2249 resolution does not allow bombarding in Syria

16/12/2015



As we all know, the use of force from a State is forbidden based on the United Nations Charter As overall standard rules this one prohibits it, with exceptions listed in the charters: it refers to military operations authorized through the Security Council Chapter VII, or those adopted from a State against another State within its legal use of self defense (article 51). In this latter case, the prior Security Council authorization is not necessary, but the State must officially inform the Security Council on those actions that will be taken in compliance with the terms stipulated in article 51.

Self defense hereafter is a legal military response to a military violence from another State. Consider also that a preliminary consent from a state to require another State support to launch a military campaign is valid as per International Law.

Since a State is pretending to use force against another entity which is not a legitimate state, how does it relate to? Or when a legitimate state is acting upon those rules, based on self defense without violence of armed forces coming from another State? Or finally when a State is looking to operate air strikes to another territory without a prior consent?

This is the perspective that is useful to stress-out briefly, and which has been adopted by the Security Council and introduced as an international response to Paris ‘Attacks 13th November 2015.

In fact, within a week of the Paris ‘attacks, the Security Council of the United Nations adopted 2249 resolution (2015) 20th November 2015 its terms are based on the resolution brief introduced by France, amended afterwards, and then fully acted from fifteen Security Council members. It’s important to read it carefully, particularly in view of the official response announced and even further following the vote.

A resolution adopted in response to other attacks

Strictly considering the first positive fact read as follows : Unanimously adopting resolution 2249 (2015), the Council unequivocally condemned the terrorist attacks perpetrated by ISIL — also known as Da'ech — on 26 June in Sousse, on 10 October in Ankara, on 31 October over the Sinaï Peninsula, on 12 November in Beirut and on 13 November in Paris, among others. It expressed its deepest condolences to the victims and their families, as well as to the people and Governments of Tunisia, Turkey, Russian Federation, Lebanon and France.

Notice, the listed attacks comprises also the event in June 2015, without prior to a resolution from the Security Council since then, as the latest resolution on terror attacks, dated February 12th 2015. followed by resolution 2214 (2015) from march 27th 2015 regarding attacks in Libya in which the Security council: " condemn all terrorist attacks by ISIL and related groups ANF, Ansar el-Charia and other individuals, groups, undertakings, and entities associated with Al-Qaida, and other terrorist groups, as designated by the United Nations Security Council, and as may further be agreed by the International Syria Support Group (ISSG) and endorsed by the UN Security Council, pursuant to the statement of the International Syria Support Group (ISSG) of 14 November, and to eradicate the safe haven they have established over significant parts of Iraq and Syria;"

"Urges Member States to intensify their efforts to stem the flow of foreign terrorist fighters to Iraq and Syria and to prevent and suppress the financing of terrorism, and urges all Members States to continue to fully implement the above-mentioned resolutions;"

This is not only an up-date of the Security Council, listed attacks committed since June 2015 allowing the Council to consider a larger number of countries which were targeted victims of terror attacks, providing meaningful statement of article 5 with the same resolution which is stipulated finally : "Recalling that ISIL and the Al-Nusrah Front (ANF) and all other individuals, groups, undertakings and entities associated with Al-Qaida also constitute a threat to international peace and security, "Determined to combat by all means this unprecedented threat to international peace and security"

An enthusiastic behavior

On the legal side, France, (Mr. Delattre) recalled that, on 13 November, Da'ech had perpetrated an act of war against France. The text provided a guarantee that there would be an effective fight against transnational terrorism, "Our military actions, which we informed the Security Council from the beginning, have been justified through self defense on a collective action basis he said, pointing out that collective action could now be based on Article 51 of the United Nations Charter."

Grounded solely on self defense (and not based on military action or other facts and concerns), France joins a position with other member states which carried-out air strikes in Syria.

In October 2015, France stated also under "self defense" as Philippe Lagrange Law professor (University of Poitiers) said: "until now France was applying international Law considering military action. To undergo air strikes in Syria they had to agree with legal authorities of the country, or through a Security Council resolution, but we have none of them at all" In an article published in September, in "La Croix" we can read that Ariel Colonomos (R & D at CNRS) : The French minister of Defense was relating to the idea of fairness in "war" a concept developed through philosophers in Christian law in order to rule interactions between States, understating that fairness, self defense or salvages of innocents, was a last resort commitment, including right proportion and probabilities of success.

A strange feeling of « déjà-Vu »

« fairness », « global threat », "self defense" statements, with regards to justifying military operations adopted in response of illegitimate entities 'actions, these words remind us strangely enough « self defense » stipulated in the Unites States of America following 11/9 attacks in 2001. As we all remember "self defense precautions" "illegal use of fighters" or statements like "violence" to qualify a terrorist attack or "war" to qualify fights against terror attacks are all narratives, arguments for debate, and argued being used by the United States to justify legal operations after 9/11/2001.

With regards to the idea of « self defense preventive measure » we need to remember that the first State to refer officially on this, is Israel in 1981 during the attacks done by Israeli fighter jets on Iraqi Osirak's nuclear reactors : 35 years after its publication, and also after other actions which were led by Israel, George's Fisher conclusion is of today's concerns; " we are surprised that such a small country acts regularly with such impunity to challenge

international rules of law and the rights of people". Recently, in march 2008, another ally of the United States Colombia, referred also to self defense, to justify its military action in Equator (Fenix operation carried out march 1st 2008)-

In the case of Paris attacks dated 13th November, to qualify this as « an act of war » and « violence against our country » from authorities in France, seem to declare very tough times, for some international law principles and foundation. It's well noted also that the definition of "violence" within the 3314 resolution adopted in 1974 by the general assembly of the United Nations can be completed by being an act of violence which was adopted by la Cour Pénale Internationale (CPI) in 2010 at Kampala (so nine years after 9/11) – this one does not include actions committed by illegitimate state independently or other entities against another state : so read again the following definition, (the one stipulated by French delegates who participated in, during its writing with the 120 nations members and being, Parts of the Statutes of Roma).

A missing fact, unnoticed since the beginning

With regards to the 2249 resolution of the UN Security Council, the French delegate stressed-out, in his speech that this resolution is laying down within the basis of International Law and the Security Council charters of the United Nations which is our common purpose and remaining loyal to the United Nations our fruitful core values. The text provided a guarantee that there would be an effective fight against transnational terrorism". It is valid to say that International law experts should feel happy to see a State taking the United Nation charters as real fruitful core values, nevertheless it has to be well noted that charters include a 2249 resolution and a specific note, which are based on a Russian motion; this is a little detail which does not seem to emerge!

In the press release of the United Nations, it indicates « Mr. Vitaly Churkin was happy to see amendments brought forth from his delegation at their own request, particularly dispensations here above within the Charter of the UN which are now included" On another hand, with regards to the Security Council framework, there is a note regarding the text amended from the first version provided by France said Russia, and on which Russia insisted on. – It goes without saying, the introduced resolution by France without mentioning the Charter and its dispensations is quite unusual : We leave this to experts to know if we are not in a "first" new set of attitudes by French diplomacy at the United Nations. This is also something where States and the International Community were very cautious with regards to high risks of drift, this fact is quite surprising.

We advise to read art 5 of 2249 resolution as is was adopted, and to imagine what are "fruitful core values"-

The press release of the United Nations indicates that the Security Council, calling upon Member States with the requisite capacity to take "all necessary measures" to prevent and suppress its terrorist acts on territory under its control in Syria and Iraq" is careful, whereas in a press article from "Le Monde" it states that "resolution 2249 does not allow a legal authorization to act through military actions in Syria and Iraq because it is not within terms UN charters under Chapter VII, which therefore provides the use of military force. But the false narrative being used within the resolution indicates "all necessary measures" are allowed against ISIL, this is somewhat a weird translation of French diplomats"

As we know it is difficult to understand legal matters which are sometimes biased but useful especially concerning regulations meaning, to make it believe it's clear as water is so confusing and could support one's opinion, as attacks in Paris caused upheavals in the public especially with related propaganda.

We are in a grey area here, which the text demonstrates in the resolution especially with art 5. Requiring all States "to take all necessary measures", it's beyond doubt, because it's immediately associated with "complying with International Law especially with regards to United Nations Charters". Military actions in Syria are therefore excluded on that basis, so the prompting plea by the French during the vote is doubtful. We leave this to the reader, but it must be shared that there is a room for debate since there is a note "with regards to the United Nations Charters".

Lately, legal experts were examining confusion related to 2249 (2015) resolution created by other parties. "It is stipulated that further to 2249 resolution, it is written in such a way that it could be translated politically as a military action, without mentioning the rules within these measures and the legal authority body to order them. It's a creative confusion, which allows anyone to not require permission and gives the feeling of an approval from the Security Council, which leaves room for unresolved dispute, debates based on ones' legitimacy of such military actions."

Note, that in United Kingdom, doubt raises which looks like a meaningful authorization given by the Security Council: Before the House of Commons, through the British Prime minister, and pledged 26th November 2015.

Military Operations beyond International Law

As we know, military campaigns in Syria have been done to send fighter jets for screening and bombarded Da'ech areas for few months. This has been carried out by Australia, Canada and the United States, France and U.K. (which comprises drones for the latter) and other "coalition members against ISIL".

In short, remember this coalition community has been launched by the United States in September 2014 and comprises of sixty states according to the official list recorded by the State Department, as per 23rd November 2015 this record comprises 63 states and two international organizations according to the Prime minister of the United kingdom – Note that there are thirty states engaged through army, according to French diplomacy, as said before the French Senate. During the deployment of armed forces by Russia in Syria, this is not 60 states or 30 states that came along, but only seven of them, in a short statement dated 2nd October 2015: Germany, Saudi Arabia, France, United States, Qatar, Turkey, United Kingdom. This could be what the prime minister in UK quoted as « Coalition air strikes against ISIL in Syria ».

Air Strikes in Iraq have been monitored in numbers, there is lower information for Syrian air strikes; when there are some, there could be objections : whereas the first ones in Syria operated by the coalition in September 2014 were led by the United States. (According to the Guardian referring to Saudi Arabia, Bahrain, Arab Emirates, Jordan, Qatar, another article published in The Independent, April 2015 indicates that first air strikes were led by the coalition in Syria. Some States communicated and showed justifications for these actions at the Security Council (stipulating for some of them, either self defense, or collective self defense) whereas others remained silent. These air strikes create a relevant legal issue, because Syria's consent has not been substantiated, as well as the authorization from the Security Council.

In the case of Iraq, a letter dated 20th September 2014 sent out to the Security Council of the United Nations, stipulates, « this is why, according to International law, bilateral and numerous agreements, have to comply to our national sovereignty and our constitution, we required specifically international action backed from the United States, to strike ISIL and their military bases with the aim of reducing regular threats against Iraq, to protect its inhabitants and finally allow the Iraqi armed forces to take back national borders".

In the case of Russian military actions in Syria, they are endorsed by the consent of the latter State. An earlier analysis on the case, which might be noticed by the legal team of the Quai d'Orsay, concludes "based upon the ruling of the Court and the replies from States with regards to armed intervention of France in Mali and of Russia in Syria, none of these rules seem to prohibit an intervention of a state in a civil war upon request from the Government. In this case, a Russian armed intervention in Syria complies with international law".

Concerning other air strikes launched into Syria, Australia launched its first bombs 15th September 2015 then Turkey 16th September 2015 and, a first drone from the British 7th September 2015 according to an article published in the New York Times which killed three suspects from Da'ech, two of them being British citizens. The same day, United Kingdom communicated an earlier action dated 21st august 2015 . British diplomats being eccentric sometimes, they explained to the Security Council that killing the Da'ech suspects in Iraq and Syria were complying with their right of self defense both collectively and individually. : We are waiting to see if the killing of a suspect from a drone can be extended to actions within the British territory as well… With this new type of device, French citizens might be targeted with some strikes in Syria, like last month; this caused various concerns, like in the latest article published in Liberation in which we can read: "targeting French citizens instead of fighting a global threat from ISIL is equivalent to an execution without judicial order". In the reporting introduced to the House of Commons lately there is only information on air scouting within the territory of Syria.

First air strikes from France

Concerning French air strikes in Syria, the French bombarded Syria by air two months ago, Sunday 27th September 2015. Little information has been reported from the French authorities specifically on the choice and the reason of this chosen date to target Syria. Is this a coincidence, (luckily or not) in his speech before the General assembly of the United Nations 24 hours later, the head of State merely informed "France/…/ seeks to take responsibility. So there we are, and again, that includes an armed intervention and through the use of force"

In this last speech, and despite that it sounds motivated by Humanitarian concerns, air strikes intervention in Syria where there is tough human living conditions, ones might have some concerns to know whether France has been evaluating risks before launching their first bombs in Syria: A backlash from Da'ech against France would have been possible following the first bombs 27th September. Coordinated attacks in Paris 13th November 2015 indicate, that preventable measures would have been taken by the intelligence agency and those working against terror attacks in France, there was limited efficiency. During his speech before the Senate, 25th November the head of French diplomacy declared " 13th November changed the parameters, we have no more choice than to wipe-out Da'ech".

The British and Canadian slow move

Concerning Canada, first air strikes in Syria were carried out in April 2015. After the United States, Canada became the second member of NATO organization to operate this type of actions in Syria. Reluctantly, the British on their side, are still arguing on the matter. A report introduced in October 2015 from the House of Commons and published on line at the Voltaire network exposes limitations especially concerns on the legal basis. – Lately a national debate exposing strikes in Syria is still ongoing. – We shall remind you that for the time being British military actions in Syria seem limited to air screening and targeted attacks with a drone. Lately 26th November, the British executive power declared its intention to extend actions in Syria and to proceed with bombs.

Note that the new authorities elected in Canada, took the liberty to stop strikes in Syria (and Iraq as well) as 21st October 2015. Canadian writers examined the so called legitimate actions in Syria with International Law and also precedent, based upon the International Court of Justice (CIJ) and they concluded that much to our opinion, this applies also to other strikes operated by other States: "there is no escape possible: air strikes from Canada in Syria are based upon weak legal basis, or unsettled".

Risk of breach and drifts

Regarding the use of military force in Syria, obviously putting such constructions are questionable particularly concerning obligations and duties provided by the United Nations Charters and also through untimely declarations from officials. This is another chapter of International Law which shall lead to stirring debates. On the day that Francois Hollande declared France "at war" the French judges' association stipulated that "the speech of martial law being invoked and this legal definition with a state of emergency by a decree based upon a law dated 3rd April 1955 raises concerns and worry". On another hand, Amnesty International exposed risks and breach of liability in these words: "amendment of the emergency law needs two days debate in our parliament". The bill shall take another three months, which therefore extends law enforcement agency's ability in proceeding to further freedom limitations. Numerous amendments have been required which strengthen law enforcements and state emergency. State emergency allows more police search, and to detain individuals without warrant, to nullify definitely nonprofit entities. These extensions are applicable when necessary and related in capacity with dispensations within a timely manner. More important, provided herein under specific condition cases, because it does not rely on common rights and restricts freedom and human rights"

To Conclude

Missing attempt to refer to the Charter, martial law speech, war behavior and threats, misleading and doubtful understanding rules, regulations and use of armed forces (and most probably Human Rights charters), all these reminds us, of the war conditioning which has been imposed on us after 9/11 in the United States of America. The US strategy in their "war against terrorism" seems to have new followers in France, even though they failed though, as we know it. Based on this, a connection is not far away and not a fancy of the mind: the first foreign diplomat who went to the Elysée palace directly after the attacks in Paris was the secretary of State John Kerry, 17th November 2015; and François Hollande's first trip to a foreign country following these attacks, was 24th November 2015 to the latter in Washington.