



## International Court of Justice (ICJ)

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### About

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- ICJ was established in 1945 by the United Nations charter and started working in April 1946.
- It is the principal judicial organ of the United Nations, situated at the Peace Palace in The Hague (Netherlands).
- Unlike the six principal organs of the United Nations, it is the only one not located in New York (USA).
- It settles legal disputes between States and gives advisory opinions in accordance with international law, on legal questions referred to it by authorized United Nations organs and specialized agencies.
- It has 193 state parties and current President is Ronny Abraham.

### Background

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- **Article 33 of the United Nations Charter** lists the negotiation, enquiry, mediation etc. methods for the pacific settlement of disputes between States. Some of these methods involve the services of third parties.
- Historically, **mediation and arbitration** preceded **judicial settlement**. The former was known in ancient India and the Islamic world, whilst numerous examples of the latter can be found in ancient Greece, in China, among the Arabian tribes, in maritime customary law in medieval Europe, and in Papal practice.
- The modern history of **international arbitration**:
  - **The first phase** is generally recognized as dating back from the so-called **Jay Treaty of 1794** between the United States of America and Great Britain.
  - The **Alabama Claims arbitration in 1872** between the United Kingdom and the United States marked the start of a second, even more decisive, phase.
  - The **Hague Peace Conference of 1899**, convened on the initiative of the Russian Czar Nicholas II, marked the beginning of a third phase in the modern history of international arbitration.

- With respect to arbitration, the 1899 Convention provided for the creation of permanent machinery, known as the **Permanent Court of Arbitration**, established in 1900 and began operating in 1902.
- The Convention also created a **permanent Bureau, located in The Hague**, with functions corresponding to those of a court registry or secretariat, and laid down a set of rules of procedure to govern the conduct of arbitrations.
- Various plans and proposals submitted between 1911 and 1919, both by national and international bodies and by governments, for the establishment of an international judicial tribunal, which culminated in the creation of the **Permanent Court of International Justice (PCIJ)** as an integral part of the new international system set up after the end of the First World War.
- In 1943, China, the USSR, the United Kingdom and the United States issued a joint declaration recognizing the necessity “of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving States, and open to membership by all such States, large and small, for the maintenance of international peace and security”.
- Subsequently, **G.H. Hackworth (United States) committee** was entrusted with preparing a draft Statute for the future international court of justice in 1945.
- The San Francisco Conference while keeping committee recommendations in mind decided against compulsory jurisdiction and in favour of the creation of an entirely new court, which would be a principal organ of the United Nations, on the same footing as the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council and the Secretariat.
- The PCIJ met for the last time in October 1945 and resolved to transfer its archives and effects to the **new International Court of Justice**, which, like its predecessor, was to have its seat at the Peace Palace.
- In **April 1946, the PCIJ was formally dissolved**, and the International Court of Justice, meeting for the first time, elected as its President Judge José Gustavo Guerrero (El Salvador), the last President of the PCIJ.

## Structure

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- The Court is composed of **15 judges**, who are elected for terms of office of nine years by the **United Nations General Assembly** and the **Security Council**. These organs vote simultaneously but separately.
- In order to be elected, a candidate must receive an absolute majority of the votes in both bodies.
- In order to ensure a measure of continuity, one third of the Court is elected every three years and Judges are eligible for re-election.
- ICJ is assisted by a **Registry**, its administrative organ. Its official languages are **English** and **French**.

- The 15 judges of the Court are distributed in following regions:
  1. Three from Africa.
  2. Two from Latin America and Caribbean.
  3. Three from Asia.
  4. Five from Western Europe and other states.
  5. Two from Eastern Europe.
- Unlike other organs of international organizations, the **Court is not composed of representatives of governments**. Members of the Court are **independent judges** whose first task, before taking up their duties, is to make a solemn declaration in open court that they will exercise their powers impartially and conscientiously.
- In order to guarantee his or her independence, no Member of the Court can be dismissed unless, in the unanimous opinion of the other Members, he/she no longer fulfils the required conditions. This has in fact never happened.

### Indian Judges at the ICJ

- Judge Dalveer Bhandari: Member of the Court since 27 April 2012
- Raghunandan Swarup Pathak: 1989-1991
- Nagendra Singh: 1973-1988
- Sir Benegal Rau: 1952-1953

### Jurisdiction and Functioning

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- **ICJ acts as a world court** with two fold jurisdiction i.e. **legal disputes** between States submitted to it by them (contentious cases) and **requests for advisory opinions** on legal questions referred to it by United Nations organs and specialized agencies (advisory proceedings).
- Only States which are members of the United Nations and which have become parties to the Statute of the Court or which have accepted its jurisdiction under certain conditions, are parties to contentious cases.
- States have no permanent representatives accredited to the Court. They normally communicate with the Registrar through their Minister for Foreign Affairs or their ambassador accredited to the Netherlands.
- When they are parties to a case before the Court they are represented by an agent. Since international relations are at stake, the agent is also as it were the head of a special diplomatic mission with powers to commit a sovereign State.
- The **judgment is final, binding on the parties to a case and without appeal** (at the most it may be subject to interpretation or, upon the discovery of a new fact, revision).
- By signing the Charter, a Member State of the United Nations undertakes to comply with the decision of the Court in any case to which it is a party.

- A State which considers that the other side has failed to perform the obligations incumbent upon it under a judgment rendered by the Court may bring the matter before the Security Council, which is empowered to recommend or decide upon measures to be taken to give effect to the judgment.
- The procedure described above is the normal procedure. However, the course of the proceedings may be modified by incidental proceedings.
- ICJ discharges its duties as a full court but, at the request of the parties, it may also establish *ad hoc* chambers to examine specific cases.
- Advisory proceedings before the Court are only open to five organs of the United Nations and 16 specialized agencies of the United Nations family or affiliated organizations.
- **Opinions provided by the court in advisory proceedings are essentially advisory and not binding.**

### Kulbhushan Jadhav Case

- Kulbhushan Jadhav 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 the charges of espionage and terrorism in April 2017.
- India has always maintained that Kulbhushan Jadhav is not a spy, and that Pakistan should provide counsellor access to him as his case pertains to abduction from the Iranian territory.
- In May 9, 2018, ICJ has 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.
- During the latest hearing in the case on 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.
- Harish Salve, who is representing India and Kulbhushan Jadhav in the ICJ, said Pakistan was using the issue of Kulbhushan Jadhav as a "propaganda tool" without even following the due proper procedure.

### Limitation on the Functioning of ICJ

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- 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.

- It differs from the Courts which deal with allegations of violations of the human rights conventions under which they were set up, as well as applications from States at which courts can entertain applications from individuals, that is not possible for the International Court of Justice.
- The jurisdiction of the International Court of Justice is general and thereby differs from that of specialist international tribunals, such as the **International Tribunal for the Law of the Sea (ITLOS)**.
- The Court is not a Supreme Court to which national courts can turn; it does not act as a court of last resort for individuals. Nor is it an appeal court for any international tribunal. It can, however, rule on the validity of arbitral awards.
- The Court can only hear a dispute when requested to do so by one or more States. It cannot deal with a dispute on its own initiative. Neither is it permitted, under its Statute, to investigate and rule on acts of sovereign States as it chooses.
- 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

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- The International Court of Justice is endowed with both a privileged institutional status and procedural instruments whose potential is frequently underestimated.
- The International Court of Justice is a component, not only of the machinery for the peaceful settlement of disputes created by the Charter but also of the general system for the maintenance of international peace and security it established.
- The Court's contribution to the institutional law of the United Nations was threefold. Its jurisprudence had helped to consolidate the Organization's role and place in the international legal order by clarifying its legal status as an international organization and the scope of powers with which it was entrusted.
- Its decisions had also shed light, within the institution itself, on the functioning and responsibilities of the Organization's principal organs and on those functions' limits.
- Moreover, the Court had pronounced itself in texts adopted by the General Assembly, thereby strengthening the cooperation in the promotion and development of international peace.
- Recently, the Court had the opportunity to reiterate that finding in its opinion on the ***Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory***, which had been delivered in 2004.
- The Court had recalled that, although the Security Council had primary responsibility for the maintenance of international peace and security under Article 24 of the Charter, its responsibility was not exclusive.

- Turning to "Crimes against humanity", while the Rome Statute regulated "vertical relationships" between the International Criminal Court and its States Parties, it did not prescribe any obligations regarding adoption of national laws on such crimes or inter-State cooperation.
- The current work would create "horizontal relationships" among States and regulate inter-State cooperation, strengthening the international community's efforts to prevent those crimes.