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

31 OCTOBER 2025

Mr Chair of the Sixth Committee,
Excellencies, Ladies and Gentlemen,

It is a great honour for me to speak before the Committee. I welcome this opportunity to celebrate and strengthen the ties between this Committee and the International Court of Justice (ICJ), two institutions that play complementary roles in strengthening the rule of law.

I wish to congratulate His Excellency Mr Enrique Manalo on his election as Chair, and the other members of the Bureau on their election as Vice-Chairs[1], of the Sixth Committee for the 80th session of the General Assembly.

I. Introduction

Today, I would like to share some reflections on the domestic application of international law and, in particular, the role of domestic institutions in the application and enforcement of international law. This topic has been a central focus of my research since the beginning of my academic career. I published a book in English two years ago entitled "Domestic Application of International Law: Focusing on Direct Applicability". My time as a judge has only deepened my appreciation of the importance of this subject. I hope my observations will contribute insights that may be useful to the work of the Committee.

International law was traditionally regarded as the law governing relations between States. Modern international law, in contrast, extends to relations between States and individuals, and even relations among individuals. Moreover, it increasingly addresses issues of global concern, which represent the common interest of the international community as a whole. Indeed, international law today affects the lives of individuals far more than it did in the past. This is evident both from the topics examined by this Committee and from the trends in the cases brought before the ICJ.

In today's world, national institutions play an increasingly important role in the application and enforcement of international law, including by implementing decisions rendered by the International Court of Justice. Among national institutions, the role of domestic courts is particularly relevant. While governments are inherently inclined towards the promotion of national interests, the judiciary is more likely to operate as a true "agent of world order", capable of enforcing international law even against its own government and ensuring national action does not violate international law. Domestic courts can therefore contribute to the making, implementation, application and enforcement of international law. The role of domestic courts is not limited to holding their own government accountable. In some circumstances, they may also enforce international law externally against foreign States. Domestic courts may also contribute to the development of customary international law, as national judicial decisions are a form of State practice[2].

Among the various roles that domestic courts can play in upholding the international rule of law, I would like to focus today on the enforcement of ICJ decisions.

---

[1] Vice-Chairs: Ms Estela Mercedes Nze Mansogo (Equatorial Guinea); Mr Marek Zukal (Czechia); Ms Lucía Teresa Solano Ramírez (Colombia). Rapporteur: Ms Wieteke Theeuwen (Kingdom of the Netherlands).

[2] *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012 (I)*, p. 148, para. 118.

II. Enforcement of ICJ decisions

The obligation to comply with judgments of the ICJ is laid down in Article 94 of the Charter of the United Nations, which provides that each Member State undertakes to comply with the decision of the ICJ in any case to which it is a party. In practice, however, the mechanism of enforcement remains decentralized. The Security Council may make recommendations or decide upon measures to be taken to give effect to a judgment under Article 94, paragraph 2. However, this power has never been exercised. In practice, the implementation of ICJ decisions depends on the domestic legal systems of States.

Domestic courts can play a role in this regard and have, in fact, been called upon to give effect to ICJ judgments. Their responses reveal a certain diversity across domestic legal systems, but the central question is essentially the same, namely whether an ICJ judgment is directly enforceable in the domestic legal order, or whether further legislative or executive action is required before it can be enforced by national authorities.

A prominent example is the *Avena* case, in which the ICJ held that the United States had violated the Vienna Convention on Consular Relations by failing to inform certain Mexican nationals of their consular rights, and ordered the United States to provide "review and reconsideration" of the convictions and sentences concerned. The ICJ noted that the obligation to provide such review was particularly suited to the judicial process[3]. However, when the question reached the Supreme Court of the United States in *Medellín* v. *Texas*, the Supreme Court held that the ICJ's Judgment in the *Avena* case did not have automatic domestic legal effect.

While the Supreme Court acknowledged that the *Avena* Judgment imposed an international legal obligation on the United States, it found that neither the Optional Protocol to the Vienna Convention on Consular Relations, nor the United Nations Charter, nor the Statute of the Court was self-executing, and that no implementing legislation had been enacted. Accordingly, the Supreme Court concluded that the *Avena* Judgment did not have "automatic *domestic* legal effect such that the judgment of its own force applies in state and federal courts"[4]. This reasoning illustrates the distinction between a State's obligation to comply with an international judgment, which was never challenged by the Supreme Court, and, on the other hand, the domestic enforceability of that judgment.

A similar case arose following the ICJ's Judgment in *Jurisdictional Immunities of the State (Germany* v. *Italy)*. The ICJ held that Italy had violated its obligation to respect the immunity enjoyed by Germany under international law by allowing civil claims to be brought against it based on violations of international humanitarian law committed by the German Reich during the Second World War. It ordered Italy to ensure that the decisions of its courts and those of other judicial authorities cease to have effect[5]. Subsequently, the Italian Court of Cassation and later the Constitutional Court were asked to determine the domestic effect of the ICJ Judgment. While the Court of Cassation noted that it was not directly and immediately bound to comply with the ICJ Judgment, it concluded that under the customary international law authoritatively declared by the ICJ and consistent with the obligations incumbent on Italy, it had to accord Germany immunity from jurisdiction[6]. Shortly thereafter, legislative measures were adopted to implement the ICJ Judgment[7]. However, in 2014, the Italian Constitutional Court held that implementing the ICJ Judgment would

---

[3] *Avena and Other Mexican Nationals (Mexico* v. *United States of America), Judgment, I.C.J. Reports 2004 (I),* pp. 65-66, para. 140.

[4] *Medellín* v. *Texas*, 552 US 491 (2008), p. 504.

[5] *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012 (I)*, p. 155, para. 138.

[6] Cass. (Sez. i penale), 9 August 2012, n. 3213, ILDC 1921 (IT 2012), para. 6.

[7] Law No. 5 of 14 January 2013, Article 3 (It.).

conflict with fundamental constitutional guarantees of access to justice and to an effective remedy[8]. There is now a case pending before the ICJ on this matter.

A third example is the ICJ's Advisory Opinion on the *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights.* This Advisory Opinion concerned an issue indispensable to the effective working of the United Nations, namely the immunity of its officials. It is also significant because, under Section 30 of the Convention on the Privileges and Immunities of the United Nations, the opinion of the ICJ on any differences between the United Nations and a member "shall be accepted as decisive by the parties"[9]. The request for an opinion arose from an interview given by Mr Cumaraswamy, a Malaysian national appointed as Special Rapporteur on the Independence of Judges and Lawyers. In response to comments made by Mr Cumaraswamy in the interview, two companies in Malaysia brought a defamation claim against him. Following a disagreement between the Malaysian authorities and the United Nations on the immunity of Mr Cumaraswamy from legal proceedings, the matter was referred to the ICJ.

The ICJ held that Mr Cumaraswamy was entitled to immunity and concluded that "the Malaysian courts had the obligation to deal with the question of immunity from legal process as a preliminary issue to be expeditiously decided *in limine litis*"[10]. Mr Cumaraswamy subsequently made an application in Malaysian domestic courts for the dismissal of the lawsuit, which was rejected by the Registrar of the Malaysian court, and he appealed to the High Court. The High Court, deciding in favour of Mr Cumaraswamy, held that it was bound to give binding effect to the ICJ's opinion, even though it disagreed with certain aspects of the decision[11]. It emphasized that the Malaysian Government, which was one of the parties that had referred the case to the ICJ, had accepted the ruling as decisive. However, at the same time, the High Court also observed that the case should not be treated as a precedent for future cases in Malaysia.

These examples are illustrative of the reluctance of domestic courts to act as an automatic enforcement mechanism for decisions of international courts and tribunals. Domestic courts generally do not consider themselves bound to enforce ICJ judgments. We should not, however, read the domestic courts' treatment of ICJ judgments as a challenge of the Court's authority to determine the content and application of international law. Their reticence is mostly due to the constitutional structures of the State, the principle of separation of powers, and varying conceptions of the relationship between international and domestic law. For example, as seen in *Medellín* v. *Texas*, the issue was whether ICJ decisions should be enforced directly or only after legislative or administrative measures have been taken domestically. Neither the US Supreme Court, nor the Italian Constitutional Court and Court of Cassation, nor the Malaysian High Court challenged the authority of the ICJ in determining the international legal obligations of States. The question concerns not its authority, but rather the manner of implementation.

Even when domestic courts reach conclusions that differ from those of the ICJ, this has not amounted to a challenge of the ICJ's interpretation of international law, but rather reflected differing assessments of facts or the application of domestic law. For example, following the ICJ's Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*[12], several cases were brought before Israeli courts. In 2006, the Israeli High Court of Justice

---

[8] *Judgment No. 238/2014, I.L.R.*, Vol. 168 (2017), pp. 529-560.

[9] *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999 (I)*, p. 88, para. 65.

[10] *Ibid*., p. 90, point 2*(b)*.

[11] *Insas Bhd & Anor v Dato' Param Cumaraswamy* [2000] 1 M.L.J. 727, discussed in Steve McDowell, "Islamic Law States and the International Court of Justice" in Achilles Skordas and Lisa Mardikian (eds.), *Research Handbook on the International Court of Justice* (2025), p. 493.

[12] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 136.

arrived at different conclusions from those reached by the ICJ, but these were based on a different factual rather than legal assessment. The President of the High Court at the time observed that while non-binding, "the opinion of the International Court of Justice is an interpretation of international law, performed by the highest judicial body in international law"[13].

Assertions of autonomy that may lead domestic courts to refuse to enforce ICJ decisions are not challenges to its authority under international law, but rather reflections of domestic legal reasoning.

III. Principle of consistent interpretation

Beyond the question of enforcement, decisions of the ICJ carry legal weight within domestic legal systems as powerful statements of law.

It is an established principle in most States that courts should interpret national laws in conformity with international law. This is commonly referred to as the principle of consistent interpretation. Thus, domestic courts often use international law indirectly in interpreting the applicable national laws. International law can aid in the interpretation of national laws, irrespective of whether it is directly applicable or not.

There are good reasons for adopting such a principle. First, this principle helps to ensure that the State is giving effect to its obligations under international law. Domestic courts can prevent divergences between a State's domestic and international legal obligations by seeking to harmonize them within the permissible bounds of the domestic legal system. Second, in domestic cases of an international nature, reliance on international law in the interpretation of national laws can ensure comity between the States and avoid the perception that the domestic law of one State is being weaponized against another.

Additionally, the principle of consistent interpretation can be applied broadly to encompass not just binding treaties and customary international law, but also non-binding international instruments. These include treaties which have been signed but not yet ratified, treaties which have not even been signed, and declarations adopted by the UN General Assembly. Moreover, treaty bodies established by the UN human rights treaties issue views, general comments and concluding observations. Even though these pronouncements of treaty bodies are not legally binding, they may be used for the interpretation of national laws[14].

Similarly, the decisions of the ICJ may be useful beyond the parties concerned in a contentious case. Because of the breadth of legal issues that come up in cases on the Court's docket and because of the reliable and rigorous jurisprudence developed by the Court over the last 80 years, domestic courts have regard to the ICJ's decisions in providing authoritative interpretation of treaties and identifying and clarifying customary international law, as well as elucidating their reasoning on matters of domestic law.

While I do not propose to conduct a comprehensive survey of domestic legal systems, there are a few examples that are illustrative and serve as an important reminder of the relevance of the ICJ's decisions.

A typical instance in which the ICJ's decisions have had an important normative effect on the interpretation of domestic law is in the area of State immunity. The *Jurisdictional Immunities* case has been particularly influential in this regard, having been cited in recent years by courts in the

---

[13] HCJ 7957/04, *Mara'abe and Ord v Prime Minister of Israel*, *I.L.M.*, Vol. 45 (2006), p. 202, para. 56.

[14] See e.g. *Yong Vui Kong* v. *Public Prosecutor*, *I.L.R.*, Vol. 143 (2010), p. 417, para. 97.

United States and the United Kingdom[15]. The uniform approach of national courts to the question of State immunity is critical to maintaining comity between States in their international relations.

A related area of law where the ICJ's decisions may prove useful is in consular relations. Thus, in Israel, the *Nottebohm* case was cited in an appeals case concerning the extradition of a dual Israeli-American citizen to the United States[16], and the *Tehran Hostages* case was cited in a case concerning a tort claim brought against the Ambassador of Egypt[17]. In Germany, the Federal Constitutional Court has referred to the ICJ's decisions in the *LaGrand* case and the *Avena* case regarding the interpretation of Article 36 of the Vienna Convention on Consular Relations[18].

Of course, the diversity of the ICJ's subject-matter jurisdiction means that we are not limited to these areas of law. The ICJ's jurisprudence on a wide range of matters has been cited by domestic courts. These range from the *Barcelona Traction* case, cited for legal propositions relating to the piercing of the corporate veil[19], to *Armed Activities (Democratic Republic of the Congo* v. *Uganda)* to elucidate the criteria for determining the existence of a state of occupation[20]. Similarly, in considering a criminal procedure application, a domestic court had regard to the State's international humanitarian law obligations, referring to the ICJ's decisions in the *Nuclear Weapons* Advisory Opinion and *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States)*[21].

As this last example illustrates, the Court's advisory opinions have also had some influence. Other examples include the *Namibia* Advisory Opinion, which has been cited in support of the normative strength of the Universal Declaration of Human Rights[22] and the *Reparations* Advisory Opinion in respect of the legal personality of the United Nations[23].

IV. Enforcement of the ICJ Advisory Opinion on climate change

Finally, I would like to refer to the recent Advisory Opinion on climate change as an example to highlight the importance of domestic courts in the enforcement of international law. The ICJ delivered this landmark Opinion in July 2024 clarifying the legal obligations of States to address the adverse effects of climate change. The enforcement of these obligations will ultimately depend on how they are implemented within domestic legal systems. The Court's Advisory Opinion does not, of course, create obligations that are directly enforceable in domestic law by national authorities.

---

[15] *Federal Republic of Germany* v. *Philipp*, 592 U.S. 169 (2021). *Basfar* v. *Wong* [2023] A.C. 33 (UKSC).

[16] Cr. A. 6182/98, *Shoenbein* v. *Attorney-General*, P.D. 53(1) 625 (1999), referred to in Talia Einborn, "Israel", in Dinah Shelton (ed.), *International Law and Domestic Legal Systems* (2011), p. 324.

[17] C.A. (T.A.) 4289/98, *Shlomit Shalom* v. *The Attorney-General, Shulman and Bassyounni tak-District*, 99(3), 2, referred to in Einborn, supra fn. 16, p. 324.

[18] BVerfG, Order of the Second Chamber of the Second Senate of 8 July 2010 — 2 BvR 2485/07, 2513/07, 2548/07, NJW 2011, p. 207.

[19] *First National City Bank* v. *Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611 (1983); *La Générale des Carrières et des Mines* v. *FG Hemisphere Associates LLC, I.L.R.*, Vol. 164 (2012), pp. 361-363 (Privy Council hearing an appeal from Jersey).

[20] Criminal Appeal 6659/06 *A v State of Israel*, *I.L.M.*, Vol. 47 (2008), p. 768, para. 11.

[21] *S* v. *Basson* (CCT30/03A) [2005] ZACC 10, referred to in Erika de Wet, "South Africa" in Dinah Shelton (ed.), *International Law and Domestic Legal Systems* (2011), p. 585.

[22] See *Diggs* v. *Richardson*, 555 F.2d 848, 849 (D.C. Cir. 1976); *United States-South West Africa/Namibia Trade & Cultural Council* v. *United States Dept. of State*, 90 F.R.D. 695, 696 n.2 (D. D.C. 1981); *Rodriguez Fernandez* v. *Wilkinson*, 505 F. Supp. 787, 797 (D. Kan. 1980); *In re Alien*, 501 F. Supp. 544, 591 (S.D. Tex. 1980).

[23] See *Trelles Cruz v. Zapata Ocean Resources*, 695 F.2d 428, 433 fn. 9 (9th Cir. 1982); *Zenith Radio Corp.* v. *Matsushita Elec. Indus. Co*., 505 F. Supp. 1125, 1187 (E.D. Pa. 1980).

Like all the Court's advisory opinions, it is not legally binding. However, as Judge Gros once observed:

> "[i]t seems to be generally admitted that the distinction between the Court's judgments and its advisory opinions cannot be taken too far. When the Court replies to a request for an advisory opinion, it does not transform itself into a committee of fifteen legal consultants; it continues to be the principal judicial organ of the United Nations"[24].

In its Advisory Opinion on climate change, the ICJ clarified the obligations of States under international law to ensure the protection of the climate system from anthropogenic emissions of greenhouse gases and clarified the framework for determining the legal consequences for those States that breach their obligations. Its reasoning may exert a powerful influence in domestic law. Domestic courts can refer to the Opinion in identifying the legal obligations of States in this regard. They can, and indeed should, interpret national laws in conformity with the standards set out by the ICJ in the Opinion, thereby ensuring that its normative guidance is reflected in domestic decision-making.

Even before the delivery of this Advisory Opinion, domestic litigation concerning governmental climate policies had already been rapidly increasing across jurisdictions. In cases such as the *Urgenda* judgment in the Netherlands, as well as proceedings in Australia, Nepal, the Czech Republic and Austria, national courts have examined whether their governments' climate policies comply with international obligations, and whether failure to do so amounts to a violation of international law. The ICJ's Advisory Opinion on climate change is a significant contribution to clarifying the obligations of States in this context. The extent to which it will influence future domestic climate litigation ultimately rests on the shoulders of national authorities. Of particular significance in this regard is the ICJ's interpretation of the climate change treaties and the confirmation that the customary international law principle of prevention of significant harm applies equally to greenhouse gas emissions[25]. These obligations bind *all* States, regardless of whether they are parties to climate-related treaties.

Even though the Advisory Opinion was rendered only three months ago, there is already some action in the domestic arena. In Brazil, for example, the Ninth Circuit Court of Porto Alegre referred to the ICJ's opinion in reaching its conclusions in a recent case[26].

However, the domestic implementation of the international obligations clarified by this Advisory Opinion will not take place solely through litigation before domestic courts. It requires co-operation between the judiciary, legislature and executive within each State in order to translate the legal obligations identified by the ICJ into concrete measures in the form of laws, regulations and policies. In this regard, the final paragraph of the Advisory Opinion on climate change is particularly illuminating. It reminds us that we must also recognize the inherent limits of international law. I would like to quote the last part of that paragraph, which is worth repeating:

> "[T]he questions posed by the General Assembly represent more than a legal problem: they concern an existential problem of planetary proportions that imperils all forms of life and the very health of our planet. International law, whose authority has been invoked by the General Assembly, has an important but ultimately limited role in resolving this problem. A complete solution to this daunting, and self-inflicted, problem requires the contribution of all fields of human knowledge, whether law, science, economics or any other. Above all, a lasting and satisfactory solution requires human will and wisdom — at the individual, social and political levels — to change our habits,

---

[24] Judge Gros, "Concerning the Advisory Role of the International Court of Justice" in Wolfgang Friedmann et al. (eds.), *Transnational Law in a Changing Society: Essays in Honor of Philip C. Jessup* (1972), p. 314.

[25] *Obligations of States in Respect of Climate Change, Advisory Opinion of 23 July 2025*, paras. 132-142, 280-292.

[26] Associação Gaucha de Proteção ao Ambiente Natural x Agência Nacional de Energia Elétrica, TRF4, Porto Alegre.

> comforts and current way of life in order to secure a future for ourselves and those who are yet to come. Through this Opinion, the Court participates in the activities of the United Nations and the international community represented in that body, with the hope that its conclusions will allow the law to inform and guide social and political action to address the ongoing climate crisis."[27]

Here, the ICJ acknowledges the limits of law, yet precisely for that reason it emphasizes that law must play a more essential role: to inform and guide social and political action to address the ongoing climate crisis. It now falls to domestic courts, legislatures and executive authorities to work together to translate the legal obligations identified by the ICJ into concrete measures such as laws, regulations and policies.

V. Concluding remarks

The reason why domestic institutions — especially courts — play such a crucial role in the application and enforcement of international law lies in the decentralized nature of the international legal order. First, recourse to international courts is not the ordinary means of resolving disputes between States, since international courts lack jurisdiction without the consent of all parties to the dispute. Second, even where international law grants rights to individuals, those individuals generally lack direct access to international remedies when their rights are violated by a State. It is true that several international procedures have been established that allow individuals to submit complaints to obtain remedies. This represents a significant advance in the enforcement of international obligations. Yet, these international procedures are often costly and time-consuming. Thus, despite these developments, the importance of domestic procedures has not diminished. As judges, counsel, diplomats and academics dedicated to international law, we must not lose sight of the fact that the effectiveness of international law depends above all on its faithful application and enforcement at the domestic level. It is crucial that domestic institutions act as faithful agents of international law, while also drawing on the collective knowledge of other fields of human understanding to confront these global issues.

Thank you, Mr Chair.

_____

[27] *Obligations of States in Respect of Climate Change, Advisory Opinion of 23 July 2025*, para. 456.