From Al-Qaida to ISIL: The Decisions and Practices of the UN Security Council Related to the Right to Self-Defense Against Non-State Actors from 2001 - 2014

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The UN at 10: Guaranteeing Security and Justice
The Hague. 2015

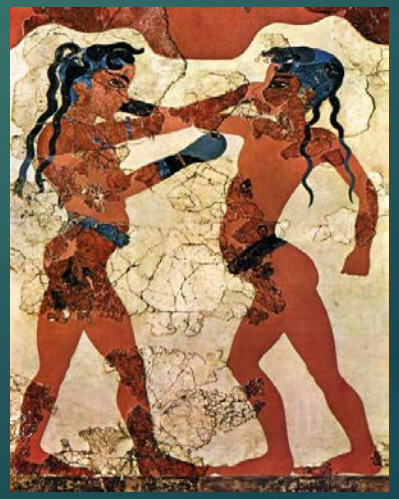
- Don Quixote (Miguel de Cervantes):
- “the fortunes of war more than any other are liable to frequent fluctuations …”

The Right to Self-defense Against Non-State Actors: The Legal Bases

- Article 2.4 UN Charter.
- "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

The Right to Self-defense Against Non-State Actors: The Legal Bases

- Article 51. UN Charter.
- Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council ....



The Right to Self-defense Against Non-State Actors and the SC

- Bases of the Alleged Right:
- UN Security Council Resolutions 1368 and 1373 of 2001. (9/11).
- *"Determined* to combat by all means threats to international peace and security caused by terrorist acts,
- *Recognizing* the inherent right of individual or collective self-defence in accordance with the Charter."

A Positive Approach

- "It is reasonably clear and accepted that states have a right of self-defense against attacks by non-state actors—as reflected, for example, in UN Security Council Resolutions 1368 and 1373 of 2001, adopted following the 9/11 attacks …" (AJIL 2012)

The State of the Law in 2004

- International Court of Justice. Wall Advisory Opinion. (2004).
- No right to self-defense against autonomous non-state actors.

"Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State. However, Israel does not claim that the attacks against it are imputable to a foreign State."

A Middle Ground

- “In principle, the rules of treaty interpretation and on the sources of international law do not exclude the possibility that Art. 51 is reinterpreted, including on the basis of subsequent practice. …. “

- “In view, however, of the fundamental importance of the right to self-defense for the Charter system of collective security, the conditions for the recognition of any significant reinterpretation of, of superseding exception to, Art 51 are strict.”

- Scope of the Wall Opinion regarding the right to self-defense in light of the Vienna Convention on the Law of Treaties:

- Security Council resolutions and practice up to 2004 did not expand Article 51 to create a new exception.
- More Security Council practice would be required.

Security Council Practice 2002 – 2014
Threats to International Peace Caused by Terrorist Acts: Resolutions

YEAR	MULTILATERAL INSTRUMENTS	SELF-DEFENSE
2002	4	0
2003	4	0
2004	4	0
2005	5	0
2006	1	0
2007	1	0
2008	2	0
2009	1	0
2010	1	0
2011	2	0
2012	2	0
2013 2014	1 5	0 0
TOTAL	**34**	**0**

Security Council Practice 2002 – 14
Threats to International Peace Caused by Terrorist Acts: Presidential Statements

YEAR	MULTI N. INSTR	SELF-DEFENSE
2002	3	0
2003	3	0
2004	5	0
2005	8	0
2006	4	0
2007	9	0
2008	4	0
2009	1	0
2010	2	0
2011	2	0
2012	1	0
2013	1	0
2014	3	0
TOTAL	46	0

Press Statements & Terrorism

YEAR	
2002	1
2003	1
2004	1
2005	1
2006	0
2007	3
2008	8
2009	5
2010	7
2011	9
2012	12
2013	26
2014	22
TOTAL	96

Security Council Practice 2002 – 14
Threats to International Peace Caused by Terrorist Acts

- Main Features of the Subsequent Practice

Security Council Practice 2002 – 14
Threats to International Peace Caused by Terrorist Acts
Right to Self-Defense Against Autonomous Non-State Actors

- Absence of explicit subsequent practice

Implicit Security Council's Practice?

- Resolution 1373 (2001) has been almost always reaffirmed to by the SC in its practice related to terrorist attacks.

- Can it be said that the fact that Res. 1373 has been reaffirmed means that there has always been a tacit reaffirmation of the right to self-defense against terrorist acts?

Right to Self-Defense is Invoked and the SC Remains Silent

- United States, Iraq 2014

UN Security Council: Moving Away from the Right to Self-Defense against Non-State Actors?

- Presidential statement of January 7, 2007:

  The Security Council pledges to uphold the purposes and principles of the Charter of the United Nations, and reaffirms its commitment to the principles of sovereign equality, national sovereignty, territorial integrity and political independence of all States, underlines further the need for respect for human rights and the rule of law, including protection of civilians in armed conflict, and the importance of adhering to the principles of refraining, in international relations, from the threat or use of force in any manner inconsistent with the purposes of the United Nations, and of peaceful settlement of international disputes. …

  The Council reaffirms its commitment to address the whole range of threats to international peace and security, including armed conflict, terrorism and proliferation of weapons of mass destruction.

UN Security Council: Moving Away from the Right to Self-Defense against Non-State Actors?

- Presidential statement of May 4, 2012 after a terrorist attack in Russia, the President expressed:

  The Security Council reaffirms that Member States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, and shall also give the UN every assistance in any action it takes in accordance with the UN Charter, and shall refrain from giving assistance to any State against which the UN is taking preventive or enforcement action.

UN Security Council: Moving Away from the Right to Self-Defense against Non-State Actors?

- Presidential statement of 15 January 2013:

  The Security Council stresses that terrorism can only be defeated by a sustained and comprehensive approach involving the active participation and collaboration of all States and international and regional organizations to impede, impair, isolate and incapacitate the terrorist threat.

  The Security Council also reaffirms that Member States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, and shall also give the United Nations every assistance in any action it takes in accordance with the United Nations Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action.

Multilateral Instruments vs Self-Defensive Actions against Non-State Actors in the SC

- Evolution Multilateral Inst.

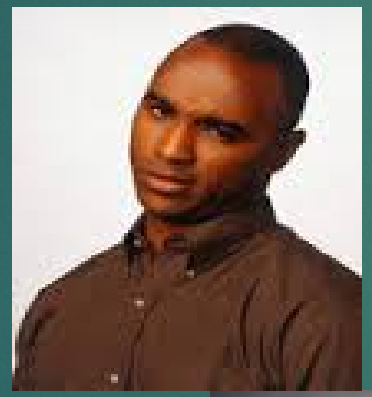
Evolution Self-Defensive Actions

Subsequent Practice by States Have Expanded Article 51

- Number of States that have been part of the SC from 2002 – 2014

70

The UN General Assembly and the Right to Self-Defense Against Non-State Actors

- No subsequent decisions related to Article 51 (2001 – 2014)

Can a Limited Number of States Expand Article 51?