

国際司法裁判所は、国連総会の要請に基づく勧告的意見（Advisory Opinion, *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*）を 2024 年 7 月 19 日に発出した。国連総会によってなされた質問（A/RES/77/247）は以下のとおり。

- (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 [...]?
- (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 [...] from this status? [GA Res ¶18]

この質問について、国際司法裁判所はまず次のように述べた上で検討に入った。

[T]he terms of question (a) assume that these policies and practices are contrary to international law. [...] By virtue of its judicial function, however, the Court must itself determine the lawfulness of the policies and practices [...]. [AO ¶74]

上記を踏まえて、以下の 2 つの問に回答せよ。

問 1（50 点）

ガザに関して、勧告的意見は次のように述べる。

Following the 1967 armed conflict, Israel, as the occupying Power, placed the Gaza Strip under its effective control. However, [...] [b]y 2005, Israel had completed the withdrawal of its army and the removal of the settlements in the Gaza Strip. [AO ¶88]

A State occupies territory that is not its own when, and to the extent that, it exercises effective control over it [...]. [AO ¶90]

Physical military presence in the occupied territory is not indispensable for the exercise by a State of effective control [...]. [AO ¶91]

Where an occupying Power, having previously established its authority in the occupied territory, later withdraws its physical presence in part or in whole, it may still bear obligations under the law of occupation to the extent that it remains capable of exercising, and continues to exercise, elements of its authority in place of the local government. [AO ¶92]

- (1) 占領に関する国際法の目的・存在理由に鑑み、¶91 で述べられている裁判所の結論を根拠付けよ。裁判所の結論を肯定する立場から議論すること。
- (2) (1) での回答を踏まえ、¶92 の従属節 (“Where [...] in whole,”) が付される理由を説明せよ。

問 2 (50 点)

裁判所は、様々な事実を検討した上で以下の結論に達する。

The sustained abuse by Israel of its position as an occupying Power, through annexation and an assertion of permanent control over the Occupied Palestinian Territory and continued frustration of the right of the Palestinian people to self-determination, violates fundamental principles of international law and renders Israel's presence in the Occupied Palestinian Territory unlawful. [AO ¶261]

Consequently, Israel has an obligation to bring an end to its presence in the Occupied Palestinian Territory as rapidly as possible. [AO ¶267]

これに対して、以下のような少数意見 (Joint Opinion of Judges Tomka, Abraham and Aurescu) が付されている。なお、この少数意見は、イスラエルによる“annexation”が国際法上違法であることについては多数意見と立場を同じにしている。

The legality *ab initio* of a situation of military occupation mainly depends on the question of whether the military action which gave rise to the occupation can be considered lawful or unlawful in terms of *jus ad bellum*. But the Court did not receive sufficient information to rule, on an objective basis, on the respective responsibilities of the various parties involved in the armed conflict of 1967. The Court therefore cannot assess the legality of Israel's use of force which is at the direct origin of the occupation at issue in the present case. [JO ¶33]

[T]he relevant question is whether the occupying Power – Israel – could today completely withdraw from the occupied territories “as rapidly as possible”, in the absence of any guarantee, without exposing its security to substantial threats. In the current context, we find it quite difficult to answer this question in the affirmative. [JO ¶36]

**ab initio* 当初の、当初からの

- (1) 多数意見と上記少数意見との相違点を説明せよ。
- (2) (1) での回答を踏まえ、そのいずれが適切であるか、あるいは第三の立場がより適切であるか、説明せよ。どの立場を採るかは評価の対象としない。