

The rule of law at the national and international levels (item 84)

Japan's Statement on 7 October 2022

On 20 September 2022, Prime Minister Kishida stated in his address at the 77th Session of the United Nations General Assembly that “Japan is fully committed to the realization of a United Nations that promotes the rule of law in the international community”, and that the ‘Friendly Relations Declaration’, which was adopted at the General Assembly in 1970, serves as a foundation from which the following three basic principles for the promotion of the rule of law are drawn.

- **First, break away from "rule by force" and pursue "rule of law" through observing international law in good faith;**
- **Second, in this regard, do not allow any attempts to change the status quo of territories and areas by force or coercion; and**
- **Third, cooperate with one another against serious violations of the principles of the UN Charter.”**

1. Break away from "rule by force" and pursue "rule of law" through observing international law in good faith

Based on Article 2(4) of the UN Charter and the Friendly Relations Declaration, States shall refrain from threat or use of force as a means of settling international issues. Under the Article 2(2) of the Charter, All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter. The Friendly Relations Declaration refers to “the paramount importance of the Charter in the promotion of the rule of law among nations” and such obligation as well.

These obligations constitute fundamental duties of States in moving away from the “rule by force” and pursuing “rule of law”.

2. Do not allow any attempts to change the status quo of territories and areas by force or coercion

Throughout the history of humankind, military and other coercive activities attempting to change the status quo of territories has increased tension and has posed threat to international peace and security. The Friendly Relations Declaration clearly renounced the acquisition of

territory by force. It also proclaimed that no State may use coercive measures in order to obtain from another State the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind.

Rules of international law relating to the legal status of territory has been developed through jurisprudence of international tribunals. Some might argue that there is ambiguity in rules of international law relating to the status of territories. However, if the States observe existing rules of international law relating to the legal status of territories in good faith, there shall not be military or other coercive attempts to change the status. In this context, it is worth noting that Article 2(3) of the UN Charter obliges States to settle disputes over territories through peaceful means rather than through force or coercion.

Some States might also attempt to invoke right to self-defense for use of force in this context. However, where a territory has been administered peacefully, the right to self-defense cannot be invoked to deny the peaceful administration. In addition, the right to self-defense under Article 51 of the Charter shall be invoked only against an armed attack and within the requirements of necessity and proportionality.

3. Cooperate with one another against serious violations of the principles of the UN Charter

The Security Council has primary responsibility for the maintenance of international peace and security, and UN Members have obligation to give assistance to any action taken by the Security Council under Article 2(5) of the UN Charter. However, if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly may make recommendations to Members for the maintenance of international peace and security under the Uniting for Peace resolution.

The most serious and dangerous violation of Article 2(4) of the UN Charter would amount to an act of aggression, and even not so serious violation of Article 2(4) may pose a threat to peace. The Friendly Relations Declaration refers to the obligation not to recognize territorial acquisition resulting from the threat or use of force as legal, and it also refers to States' duty to co-operate with other States in the maintenance of international peace and security. This would include the duty to cooperate within each States' capacity to end an attempt to acquire territory through use

of force which is considered by the General Assembly to be violation of Article 2(4) in accordance with the Uniting for Peace resolution.

Mr./Madam Chair,

In our view, these are basic and universal obligations and duties for all the States in promoting the “rule of law” among nations instead of “rule by force”. As Prime Minister Kishida emphasized, “The rule of law is not reserved for one particular State or region” and “We need to remind ourselves that the rule of law is especially important for vulnerable nations.” Strengthening the rule of law through upholding UN Charter will, in the long run, benefit all States and lead to sustainable growth and sound development of the international community.

Based on this philosophy, Japan has been playing its active role in advancing the rule of law, including through the reinforcement of international judicial organizations such as the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS), and the International Criminal Court (ICC), by providing both human and financial resources. As a member of the Security Council from next January, not just listening to big voices but being attentive to small ones, we will redouble our effort to fortify the rule of law in the international community.

Thank you.