



Security Council

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Letter dated 3 January 2023 from the Permanent Representative of Japan to the United Nations addressed to the Secretary-General

I have the honour to inform you that, under the presidency of Japan, the Security Council plans to hold a ministerial-level open debate on 12 January 2023, on the theme “The rule of law among nations”, under the item entitled “The promotion and strengthening of the rule of law in the maintenance of international peace and security”.

In that regard, Japan has prepared the attached concept note (see annex).

I should be grateful if the present letter and its annex could be circulated as a document of the Security Council.

(Signed) Ishikane **Kimihito**
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Japan to the United Nations



Annex to the letter dated 3 January 2023 from the Permanent Representative of Japan to the United Nations addressed to the Secretary-General

Concept note for the ministerial-level open debate of the Security Council on the theme “The promotion and strengthening of the rule of law in the maintenance of international peace and security: the rule of law among nations”, to be held on 12 January 2023

Introduction

Seventy-seven years have passed since the Charter of the United Nations was unanimously adopted. Fifty-two years have passed since consensus was achieved on the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution [2625 \(XXV\)](#), annex). The year 2022 marks the tenth anniversary of the adoption, in 2012, of the declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels (resolution [67/1](#)). The Assembly has adopted a resolution affirming the importance of the rule of law every year since 2006.

Nonetheless, challenges to the rule of law among nations remain on almost every front, especially regarding adherence to the Charter. Despite the fact that our Heads of State and Government agreed in the 2012 declaration that our collective response must be guided by the rule of law, some may point out that, in reality, there is now severe pressure on both the rule of law and the purposes and principles of the Charter. We need to remind ourselves that we should pursue the rule of law, instead of rule by force, especially for vulnerable nations.

The Secretary-General, in his report entitled “Our Common Agenda” ([A/75/982](#)), makes reference to a new vision for the rule of law. This open debate will give Member States an opportunity to have a deeper discussion on how to take action, under the United Nations framework, to ensure international peace and security through the promotion of the rule of law. At the same time, Member States are invited to build on the accumulation of prior discussions at the United Nations and actions they themselves have taken and to share their fundamental notions of what the world should look like from the viewpoint of the rule of law among nations, looking ahead to the Summit of the Future, to be held in 2024.

Background

The Declaration on Principles of International Law was probably the first major United Nations document aimed at clarifying principles of international law in which clearly mention was made of the rule of law among nations. The Declaration was adopted on a consensus basis in 1970 and was a landmark document for promoting the rule of law among nations and, in particular, promoting the universal application of the principles embodied in the Charter. The Declaration, together with the provisions of the Charter, can serve as a foundation from which the basic principles set out below are drawn.

First, on the basis of Article 2 of the Charter, in the Declaration, Member States clarified principles essential for the pursuance of the “rule of law” instead of “rule by force”. With regard to Article 2 (4) of the Charter, Member States provided in the Declaration that States shall refrain from the threat or use of force as a means of settling international disputes. Article 2 (2) of the Charter reads as follows: “All

Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.” The Declaration also contains a reference to the duty to fulfil, in good faith, the obligations under international law.

Second, Member States clearly renounced the acquisition of territory by force. Under the Declaration, the deployment of armed personnel to territory that is beyond internationally recognized borders or under the peaceful administration of another State to attempt to change the status quo on the ground for the acquisition of the territory and create a *fait accompli* through coercion would amount to an attempt to acquire territory by force. In that context, it is also worth noting that, under Article 2 (3) of the Charter, States are obliged to settle disputes over territories through peaceful means rather than through force or coercion. The right to self-defence under Article 51 of the Charter shall be invoked only against an armed attack and within the requirements of necessity and proportionality and should not be invoked speciously and entirely as a pretext.

Third, Member States articulated in the Declaration the duty of States to cooperate with one another in the maintenance of international peace and security. The Security Council has the primary responsibility for the maintenance of international peace and security, and Member States are obliged to give assistance to any action taken by the Council under Article 2 (5) of the Charter. However, if the Council, owing to a lack of unanimity among the permanent members, fails to exercise its primary responsibility in a case where a State violates Article 2 (4) of the Charter and where there appears to be a threat to the peace, a breach of the peace or an act of aggression, the General Assembly may make recommendations to Member States regarding the maintenance of international peace and security under its resolution 377 A (V), entitled “Uniting for peace”. In such a case, States shall cooperate within their capacities to end an aggression or an attempt to acquire territory through the use of force.

In the 2012 declaration on the rule of law at the national and international levels, Member States reaffirmed their solemn commitment to the purposes and principles of the Charter, to international law and justice and to an international order based on the rule of law, all of which are indispensable foundations for a more peaceful, prosperous and just world.

In the 2012 declaration, Member States recognized that the rule of law applies to all States equally and to international organizations, including the United Nations and its principal organs, and that respect for and the promotion of the rule of law and justice should guide all of their activities and accord predictability and legitimacy to their actions.

Furthermore, in the 2012 declaration, Member States indicated their determination to establish a just and lasting peace all over the world, in accordance with the purposes and principles of the Charter. They rededicated themselves to support all efforts to uphold the sovereign equality of all States, to respect their territorial integrity and political independence, to refrain from the threat or use of force in any manner inconsistent with the purposes and principles of the United Nations, and to uphold the resolution of disputes by peaceful means and in conformity with the principles of justice and international law, and the fulfilment in good faith of the obligations assumed in accordance with the Charter. Under such collective endeavours at the international level, Member States also reaffirmed that human rights, the rule of law and democracy are interlinked and mutually reinforcing. The importance of fair, stable and predictable legal frameworks was recognized in that regard for generating inclusive, sustainable and equitable development, among other things.

A resolution on the rule of law at the national and international levels has been adopted every year since 2006 (since 2012: resolutions [68/116](#), [69/123](#), [70/118](#), [71/148](#), [72/119](#), [73/207](#), [74/191](#), [75/141](#), [76/117](#) and [77/110](#)), in which the General Assembly reaffirmed the significance of principles that included the duty of all States to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes and principles of the United Nations.

Today's conflicts and global challenges are a clear reminder for Member States of the pressing need to reconfirm the paramount importance of the Charter to promoting the rule of law among nations for peace, stability and prosperity in the international community, including for vulnerable countries.

Objectives and guiding questions

Participant countries, as they prepare their statements, are invited to consider the guiding questions set out below. The objective of the meeting is to reaffirm the meaning and role of the rule of law among nations and the common understanding that the rules to which all Member States have agreed must be observed by all.

1. What is the role of the rule of law among nations for fulfilling the purposes of the United Nations and the Charter, namely the maintenance of the peace and security of the international community?
2. What are the significance of and challenges regarding the rule of law for your country (peace and security, development, human rights, etc.)?
3. Are the principles of the Charter being challenged and, if so, which principles and rules should be reaffirmed and what should Member States do to defend them for the maintenance of international peace and security?
4. How can we strengthen the General Assembly, the Security Council, the role of the Secretary-General, the International Court of Justice and other international systems with a view to promoting the rule of law?

Format, briefers and participation

The ministerial-level meeting will be held on 12 January 2023, at 10 a.m. (Eastern Standard Time), in an open debate format, in order to allow the wider membership to participate. It will be chaired by the Minister for Foreign Affairs of Japan, Hayashi Yoshimasa, and will feature briefings by:

- The Secretary-General;
- The President of the International Court of Justice (via videoconference);
- Dapo Akande, Professor, University of Oxford.

Member States wishing to participate in person should inscribe their names on the list of speakers through the eSpeakers module of e-deleGATE. A letter addressed to the President of the Security Council, duly signed by the Permanent Representative or the Chargé d'affaires, a.i., containing a request to participate in accordance with rule 37 of the Council's provisional rules of procedure must be uploaded to the eSpeakers module of e-deleGATE. Inscription for the meeting will open on 9 January 2023 at 9.30 a.m. (Eastern Standard Time).

The presidency encourages the participation of as many Member States as possible. Statements or interventions should not, however, exceed three minutes.