom this right belongs, while not using restrictive language as to the actor against which this right may need to be exercised. This actor can indeed be -and increasingly is- a terrorist organization. Any other interpretation of this article would be contrary to the notion of self-defence.

Furthermore, the recognition of the "inherent" nature of this right rooted in customary international law; the pronouncement that "nothing in the Charter shall impair this right"; and the fact that the article does not attempt to regulate this concept in detail, reinforce the very particular nature of self-defence.

The foregoing aside, it is all too clear that terrorism constitutes one of the most serious threats to international peace and security in the 21st century. Terrorist organizations carry out heinous attacks and inflict serious harm beyond the borders of nation states. In most cases, this is done without the consent, support or involvement by the State from whose territory they launch their terrorist activities.

This brings us to the concept of sovereignty, and the responsibilities and obligations that it entails, as reflected in the letter and spirit of the UN Charter. Sovereignty is linked inseparably to its effective and due exercise. However, unfortunately, this is not always the case in practice. Indeed, we have very frequently been seeing instances in which States are not capable or willing to prevent terrorist organizations from controlling parts of their territories and using them as safe havens to carry out terror attacks against neighbouring and other States.

From a broader perspective, the issue of failed states poses a major challenge. As a matter of fact, these countries fail to exercise their sovereignty, and accordingly cannot discharge their legal responsibilities first and foremost towards their neighbours.

In this context, the responsibilities attributed to States by Security Council resolutions 1368 (2001), 1373 (2001), 1624 (2005), 2170 (2014) and 2249 (2015) among others, must be taken into consideration. The first two of these resolutions clearly reaffirmed the inherent right of self-defence in the face of international terrorism, in other words, terrorism that crosses international borders, with overwhelming support by the international community. Further, in the past few decades, States from various regions of the world have exercised this right against the threats posed and violent crimes launched by terrorist organizations. Some of these cases indeed concerned the lack of necessary action by the State on whose territory the relevant terrorist organizations operated.

Having stated the above, there is no doubt that the principles of necessity and proportionality should be observed, and all applicable rules of international law respected in the exercise of the inherent right of self-defence.

We consider the term "immediacy" in Article 51 to be clear, bearing in mind that the reporting requirement is not a condition on the lawfulness of the exercise of self-defence. Transparency in the work of the UN, on the other hand, should be tackled holistically and in a non-arbitrary manner.

Finally, we advise caution against an unduly restrictive interpretation of Article 51, that would hamper States' fundamental right and responsibility to protect their territory and nationals against actual or imminent attacks by terrorist organizations. As we saw with Da'esh and Al-Qaida, this problem has become one that knows no boundaries, and that can very quickly come and knock on our door. Therefore, such a restrictive approach as to the scope of the inherent right of self-defence would also undermine the existential fight against international terrorism, which we have decided to undertake as the global community.

Turkey remains committed to work towards ensuring that we can address the contemporary global challenges in an effective, collective and non-discriminatory manner, while preserving the integrity of the UN Charter.

Mr. Chair,

We are obliged to express our regret that this meeting which aimed to have a non-political discussion of the topic in question, was disrupted by ill-intentioned attempts to make accusations and baseless allegations against Turkey, which we reject.

Turkey has expressed in a loud and clear manner that it is fully committed to the principles of territorial integrity and political unity of States in its exercise of the inherent right of self-defence against the direct and imminent threat posed by terrorist organizations from across its borders. The measures taken in this regard are in strict adherence to these principles, as well as to the principles of necessity and proportionality, targeting only the terrorists and their hideouts, weapons and equipment.

We also categorically reject the allegations of the delegation of Armenia, which contained similar elements of smear campaign, used by that delegation in previous months. Instead of misusing every platform of the UN, we advise Armenia to focus on fulfilling its obligations under international law, which it blatantly violated for three decades, including by its illegal occupation of Azerbaijani territories.

Thank you.

Statement by the Delegation of Ukraine at the Arria Formula Meeting on «Upholding the collective security system of the UN Charter: the use of force in international law, non-state actors and legitimate self-defence»
(24 February 2021)

Mr. Chair,

The delegation of Ukraine would like to thank Mexico for organizing this Arria formula meeting. It is a good opportunity to discuss the issue of maintaining international peace and security against the backdrop of armed attacks against UN Member States.

By joining the UN, Member States undertake the responsibility to act in conformity with international law, including the Charter's Purposes and Principles, in particular to 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.

This principle underlines that armed force shall not be used, save in the common interest and, in principle, through the collective security system of the United Nations. Resort to force by individual states on their own initiative constitutes a departure from this principle and is permitted only under exceptional circumstances, if an armed attack occurs against a member of the United Nations as stipulated in article 51 of the Charter.

In the San Francisco Conference, Subcommittee in charge of Article 2, Paragraph 4 stated that "the right of self-defence against aggression should not be impaired or diminished." This is particularly relevant when the source of aggression is a permanent member of the Security Council, who systematically abuses its veto right and blatantly disregards its obligations to maintain peace and security. Such acts discredit the Security Council as a body authorized to take measures necessary to maintain international peace and security in view of Article 51.

At the very initial period of the Russian armed aggression against my country in March 2014, the Ukrainian Parliament adopted an Address to the United Nations, where, in accordance with the right to self-defence, acknowledged by Article 51, Ukraine reserved the right to request the states and the regional collective security systems to assist in restoring its sovereignty, territorial integrity and inviolability. This Address was transmitted to the President of the Security Council by the letter dated 13 March 2014.

We were forced to refer to our right to act in accordance with the Article 51 on the later stages of the Russian aggression as well. It happened in particular at the Security Council meeting in August 2014 following the full-scaled Russian incursion in Donbas. On numerous occasions our right of self-defence has been reconfirmed and supported by the members of the Security Council.

The Russian Federation carries out its armed aggression against Ukraine both directly and through its proxies. Russia has occupied and exercises effective control over the parts of Ukrainian territory in Crimea and Donbas. At the same time, Russia has created the illegal armed formations and continues to support, control and provide them with weaponry and personnel in an attempt to conceal its own responsibility as a party to international armed conflict and its instigator. The proper response to such violations by a UNSC permanent member, damaging for the Security Council credibility, should be a part of our discussion on invocation of the Article 51.

In conclusion, we should admit that today the role of self-defence cannot be confined to a subsidiary one only. As long as a situation of an armed aggression by a UNSC permanent

member exists, thus undermining the ability of the Security Council to duly exercise its mandate, self-defence will remain the legitimate last resort for the states under attack.

Thank you, Mr. Chair

THE SOCIALIST REPUBLIC OF VIET NAM
PERMANENT MISSION TO THE UNITED NATIONS

STATEMENT
by H.E. Ambassador Dang Dinh Quy
Permanent Representative of the Socialist Republic of Viet Nam
at the UNSC 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-defence"
New York, 24 February 2021

Mr. Chairman,

The principle of non-use or threat of force is one of the most important principles enshrined in the UN Charter and international law.

It is deeply troubled that in recent years, several instances of use or threat of use of force have been witnessed in international relations, running counter to the UN Charter and posing serious threats and challenges to international peace and security.

The right to self-defence was invoked in increasing frequency to justify the use of force, including in response to armed attacks by non-state actors, in particular terrorist groups.

In that context, my Delegation would like to share the followings:

First, our collective and individual imperative must continue to be the development of friendly relations among nations and building of a culture of upholding the UN Charter and international law. We must abide by the principles of sovereignty, territorial integrity, non-interference in domestic affairs, non-use or threat of force and peaceful settlement of disputes. The Security Council needs to further uphold full implementation of and compliance with international law and strengthen the role and validity of international law in the maintenance of international peace and security.

Second, it is the obligation of each and every State to peacefully resolve disputes and refrain from threat or use of force. The Council should make full use of cooperation and coordination with regional organizations and legal bodies in promoting the resolution of disputes, preserving peace and preventing conflicts.

Third, the UN Charter exhaustively provides for lawful use of force. Any use of force without the Security Council's authorisation or outside the scope of the right to self-defence is without legal basis. Attempts to reinterpret or abuse the UN Charter drive us all down a very dangerous and unsettling path. In that spirit, we fully support inclusive and transparent dialogue and exchange of views and practice in the implementation of Article 51. We also believe that the Council should continue to improve its working methods, so as to increase accessibility by Member States to its documents and to facilitate discussion.

Viet Nam remains strongly committed to upholding the role of the UN Charter and international law as an indispensable tool in the maintenance of international peace and security.

I thank you./.