SPEECH OF HE MR IWASAWA YUJI, PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE, AT THE SEVENTY-SEVENTH SESSION OF THE INTERNATIONAL LAW COMMISSION

15 May 2026

Mr Chair,

Ladies and gentlemen,

Colleagues and friends,

It is a distinct honour for me to address the International Law Commission today, and to do so for the second and final time in my capacity as President of the International Court of Justice. At the outset, I would like to take this opportunity to extend my congratulations to Mr Andreas Mavroyiannis on his election as Chair of the Commission, and to all the newly elected officers.

Before proceeding with my remarks, I wish to pay tribute to my predecessor, Judge Stephen Schwebel, who passed away a few weeks ago, and Judge Kenneth Keith, who left us only a few days ago. Judge Schwebel was a Member of the International Law Commission for four years, from 1977 to 1981, and then served on the Court for nineteen years, until 2000, including as President of the Court. I wish to recall that Judge Schwebel initiated the Jessup Moot Court Competition in 1959 and the Judicial Fellowship Programme of the Court in 1999. Judge Keith served in the Court from 2006 to 2015 and later as a Judge *ad hoc* in two cases. He played important roles in the New Zealand government, including representing his Government in the diplomatic conferences that prepared the additional protocols to the Geneva Conventions. We remain acutely aware of the significance of their work, and they will be remembered by us all.

In my speech this morning, I shall focus on providing an update on the cases submitted to the Court over the last year and on the decisions it has rendered since my last address to you on 8 May 2025. The Court greatly values this annual exchange of views between our two institutions.

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There are at present 24 cases on the Court's docket, of which 23 are contentious and one is an advisory proceeding. The inter-State disputes cover diverse and wide-ranging legal issues, such as land and maritime delimitation and alleged breaches of obligations under an array of bilateral and multilateral conventions. On Thursday next week, the Court will deliver an advisory opinion on the question of the *Right to Strike under ILO Convention No. 87*.

Since my last speech to you in May 2025, two new contentious cases have been added to the Court's docket, involving States in Asia and Europe. The most recent of these was brought by the Russian Federation against Australia and the Netherlands on 18 September 2025. It constitutes an appeal against a decision by the ICAO Council. Prior to that, on 19 May 2025, Lithuania instituted proceedings against Belarus concerning alleged breaches of the Protocol against the Smuggling of Migrants.

During the same period, France also initiated proceedings against the Islamic Republic of Iran relating to alleged violations of the Vienna Convention on Consular Relations in the context of the arrest, detention and trial of two French nationals. On 15 September 2025, however, France informed the Court that it wished to discontinue the proceedings. By an Order dated 19 September 2025, the

Court placed on record the discontinuance of the proceedings and directed that the case be removed from the List.

The Court has held hearings in four contentious proceedings, in relation to requests for the indication of provisional measures and applications for permission to intervene, as well as on the merits. Hearings have also been held on the request submitted by the ILO for an advisory opinion. During the same period, the Court rendered decisions, judgments and substantive orders in five cases, as well as two advisory opinions, each of which I shall address in greater detail shortly. Three cases are currently under deliberation, namely the advisory opinion on the question of the *Right to Strike under ILO Convention No. 87*, the case between The Gambia and Myanmar concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, and, as of Monday, the case concerning the *Arbitral Award of 3 October 1899* between Guyana and Venezuela. In recent years, it has become common for the Court to deliberate on two or three cases in parallel.

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In addressing the decisions rendered by the Court, I shall begin with the judgments and advisory opinions, before turning to the substantive orders.

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On 19 May 2025, the Court issued its Judgment on the merits in the case concerning *Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea)*. This case was introduced in March 2021 by way of a Special Agreement, whereby the Parties requested that the Court determine whether certain legal titles, treaties and international conventions invoked by them have the force of law in their relations, in so far as they concern the delimitation of their common maritime and land boundaries and sovereignty over certain maritime features in Corisco Bay.

The Parties recognized as applicable the 1900 Special Convention on the Delimitation of French and Spanish Possessions in West Africa — referred to as the "1900 Convention". However, they disagreed on whether a document referred to as the "Bata Convention" constituted a legal title having the force of law in the relations between the Parties. The Court found that this instrument does not constitute a legal title under the terms of the Special Agreement. In reaching this conclusion, the Court examined various factors to determine whether the Parties intended to be legally bound by this instrument, including the terms thereof, the circumstances in which it was drawn up, and the subsequent conduct of the Parties which it found particularly indicative of the fact that they did not consider this instrument to be a treaty.

With regard to the delimitation of the common land boundary between Gabon and Equatorial Guinea, the Court found that the relevant legal titles are those held on 17 August 1960 by France and on 12 October 1968 by Spain on the basis of the 1900 Convention, to which titles Gabon and Equatorial Guinea respectively succeeded.

Turning to the question of sovereignty over certain islands in Corisco Bay, the Court focused on the question whether Spain held title to these maritime features at the time Equatorial Guinea became independent. Having examined the evidence, the Court concluded that, based on an intentional display of authority that was continuous and uncontested, this was indeed the case.

Accordingly, the Court found that the title having the force of law in the relations between the Parties concerning sovereignty over three islands in Corisco Bay is the title held by Spain in 1968, to which Equatorial Guinea succeeded upon independence.

Finally, the Court turned to the legal titles, treaties and international conventions invoked by the Parties concerning the delimitation of their common maritime boundary. In the opinion of the Court, the 1900 Convention constitutes a source of the Parties' rights to adjacent maritime areas, in so far as it establishes the land boundary terminus from which the maritime boundary starts. The Court also concluded that while UNCLOS does not constitute a legal title within the meaning of Article 1 of the Special Agreement, it is an international convention which has the force of law in the relations between the Parties within the meaning of that Article.

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I shall now provide a brief overview of the advisory opinions delivered during the period under review.

The Advisory Opinion on the *Obligations of States in respect of Climate Change* was rendered on 23 July 2025. The level of participation in these proceedings was unprecedented. Ninety-six States and eleven international organizations presented their views during the oral hearings held in December 2025. The Opinion of the Court was adopted unanimously.

The General Assembly put two questions to the Court. The first concerned the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases. The second question concerned the legal consequences under these obligations for States where they have caused significant harm to the climate system and other parts of the environment.

In its Advisory Opinion, the Court noted that the consequences of climate change were severe and far-reaching, affecting both natural ecosystems and human populations, and posing an urgent and existential threat. In examining these consequences, the Court relied on the reports of the IPCC as the best available science on the causes, nature and consequences of climate change.

With regard to the first question relating to the obligations of States in respect of climate change, the Court determined that the most directly relevant applicable law consists of the Charter of the United Nations, the three climate change treaties (namely the United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement), the United Nations Convention on the Law of the Sea, the Ozone Layer Convention, the Montreal Protocol, the Biodiversity Convention and the Desertification Convention. The Court further determined that the customary duty of States to prevent significant harm to the environment and the duty to co-operate for the protection of the environment also form part of the most directly relevant applicable law. The Court likewise stated that the core human rights treaties and human rights recognized under customary international law form part of the most directly relevant applicable law. Finally, the Court found that the principles of sustainable development, common but differentiated responsibilities and respective capabilities, equity, intergenerational equity and the precautionary approach or principle are applicable as guiding principles for the interpretation and application of the most directly relevant legal rules.

The Court rejected the argument that the climate change treaties constitute *lex specialis* excluding the application of other rules of international law.

The Court explained that the climate change treaties set forth binding obligations for States parties to ensure the protection of the climate system from anthropogenic greenhouse gas emissions. It added that these obligations are stringent and notably include an obligation to prepare, communicate and maintain successive and progressive nationally determined contributions which, *inter alia*, when taken together, are capable of achieving the temperature goal of limiting global warming to 1.5°C above pre-industrial levels.

Concerning the obligations of States under customary international law, the Court noted that States are under a duty to prevent significant harm to the environment and that, to this end, due diligence is the required standard of conduct. The Court further noted that the duty to co-operate for the protection of the environment has a customary character, and it emphasized the importance of co-operation for the protection of the climate system.

The Court considered that the obligations arising from the climate change treaties and State practice in implementing them inform the general customary obligations, just as the general customary obligations provide guidance for the interpretation of the climate change treaties.

The Court further considered that UNCLOS, the relevant environmental treaties, the climate change treaties and the relevant obligations under customary international law inform each other and are each relevant to the implementation of the other.

With respect to sea level rise, the Court considered that the provisions of UNCLOS do not require States parties, in the context of physical changes resulting from climate-change related sea level rise, to update their charts or lists of geographical co-ordinates that show the baselines and outer limit lines of their maritime zones once they have been duly established in conformity with the Convention. The Court also clarified that once a State is established, the disappearance of one of its constituent elements would not necessarily entail the loss of its statehood.

The Court then examined the obligations of States under international human rights law. Taking into account the adverse effects of climate change on the enjoyment of human rights, the Court considered that the full enjoyment of human rights cannot be ensured without the protection of the climate system.

The Court next addressed the second question relating to the legal consequences. It underlined that State responsibility for breaches of obligations under the climate change treaties is to be determined by applying the well-established rules on State responsibility under customary international law.

The Court noted that breaches of States' obligations under the first question might give rise to the entire panoply of legal consequences provided for under the law of State responsibility. These include cessation and non-repetition, as well as reparation, including restitution, compensation and/or satisfaction.

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I now turn to the Court's Advisory Opinion delivered on 22 October 2025 on the *Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian Territory*. The General Assembly asked the Court to determine

> "the obligations of Israel, as an occupying Power and as a member of the United Nations, in relation to the presence and activities of the United Nations,

including its agencies and bodies, other international organizations and third States, in and in relation to the Occupied Palestinian Territory".

The Court noted that Israel's relevant obligations flow from the Fourth Geneva Convention of 1949, to which Israel is a party. Israel also has obligations under customary international law as reflected notably in the 1907 Hague Regulations and certain provisions of the Additional Protocol I of 1977.

The Court observed that, since 7 October 2023, Israel's effective control over the Gaza Strip had increased significantly. Therefore, the Court found that Israel's obligations under the law of occupation had also increased significantly, commensurate with the increase in its effective control over the territory. The Court added that when hostilities take place in an occupied territory, the law of occupation applies alongside other rules of international humanitarian law, and the occupying Power must comply with both sets of rules. However, the intensity of the hostilities may affect the implementation of certain obligations under the law of occupation.

The Court was conscious of Israel's security concerns. It observed, however, that the protection of security interests is not a free-standing exception permitting a State to depart from the otherwise applicable rules of international humanitarian law. It noted that any limitations on Israel's obligations under international humanitarian law based on its security concerns must be grounded in a specific rule.

Turning to the relevant framework under international humanitarian law, the Court observed that Articles 55 and 56 of the Fourth Geneva Convention oblige an occupying Power to ensure that the population of the occupied territory is supplied with the essentials of daily life, including food, water, shelter, medical supplies and medical care. Article 59 imposes additional obligations. The Court found that the local population in the Gaza Strip had been inadequately supplied. Thus, it concluded that, in the circumstances, Israel is under an obligation to agree to and facilitate relief schemes provided by the United Nations and its entities, including UNRWA. Furthermore, under Article 59, Israel is also obliged to agree to and facilitate relief schemes provided by third States or impartial humanitarian organizations.

The Court further observed that Israel, as an occupying Power, is prohibited from restricting the presence and activities of the United Nations, other international organizations and third States in and in relation to the Occupied Palestinian Territory to a degree that creates, or contributes to, conditions of life that would force the population to leave.

The Court also found that Israel has obligations under international human rights law to respect, protect and fulfil the human rights of the population of the Occupied Palestinian Territory. The Court observed that, to the extent that the local population has been capable of enjoying many of their human rights, this has been largely enabled and ensured through the work of the United Nations, particularly through UNRWA, supported by the activities of other international organizations and third States. Consequently, any diminution by Israel of the capacity of these entities to ensure these basic human rights means that the obligations of Israel to respect, protect and fulfil these rights increases to a commensurate degree.

Turning next to the obligations of Israel as a Member State of the United Nations, the Court first discussed the obligation to co-operate with the United Nations. The obligation of Israel, and of all other Member States, to co-operate with the United Nations with respect to the question of Palestine is of paramount importance in addressing the critical situation on the ground since October 2023. In the view of the Court, Israel is not entitled to withhold its co-operation with the United Nations by unilaterally deciding on the presence and activities of United Nations entities in and in relation to the Occupied Palestinian Territory. This is in contrast to the fact that, within the territory of Israel, the presence and activities of the United Nations and its entities are subject to the consent of Israel.

With regard to the obligation to respect the privileges and immunities of the United Nations, the Court emphasized that the privileges and immunities accorded to the United Nations and its personnel by virtue of Article 105 of the Charter and the General Convention are functional in nature, and do not cease to operate in the context of armed conflict. The Court concluded that Israel must respect the privileges and immunities accorded to the United Nations, its personnel, premises, property and assets in the Occupied Palestinian Territory, and that it must address any concerns arising in this context within the legal framework of the United Nations.

In the last section of its Advisory Opinion, the Court stated that respect for the right to self-determination of the Palestinian people requires Israel not to prevent the fulfilment of the basic needs of the Palestinian people in the Gaza Strip, including by the United Nations, its entities, other international organizations and third States. The Court concluded that Israel is under an obligation not to impede the operations of United Nations entities, other international organizations and third States, and to co-operate in good faith with the United Nations to ensure respect for the right of the Palestinian people to self-determination.

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On 19 March 2026, the Court delivered its Judgment on Guatemala's Application for permission to intervene in the case between Belize and Honduras concerning *Sovereignty over the Sapodilla Cayes/Cayos Zapotillos*.

Concerning the interest of a legal nature which may be affected, the Court considered that the interest of Guatemala is based on a "real and concrete claim" to sovereignty over the Sapodilla Cayes/Cayos Zapotillos. It is, moreover, "based on law" in so far as it concerns a determination, under international law, of sovereignty. The Court further observed that the operative clause of its judgment on the merits in the case will address the question of sovereignty over the cays. Therefore, the Court's determination may affect Guatemala's interest of a legal nature, in so far as it claims sovereignty over the same territory in its case with Belize. Any decision by the Court on Honduras's submission regarding traditional, artisanal and subsistence fishing rights may also affect Guatemala's interest of a legal nature. The Court further considered that to hold that Article 59 of the Statute shields a third State from the effect of a decision of the Court in a case to which it is not a party would eliminate the need for interventions, thus rendering Article 62 superfluous. While Article 59 confines the binding force of a decision to the parties and in respect of that particular case, Article 62 provides third States with an opportunity to seek protection of their interests of a legal nature that may otherwise be affected by the decision of the Court. The Court thus considered that, in the present case, Article 59 of the Statute may not sufficiently protect Guatemala from the effects of a judgment affecting its legal interest.

Concerning the object of the intervention, the Court recalled that the precise object of the intervention must be connected with the subject of the main dispute. It follows that a State requesting permission to intervene cannot seek to introduce a new case alongside the main proceedings under the guise of intervention; nor can it alter the nature of the main proceedings, transforming the case into a separate dispute involving different parties. The Court observed that the precise object of Guatemala's intervention, which is to protect its interest of a legal nature over the cays and to inform the Court of the nature and extent that interest, falls within the subject of the main dispute. Accordingly, the Court concluded that this object satisfies all conditions under Article 62 of the Statute and Article 81 of the Rules of Court.

The Court lastly considered other objections raised by Honduras. According to Honduras, the Court had discretion to reject Guatemala's Application since it constituted an abuse of process. In

the opinion of the Court, the authority entrusted to it is one of objective assessment and not a general discretion to accept or reject an application for permission to intervene. As the requirements set out in Article 62 of the Statute and Article 81 of the Rules were met in this case, the Court noted that it had no discretion to reject the Application.

For these reasons, the Court decided that Guatemala was permitted to intervene as a non-party in the case. Guatemala's intervention is to be limited to the issue of sovereignty over the Sapodilla Cayes/Cayos Zapotillos, including fishing rights in the waters surrounding them.

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I shall now move on to some of the principal orders issued by the Court during the period under review.

I shall begin by referring to the decision on the admissibility of the declarations of intervention under Article 63 of the Statute in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia* v. *Myanmar)*. Article 63 of the Statute grants States parties to a convention the right to intervene in a case when the construction of that convention is in question. By an Order issued on 3 July 2024, the Court decided that the Declaration of intervention submitted by the Maldives and the Declaration submitted jointly by Canada, Denmark, France, Germany, the Netherlands and the United Kingdom were admissible. Then, between November and December 2024, four other States — Slovenia, the Democratic Republic of the Congo, Belgium and Ireland — sought to intervene in the case. Myanmar raised objections to the admissibility of their Declarations of intervention. By an Order issued on 25 July 2025, the Court decided that the Declarations of intervention submitted by these four States were admissible.

In October 2025, the Parties and the intervening States were informed by the Court that it had been sufficiently informed of the positions of the intervening States on the subject-matter of their interventions by way of the written observations, and that it did not deem it necessary for them to submit observations in the course of the oral proceedings.

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I now turn to the Order delivered by the Court on 12 September 2025 on the Request for the indication of provisional measures submitted by Equatorial Guinea, in the case concerning the *Request relating to the Return of Property Confiscated in Criminal Proceedings (Equatorial Guinea* v. *France)*. In this case, Equatorial Guinea contends that France is in violation of the United Nations Convention against Corruption by not returning to it certain immovable property in Paris, which the French courts have found to constitute the proceeds of the crime of misappropriation of public funds. In its Request for the indication of provisional measures, Equatorial Guinea asked the Court, *inter alia*, to order France to take all necessary measures to ensure that the building in question would not be offered for sale.

In its Order, the Court addressed the question of whether the rights whose protection Equatorial Guinea sought were plausible. The Court noted that Equatorial Guinea was seeking to protect the right it claimed to possess, under Article 57, paragraph 3 *(c)*, of the Convention, to the return of the building. That provision requires a requested State party to give priority consideration to three

possibilities: (i) the return of such property to the requesting State party; (ii) the return of such property to its prior legitimate owners; or (iii) the provision of compensation to the victims of the crime. The Court explained that the phrase "shall . . . give priority consideration" suggests that the requested State party has some discretion as to the course of action ultimately adopted. Consequently, the Court observed that the return of the confiscated property to the requesting State party is only one of the possibilities to which the requested State party shall give priority consideration in performing their obligation.

The Court concluded that Equatorial Guinea had not demonstrated, in the course of the incidental proceedings, that it possessed a plausible right to the return of the property in question on the basis of the provision it had invoked.

Having found that one of the conditions for the indication of provisional measures had not been met, the Court rejected the Request for the indication of provisional measures.

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I turn finally to the Order on counter-claims delivered by the Court on 5 December 2025 in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation)*.

The Court noted that under Article 80, paragraph 1, of its Rules, it may entertain a counter-claim only if two requirements are met, namely that the counter-claim "comes within the jurisdiction of the Court" and that it "is directly connected with the subject-matter of the claim of the other party".

Concerning jurisdiction, the Court recalled that it needed to examine whether the conditions set out in Article IX of the Genocide Convention had been satisfied. The Court further recalled that in its Judgment of 2 February 2024, it concluded that it had jurisdiction, on the basis of Article IX of the Genocide Convention, to entertain one of Ukraine's submissions. The Court noted that the Russian Federation also relies on Article IX of the Genocide Convention to found the Court's jurisdiction, alleging that the Applicant has violated its obligations under Articles I, III, IV, V and VI of the Convention. Ukraine denies these allegations. The Court considered that there exists a dispute between the Parties as to whether the Applicant has violated its obligations referred to above. This dispute concerns the interpretation, application or fulfilment of the Genocide Convention. The Court thus concluded that the Russian Federation's counter-claims come within its jurisdiction under Article IX of the Convention.

Regarding the direct connection between a counter-claim and the principal claim, the Court recalled that it has taken into consideration a range of factors that could establish a direct connection in fact and in law between a counter-claim and the principal claim. With respect to the question of connection in fact, the Court considered that the Parties' respective claims relate to the same factual complex and that there is a direct connection in fact. The Court noted that the Russian Federation intends to rely, for the most part, on the same evidence in order both to refute Ukraine's claim and to substantiate its own counter-claims.

With respect to the question of connection in law, the Court noted that both Parties rely, in their respective claims, on the same instrument, the Genocide Convention. The Court recalled that the specific provisions or legal principles invoked by each party need not be identical in order for the requirement of a direct connection in law to be satisfied. Further, the Court considered that the Applicant and the Respondent pursue the same legal aim, namely to establish whether Ukraine is responsible for violating its obligations under the Genocide Convention. The fact that the Applicant

seeks primarily a declaratory judgment, while the Respondent invokes Ukraine's international responsibility for the violation of various provisions of the Genocide Convention, does not alter this conclusion. Accordingly, the Court concluded that the Russian Federation's counter-claims are admissible as such.

Ukraine argued that even if the Russian Federation's counter-claims could satisfy the requirements for admissibility, the Court should nevertheless refuse to entertain them in the "exceptional circumstances" of the present case. The Russian Federation, for its part, contended that the Court does not have discretion to decline to entertain a counter-claim that is admissible as such. The Court considered that, where the conditions laid down in Article 80, paragraph 1, of the Rules are met, the Court must proceed to consider the counter-claims in question on the merits.

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Mr Chair, this concludes my brief overview of the recent decisions of the Court during a year of intense judicial activity. It has been a privilege for me to address you this year, in which the Court is celebrating the eightieth anniversary of its inaugural sitting.

The events marking the commemoration of this historic moment were opened with a solemn sitting held in the Great Hall of Justice of the Peace Palace, in the presence of His Majesty the King of the Netherlands, the Secretary-General of the United Nations, the President of the United Nations General Assembly, the Minister for Foreign Affairs of the Netherlands, and the President of the United Nations Security Council. The celebration of this anniversary holds particular significance, and reflects the United Nations' commitment, to the promotion of international law and the consolidation of the international rule of law. In this spirit, I hope that the International Law Commission will accept our invitation to take part in the events marking this anniversary over the course of the year, particularly those scheduled to take place in New York in October during International Law Week.

I thank you for your kind attention.

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