

# International Court of Justice (ICJ)

The ICJ is one of the six principal organs of the United Nations. Its seat is at the Peace Palace in The Hague (Netherlands). Notably, it is the only UN principal organ not situated in New York.

- The chief judicial organ of the UN, it is also sometimes known as the World Court.
- Established by the UN Charter in 1945, it began work in 1946 when it replaced the Permanent Court of International Justice which had functioned in the Peace Palace since 1922.
- All the 193 member states of the UN are automatically parties to the Court. Those nations that are not members of the UN may become parties to the Court's statute with the help of the Article 93 procedure.
- The chief function of the ICJ is to settle disputes submitted by parties according to international law.
- The Court also gives advisory opinions on legal matters submitted by any of the UN bodies or specialised agencies.
- The United Nations Security Council (UNSC) can enforce ICJ judgements as per the UN Charter. However, the permanent members of the UNSC can veto against any such ruling.
- The official languages of the ICJ are English and French.

## ICJ Composition

The ICJ is composed of 15 judges.

- The judges have a tenure of nine years each.
- They are elected independently by the UNGA and the UNSC. The candidate should get an absolute majority in both the UNGA and the UNSC to be elected.
- No two judges can have the same nationality in the ICJ.
- Elections are held every three years for one-third of the seats, and retiring judges may be re-elected.
- The members of the ICJ do not represent their governments but are independent magistrates.
- The judges must possess the qualifications required in their respective countries for appointment to the highest judicial offices, or be jurists of recognized competence in international law.
- The judges are distributed as per the regions:
  - 3 from Africa
  - 2 from Latin America and the Caribbean
  - 3 from Asia
  - 5 from Western Europe and other states
  - 2 from Eastern Europe
- Among the 15 judges, there is a President, a Vice President and a Registrar.
- Every State government party to the Charter designates a group that proposes candidates for the office of ICJ judges.

## ICJ Jurisdiction

The ICJ has two types of jurisdictions:

1. Contentious cases
  0. ICJ, in accordance with international law, settles disputes of legal nature that are submitted to it by states.
  1. Countries should apply and only then appear before the ICJ. International organisations, other authorities, and private individuals are not entitled to institute proceedings before the ICJ.
  2. The Court can only deal with a dispute when the States concerned have recognized its jurisdiction.
  3. The judgment is final, binding on the parties to the case and without an appeal.
2. Advisory opinions
  0. The advisory procedure is available to five UN Organs, fifteen Specialized Agencies, and one Related Organisation.
  1. Despite having no binding force, the Court's advisory opinions nevertheless, carry great legal weight and moral authority and thus help in the development and clarification of international laws.

There is also a distinction between **mainline and incidental jurisdictions**.

- Incidental jurisdiction relates to a series of miscellaneous and interlocutory matters; for example, the power of the Court to decide a dispute as to its own jurisdiction in a given case; its general authority to control the proceedings; its ability to deal with interim measures of protection; and the discontinuance of a case.
- Mainline jurisdiction, on the other hand, concerns the power of the Court to render a binding decision on the substance and merits of a case placed before it.

## Limitations of ICJ

ICJ suffers from certain limitations, these are mainly structural, circumstantial and related to the material resources made available to the Court.

- It has no jurisdiction to try individuals accused of war crimes or crimes against humanity. As it is not a criminal court, it does not have a prosecutor able to initiate proceedings.
- The ICJ is not an apex court to which national courts can turn to. It is also not a court of last resort for people. It also does not act like an appeal court for international tribunals, however, it can make a ruling on the validity of the arbitration awards.
- The ICJ cannot suo moto take up a case. It can only hear cases or disputes when requested to do so by States. It can also not investigate and rule on acts of States.
- The ICJ only has jurisdiction based on consent, not compulsory jurisdiction.
- It does not enjoy a full separation of powers, with permanent members of the Security Council being able to veto enforcement of cases, even those to which they consented to be bound.

### Way Forward

The International Court of Justice is endowed with both a privileged institutional status and procedural instruments whose potential is frequently underestimated. It needs strengthening for the promotion and development of international peace.

## Kulbhushan Jadhav Case

Kulbhushan Jadhav, an Indian naval officer, was arrested in March 2016 by Pakistani security forces in Balochistan province after he reportedly entered from Iran.

- He was sentenced to death by a Pakistani military court on charges of espionage and terrorism in April 2017.
- On May 9, 2018, ICJ stayed his death sentence after India had moved a petition before the UN body to seek justice for him, alleging violation of the Vienna Convention on Consular Relations by Pakistan.
- In February 2019, India said Pakistan's continued custody of Indian national Kulbhushan Jadhav without any consular access should be declared "unlawful" as it was an egregious violation of the Vienna Convention.
- In 2019, the ICJ has directed Pakistan to review the conviction order of Kulbhushan Jadhav and, until then, put his death sentence on hold. ICJ also asked Islamabad to allow New Delhi consular access at the earliest. This is a major diplomatic and legal victory for India in the Jadhav case.
- In 2019, Pakistan granted consular access for Jadhav in line with the ICJ ruling.

### **Key Highlights of Judgement**

- Pakistan Violated the Vienna Convention: ICJ upheld that Islamabad had violated Article 36 of the Vienna Convention on Consular Relations, 1963, by not informing India about Jadhav's arrest immediately after Pakistan Army had taken him into custody.
- ICJ found that India had been deprived of the 'right to communicate with and have access to Jadhav, to visit him in detention and to arrange for his legal representation', which meant that Pakistan had breached obligations incumbent upon it under Article 36, paragraph 1 (a) and (c), of the Vienna Convention on Consular Relations.
- The provisions of the 1963 Vienna Convention defines a framework for consular relations between countries.

### **Indian among the ICJ judges**

In November 2017, India's Dalveer Bhandari has been re-elected to the International Court of Justice (ICJ), after Britain pulled out its candidate Christopher Greenwood before the 12th round of voting. Bhandari's term ends in 2027.

### **Election significance:**

- Analysts say the election result was crucial for India to gauge the support it enjoys in the world body where New Delhi has been campaigning for reforms, including a permanent seat for itself in the UNSC.
- This is the first time that one of the five permanent members of the UNSC lost out to an ordinary member in a race.
- This is the first time in the 70-year history of the UN that the United Kingdom will not be on the ICJ.
- Although he does not represent the Indian government, having a judge of Indian origin is seen as a strategic asset.
- It particularly gains significance in the backdrop of the Kulbhushan Jadhav case