

INTERNATIONAL COURT OF JUSTICE

LEGAL CONSEQUENCES ARISING FROM THE POLICIES AND
PRACTICES OF ISRAEL IN THE OCCUPIED PALESTINIAN TERRITORY,
INCLUDING EAST JERUSALEM

(REQUEST FOR AN ADVISORY OPINION)

WRITTEN STATEMENT OF JAPAN

25 July 2023

I. Japan's position on the Middle East Peace Process

1. On 30 December 2022, the United Nations General Assembly adopted a resolution titled "*Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem*" (A/RES/77/247), whereby it decided to request the International Court of Justice (ICJ):

"to render an advisory opinion on the following questions, considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004:

(a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?

(b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?"

2. With regard to the Middle East Peace Process, Japan supports a two-state solution whereby Israel and a future independent Palestinian state live side by side in peace and security. Japan emphasizes that the conflict between the Israeli and the Palestinian sides including the final status of Jerusalem can be resolved only through negotiations and efforts to build mutual trust among the parties to the conflict. Japan also reiterates that terrorism cannot be justified for any reason and urges all the parties concerned to exercise maximum restraint and refrain from violence and provocative actions in order to avoid further escalation of the situation. Japan has been committed to supporting the Palestinians with a view to creating a favorable environment for the achievement of peace in the Middle East and has extended more than US\$2.3 billion in assistance to the Palestinians since 1993 in order to improve the humanitarian situation of Palestine and promote its economic self-

reliance.

3. It is regrettable that the peace talks between the two parties have stalled since 2014 while unilateral measures such as settlement activities continue despite repeated calls from the international community. As the ICJ found in the Advisory Opinion concerning “*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*” (the *Wall Advisory Opinion*), the construction of the wall in the Occupied Palestinian Territory and its associated regime are contrary to international law and undermine the viability of a two-state solution.
4. Japan fully understands Palestinians’ desire to seek all the avenues available, in light of the current stalemate in the Middle East Peace Process and the situation on the ground, which is extremely dire. At the same time, it is also necessary to carefully consider which approach is the most appropriate in achieving lasting peace in the Middle East.

II. The Prohibition of Acquisition of Territory by Force

5. With regard to the questions posed to the ICJ, Japan considers that the prohibition of the acquisition of territory by force is an essential element of the rule of law among nations to which Japan is profoundly attached, and of particular importance to the peace and stability in the region and the international community. As declared in its written statement in the proceedings concerning the *Wall Advisory Opinion*, Japan believes that the “acquisition” of land by force is not admissible, and measures taken under such “acquisition” do not constitute a basis for obtaining territorial title under international law.
6. Considering the particular importance Japan attaches to the question relating to the prohibition of acquisition of territory by force, Japan wishes to submit the following view on the scope of the prohibition.

7. The ICJ examined the principle of the inadmissibility of acquisition of territory by force in the *Wall Advisory Opinion*. Paragraph 121 of the opinion reads:

“The Court considers that the construction of the wall and its associated regime create a “fait accompli” on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to *de facto* annexation.”

8. By referring to ‘annexation’ of territory, this statement by the Court can be interpreted as one which applied the principle of the inadmissibility of the acquisition of territory by force to the Israeli construction of the wall in the Occupied Palestinian Territory. If so, the ICJ might seem to consider that the construction of the wall could amount to the acquisition of territory by force prohibited under Article 2(4) of the United Nations Charter because it creates a ‘*fait accompli*’. On the other hand, the ICJ did not make clear determination on the violation of Article 2(4) in this opinion.
9. Japan believes that the prohibition of threat or use of force under Article 2(4) of the United Nations Charter constitutes the most fundamental rule of the post-war regime for peace based on the rule of law among nations. As the ICJ clarified in the *Wall Advisory Opinion*, the illegality of the acquisition of territory by force is a corollary of the prohibition of use of force incorporated in the UN Charter and it reflects customary international law. GA Res 2625 (XXV) “*Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*” (the Friendly Relations Declaration) reads:

“The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal.”

10. The Security Council and General Assembly resolutions have repeatedly confirmed the prohibition on acquiring territory by force. In the context of the situation of the Middle East, Security Council resolutions including 242 (1967), 298 (1971), 478

(1980) refer to this principle. Most recently, in the context of Russian acts in Ukraine, GA Res ES-11/4 titled “*Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations*”, adopted on 12 October 2022 with the overwhelming support of 143 UN Member States, reaffirmed this prohibition. Japan believes that this prohibition provides an important safeguard for the international community against the return of rule by force.

11. In the same vein, on 20 May this year, G7 Leaders met in Hiroshima, Japan, and issued a Communiqué containing the following paragraph relating to the rule of law among nations:¹

“We will champion international principles and shared values by:

- upholding and reinforcing the free and open international order based on the rule of law, respecting the UN Charter to the benefit of countries, large and small;
- strongly opposing any unilateral attempts to change the peacefully established status of territories by force or coercion anywhere in the world and reaffirming that the acquisition of territory by force is prohibited;” (p2)

12. Japan takes the position that the prohibition of acquisition of territory by force under the UN Charter: (i) extends to the sending of regular or irregular forces to a territory which is within another State’s internationally recognized border, or a territory under another State’s peacefully established control, and acquiring or strengthening control over such territories through coercion; and (ii) applies even if those acts do not cause death, injury or destruction.

13. GA Res ES-11/4 dealing with Russian acts in Ukraine addressed attempts to acquire territory beyond internationally recognized borders through violent use of force by regular armed forces causing death, injury and destruction. On the other hand, the UNGA resolution 68/262, adopted in the context of the attempted annexation of Crimea on 27 March 2014, seems to indicate that the attempted annexation process constituted unlawful acquisition of territory by force and therefore shall not be

¹ G7 Hiroshima Leaders’ Communiqué, May 20, 2023, available at <https://www.mofa.go.jp/files/100506878.pdf>.

recognized². In this case, the attempted annexation process did not seem to involve violent use of force by regular armed forces. On the other hand, armed forces carrying weapons were reported to play an important role in controlling the situation on the ground through coercion, not necessarily engaging in violent use of force causing death, injury or destruction. It was also reported that Russia admitted that forces operating in Crimea without insignia were Russian. Should these reports be confirmed, such an attempt to acquire territory through creating a *fait accompli* by sending irregular forces carrying weapons to a territory within another State's internationally recognized border, controlling the situation on the ground through coercion, and unilaterally declaring their annexation, would constitute unlawful acquisition of territory by force prohibited under the UN Charter. In this regard, it is also worth noting that the GA resolution 3314(XXIX) on the Definition of Aggression refers to actions that do not necessarily involve the violent use of force causing death, injury or destruction³.

14. In cases relating to territorial disputes where the ICJ was also asked about the application of Article 2(4) of the UN Charter to the deployment of armed personnel to disputed territories, the ICJ did not exclude the possibility of applying Article 2(4) to activities in disputed territories but did not find it necessary to dwell further on

² The resolution recalled Article 2 of the UN Charter and the Friendly Relations Declaration in the preamble, and its operative paragraphs read:

“1. Affirms its commitment to the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognized borders;
2. Calls upon all States to desist and refrain from actions aimed at the partial or total disruption of the national unity and territorial integrity of Ukraine, including any attempts to modify Ukraine's borders through the threat or use of force or other unlawful means; ...
6. Calls upon all States, international organizations and specialized agencies not to recognize any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol on the basis of the above-mentioned referendum and to refrain from any action or dealing that might be interpreted as recognizing any such altered status.”(emphasis added)

³ For example, Article 3(e) of the Definition refers to ‘the use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement’.

this particular question⁴. On the other hand, not only territory which is within another State's internationally recognized border, but also territory under another State's peacefully established control shall not be subjected to attempts to acquire territory by force⁵.

15. On 18 April 2023, G7 Foreign Ministers reaffirmed the prohibition of the acquisition of territory by force. The related paragraph of the Communiqué reads:⁶

⁴ In the judgment on *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica)* (ICJ Rep (2015) 740, para 97), the ICJ said:

“... in the circumstances, given that the unlawful character of these activities has already been established, the Court need not dwell any further on this submission. As in the case concerning Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria Equatorial Guinea intervening), the Court finds that ‘by the very fact of the present Judgment and of the evacuation’ of the disputed territory, the injury suffered by Costa Rica ‘will in all events have been sufficiently addressed’.”

On the other hand, Judge Owada argued in his separate opinion: ‘... it is my view that it would have been more appropriate for the Court to have gone further by declaring that these internationally wrongful acts by Nicaraguan authorities constituted an unlawful use of force under Article 2(4) of the United Nations Charter’. (Separate opinion of Judge Owada, *Costa Rica v Nicaragua* and *Nicaragua v Costa Rica* (Merits, Judgment of 16 December 2015) paras 11, 12.) Judge Robinson concurred with Judge Owada on this matter (Separate opinion of Judge Robinson, *Costa Rica v Nicaragua* and the *Nicaragua v Costa Rica* (Merits, Judgment of 16 December 2015) para 51) . See T Mikanagi, “*Establishing a Military Presence in a Disputed Territory: Interpretation of Article 2(3) and (4) of the UN Charter*”, ICLQ Vol 67(2018) 1021-1034.

⁵ The Eritrea-Ethiopia Claims Commission found that Eritrea violated Article 2(4) of the UN Charter by attacking and occupying in 1998 the town of Badme, whose sovereignty was claimed by Eritrea but which the Commission found was under ‘peaceful administration’ by Ethiopia at the time. The Commission later found that Badme belongs to Eritrea and there was no “internationally recognized border” between territory under Eritrea’s administration and Badme at the time of attack in 1998. However, the Commission recognized that Badme was under Ethiopia’s peaceful administration and the use of force by Eritrea to acquire Badme violated Article 2(4). (*Eritrea-Ethiopia Claims Commission*, Partial Award, Jus ad Bellum: Ethiopia’s Claims 1–8 (19 Dec 2005) 26 RIAA 465, paras 10-16.) The Commission did not define the term “peaceful administration” in this award, but it should include the control over a territory peacefully established without protest from other States.

⁶ G7 Japan 2023 Foreign Ministers’ Communiqué, April 18, 2023, Karuizawa, Nagano, available at <https://www.mofa.go.jp/files/100492731.pdf>.

“The prohibition of threats or the use of force against the territorial integrity or political independence of any state, in accordance with the provisions of the UN Charter, constitutes the cornerstone of the post-war international system. Yet, territorial ambition is again driving some states to return to rule by force, so we have redoubled our efforts to uphold peace guided by the rule of law. The prohibition on the acquisition of territory resulting from the threat or use of force, reaffirmed in the Friendly Relations Declaration of 1970, should be observed in good faith. We strongly oppose any unilateral attempts to change the peacefully established status of territories by force or coercion anywhere in the world. In this regard, sending regular or irregular forces to unilaterally annex a territory is prohibited.” (pp10-11)

16. Security Council Resolution 242 (1967) emphasizes the inadmissibility of “the acquisition of territory by war” and the commitment of Member States to act in accordance with Article 2 of the UN Charter in the preamble.
17. As the prohibition of threat or use of force constitutes the cornerstone of the post-war international system based on the UN Charter, the prohibition of acquisition of territory by force shall be observed in good faith, taking into account the object and purpose of the UN Charter.
