SPEECH BY HE JUDGE NAWAF SALAM, PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE, BEFORE THE SIXTH COMMITTEE OF THE GENERAL ASSEMBLY

25 October 2024

Mr Chairman,
Distinguished Delegates of the Sixth Committee,

It is a great honour for me to address this Committee for the first time as President of the International Court of Justice (ICJ) and to maintain the solid ties and the tradition of annual exchange between us. Let me first congratulate His Excellency Mr Rui Vinhas on his election as Chairman of the Sixth Committee for the seventy-ninth session of the General Assembly.

I have chosen to speak to you today about the place of the "individual" in the jurisprudence of the ICJ, in line with the "pact for the future" adopted last month, in which it was stressed that people ought to be placed at the centre of all the actions of our organization, not to mention the UN Charter, which famously starts with "we the peoples".

Unlike international criminal courts which deal with the criminal responsibility of individuals, the ICJ, in addition to its advisory function, serves as a dispute settlement mechanism between States. As you know, only States may be parties to contentious proceedings before the Court. Nonetheless, there are a number of ways by which individuals can see their rights protected by the proceedings before Court. Let me first mention that we have recently witnessed a significant increase in cases involving human rights treaties such as the Convention on the Prevention and Punishment of the Crime of Genocide (or the "Genocide Convention"), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (or the "Convention against Torture"), and the International Convention on the Elimination of All Forms of Racial Discrimination (or "CERD"). Irrespective of the motivations that might have driven the States parties to bring these cases before the Court, it cannot be said that the Court loses sight of the rights and interests of human beings in the exercise of its judicial dispute settlement function — not to mention its advisory role, to which I shall return.

*

It is true that, unlike international human rights tribunals, individual complainants cannot plead autonomously before the ICJ. Yet, this does not mean that they cannot see their rights under international law protected by the Court.

I will start by addressing the protection of human rights through the indication of provisional measures in particular. Recently, we have witnessed an increase in the number of cases brought before the Court on the basis of human rights treaties in the context of armed conflicts, as well as an unprecedented increase in requests for the indication of provisional measures. This shows that States do not hesitate to turn to the Court, even in times of war. Let me stress, however, that this has also given the Court the occasion to reaffirm that the protection offered by human rights conventions does not cease in times of armed conflict.

As you know, the purpose of provisional measures is the preservation of the rights claimed by States pending the Court's decision on the merits of a case. The Court exercises this power only when there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the plausible rights which are the subject of judicial proceedings.

In assessing whether there is a risk of irreparable harm to States' rights at issue in a case brought under a human rights treaty, the Court examines whether there is a risk of irreparable harm to the protected rights of individuals.

For instance, in assessing whether there is a risk of irreparable prejudice to plausible rights in dispute between two States in cases brought under CERD, the Court has held on several occasions that the rights stipulated in this Convention, such as the right of persons not to be subject to racial hatred and discrimination, the right to security and other civil rights (for example, the right to freedom of movement, the right to leave any country including one's own, and to return to one's country), are of such a nature that prejudice to them is capable of causing irreparable harm. It has also held that individuals subject to inhuman and degrading treatment or torture could be exposed to a serious risk of irreparable prejudice. Furthermore, the Court has recognized that psychological distress, like bodily harm, can lead to irreparable prejudice (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 389, para. 82; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, p. 431, para. 69).

Following a request for the indication of provision measures filed by The Gambia in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia* v. *Myanmar)*, and when examining whether there was a risk of irreparable prejudice and urgency, the Court held that

> "[i]n view of the fundamental values sought to be protected by the Genocide Convention, . . . the rights in question in these proceedings, in particular the right of the Rohingya group in Myanmar and of its members to be protected from killings and other acts threatening their existence as a group, are of such a nature that prejudice to them is capable of causing irreparable harm".

Since the ultimate beneficiaries of human rights treaties are individuals, when the Court orders provisional measures, the rights of human beings are being protected alongside the rights of States.

Allow me to give some examples of specific provisional measures that have been indicated, the ultimate beneficiaries of which were individuals. In the case concerning the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation)*, the Court ordered both Parties, on 15 October 2008, within South Ossetia and Abkhazia and adjacent areas in Georgia, to

> "(1) refrain from any act of racial discrimination against persons, groups of persons or institutions;
>
> . . . . . .
>
> (3) do all in their power, whenever and wherever possible, to ensure, without distinction as to national or ethnic origin,
>
> (i) security of persons;
>
> (ii) the right of persons to freedom of movement and residence within the border of the State;
>
> (iii) the protection of the property of displaced persons and of refugees;

(4) do all in their power to ensure that public authorities and public institutions under their control or influence do not engage in acts of racial discrimination against persons, groups of persons or institutions".

In the same case, the Court ordered both Parties to "facilitate, and refrain from placing any impediment to, humanitarian assistance in support of the rights to which the local population are entitled under the International Convention on the Elimination of All Forms of Racial Discrimination".

In the case concerning the application of CERD, filed by Azerbaijan against Armenia, the Court ordered Armenia to

> "take all necessary measures to prevent the incitement and promotion of racial hatred, including by organizations and private persons in its territory, targeted at persons of Azerbaijani national or ethnic origin" (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan* v. *Armenia), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 431, para. 76 (1)).

In the case brought by Armenia against Azerbaijan concerning the application of the same convention, the Court indicated several provisional measures aimed at protecting the rights of persons under CERD. For instance, in its Order of 17 November 2023, the Court ordered Azerbaijan to

> "(i) ensure that persons who have left Nagorno-Karabakh after 19 September 2023 and who wish to return to Nagorno-Karabakh are able to do so in a safe, unimpeded and expeditious manner; (ii) ensure that persons who remained in Nagorno-Karabakh after 19 September 2023 and who wish to depart are able to do so in a safe, unimpeded and expeditious manner; and (iii) ensure that persons who remained in Nagorno-Karabakh after 19 September 2023 or returned to Nagorno-Karabakh and who wish to stay are free from the use of force or intimidation that may cause them to flee".

The Court also ordered Azerbaijan to "protect and preserve registration, identity and private property documents and records that concern the persons [who have left or who remain in Nagorno-Karabakh] and have due regard to such documents and records in its administrative and legislative practices" (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan), Provisional Measures, Order of 17 November 2023*, para. 74 (2)).

The case concerning the *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and Netherlands* v. *Syrian Arab Republic)* is another in which the beneficiaries of provisional measures were individuals. In this case, the Court ordered the Syrian Arab Republic, on 16 November 2023, to "take all measures within its power to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment".

In the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel)*, the Court indicated several provisional measures. In its first Order of 26 January 2024, the Court considered that

> "Israel shall, in accordance with its obligations under the [Genocide Convention], in relation to Palestinians in Gaza, take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention, in particular:
>
> *(a)* killing members of the group;

(b) causing serious bodily or mental harm to members of the group;

(c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and

(d) imposing measures intended to prevent births within the group".

The Court also ordered Israel to "take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip".

These orders indicating provisional measures are an illustration of how human beings can be at the centre of the protection offered by the Court. In addition, since the *LaGrand (Germany* v. *United States of America)* case in 2001, which concerned the protection of the lives of two individuals whose rights under the Vienna Convention on Consular Relations were violated, the Court has underlined that orders indicating provisional measures are binding in character and create legal obligations upon States.

*

I would like to highlight the importance of the ongoing trend in the Court's jurisprudence towards a greater recognition of the rights and interests of the individual under international law, not only in its orders indicating provisional measures, but also in its judgments.

A milestone in this trend is the case concerning *Ahmadou Sadio Diallo*, between the Republic of Guinea and the Democratic Republic of the Congo (DRC). In that case, Guinea filed an Application in respect of a dispute concerning "serious violations of international law" alleged to have been committed upon the person of Mr Diallo, a Guinean national. It alleged that Mr Diallo was unjustly imprisoned by the authorities of the DRC, despoiled of his sizeable investments, businesses, movable and immovable property and bank accounts, and then expelled. In its Judgment on the preliminary objections of 24 May 2007, the Court found Guinea's Application to be admissible in so far as it concerned the protection of Mr Diallo's rights as an individual, as well as his direct rights as *associé* in two companies. In this context, it is worth recalling the Court's memorable statement:

> "under customary international law, as reflected in Article 1 of the draft Articles on Diplomatic Protection of the International Law Commission . . .,
>
> > 'diplomatic protection consists of the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility' (Article 1 of the draft Articles on Diplomatic Protection adopted by the ILC at its Fifty-eighth Session (2006), ILC Report, doc. A/61/10, p. 24).
>
> Owing to the substantive development of international law over recent decades in respect of the rights it accords to individuals, the scope *ratione materiae* of diplomatic protection, originally limited to alleged violations of the minimum standard of treatment of aliens, has subsequently widened to include, *inter alia*, internationally guaranteed human rights." (*Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 599, para. 39.)

In this Judgment, the Court expanded the scope of diplomatic protection beyond violations of the minimum standard for the treatment of aliens, and declared that it encompasses internationally guaranteed human rights.

The Court rendered its Judgment on the merits of this case in 2010, in which it found that the DRC had violated its obligations under the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights and the Vienna Convention on Consular Relations, and was under an obligation to make appropriate reparation, in the form of compensation, to the Republic of Guinea for the injurious consequences of the violations of international obligations.

With regard to compensation, the Court usually gives the parties the opportunity to come to an agreement on the matter. Failing agreement between them within a certain period — in this case it was six months — the nature of the compensation is determined by the Court. In the *Diallo* case, the time-limit having expired, it fell to the Court to determine the amount of compensation to be awarded to Guinea as a consequence of the unlawful arrests, detentions and expulsion of Mr Diallo by the DRC. In its Judgment of 19 June 2012, in which it fixed the amount owed by the DRC to Guinea, the Court stated, in a clear recognition of individual interests under international law, that "the sum awarded to Guinea in the exercise of diplomatic protection of Mr Diallo is intended to provide reparation for the latter's injury" (*Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 344, para. 57).

More recently, the Court had to deal with the question of reparation for damage caused due to breaches of international obligations in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda).* In its Judgment on the merits rendered in 2005, the Court found, *inter alia*, that Uganda had violated the principle of non-use of force in international relations and the principle of non-intervention, its obligations under international human rights law and international humanitarian law, as well as obligations owed to the DRC related to natural resources. The Court also found that Uganda was under an obligation to make reparation to the DRC for the injury caused. Failing agreement between the Parties on the question of reparations, the Court resumed the proceedings at the request of the DRC and settled the matter in its Judgment of 9 February 2022.

I need not analyse today the principles and rules applicable to the assessment of reparations, the standard of proof, etc. However, what I would like to mention is that this was the first time that the Court had to fix reparations for damage involving a large group of victims in a large-scale armed conflict, which included loss of life, personal injuries, rape and sexual violence, the recruitment and deployment of child soldiers, displacement, and damage to personal property. Ultimately, the Court awarded compensation in the form of a global sum for, *inter alia*, the loss of life and other damage to persons, and for damage to property.

It is worth noting that at the end of its Judgment, the Court took full cognizance of and welcomed an undertaking given by the Agent of the DRC during the oral proceedings regarding a fund established by the Government of the DRC, to be used to fairly and effectively distribute to the victims of the harm the compensation to be paid by Uganda. The Court concluded by stating that "[i]n distributing the sums awarded, the fund is encouraged to consider also the possibility of adopting measures for the benefit of the affected communities as a whole" (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 137, para. 408).

In the *Diallo* case and in the *Democratic Republic of the Congo* v. *Uganda* case, the Court recognized the right of individuals to reparation under international law, even though the individuals themselves were not involved in the process of determining reparation before the Court.

In the same vein, in its Advisory Opinion rendered 20 years ago, on 9 July 2004, concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court concluded that the construction of the wall had, *inter alia*, entailed the requisition and destruction of homes, businesses and agricultural holdings. It therefore found that Israel had an obligation to make reparation for the damage caused to all the natural or legal persons concerned. Specifically, the Court stated that Israel was under an obligation to

> "return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall in the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered. The Court considers that Israel also has an obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons having suffered any form of material damage as a result of the wall's construction."

In its latest Advisory Opinion of 19 July 2024, concerning the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, having found that Israel was under an obligation to "end its unlawful presence in the Occupied Palestinian Territory as rapidly as possible", the Court stated that it "*[i]s of the opinion* that the State of Israel has the obligation to make reparation for the damage caused to all the natural or legal persons concerned in the Occupied Palestinian Territory".

*

The last aspect I would like to address is the contribution of the Court to the development of peoples' rights. The Court has on many occasions taken the view that "peoples" as such, and not only States, can be holders of rights and obligations under international law. In its Advisory Opinion on *Western Sahara* in 1975, the Court referred to self-determination not only as a "principle" but as a "right of peoples", which was enunciated in resolution 1514 of the United Nations General Assembly (Declaration on the Granting of Independence to Colonial Countries and Peoples). Later on, the Court made clear in its Advisory Opinions on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* and the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* that the right of peoples to self-determination had crystallized as a customary rule binding upon all States. The Court recognized that the obligation to respect the right to self-determination is owed *erga omnes* and that all States have a legal interest in protecting that right.

The Court turned again to the right of self-determination in its latest Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* and recalled that it is a fundamental human right. In an important development, the Court found that in cases of foreign occupation, the right to self-determination constitutes a peremptory norm of international law. I recall that a peremptory norm is defined by the International Law Commission as follows:

> "A peremptory norm of general international law (*jus cogens*) is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted".

In this latest advisory opinion, the Court also clarified the scope of application of the right to self-determination. In particular, it recalled that the right to territorial integrity is recognized under customary international law as a corollary of the right to self-determination. Moreover, by virtue of this right, a people is protected against acts aimed at dispersing the population and undermining its

integrity as a people. The Court found that the right to self-determination is the right to exercise permanent sovereignty over natural resources, which is a principle of customary international law. The Court also stated that a key element of the right to self-determination is the right of a people to determine freely its political status and to pursue its economic, social and cultural development.

*

Mr Chairman,
Distinguished Delegates,

This concludes my address today, which I hope has provided you with a general overview of the ways in which the Court protects individual and peoples' rights. The ultimate concern of international law is indeed the human being. If time permits, I would be delighted to hear your reactions and answer any questions you may have.

I would like once again to thank the Chairman and all members of the Commission for their support and the interest they have shown in the work of the International Court of Justice.

_____