

International Court of Justice

What is the International Court of Justice?

The International Court of Justice is the judicial body of the United Nations. The UN has 6 primary bodies, the ICJ being one of them. The ICJ is also the only UN body to not have its headquarters in the city of New York. The ICJ headquarters is located in Hague, Netherlands.

Here are some other important facts to know about the ICJ:

- It is sometimes called the 'World Court', owing to its position as the judicial centre for all international issues and disputes.
- The UN Charter of 1945 marks its establishment. In 1946, it became functional and replaced the Permanent Court of International Justice, which had been instituted in 1922.
- There were 193 members of the UN, which automatically became parties to the ICJ as well. Article 93 suggests a procedure for countries to become a member of the ICJ even if they are not part of the UN.
- Their primary function is to resolve disputes that are submitted to them by countries. They provide these resolutions in accordance with international law.
- The Court is advisory in nature and hence, cannot reinforce its judgements on the countries. However, the United Nations Security Council (UNSC) has the authority to enforce these verdicts, as suggested by the UN Charter.
- The permanent members of the UN exercise veto power to such rulings.
- The ICJ's official languages are English and French. .

Background and History of the ICJ

The history of the establishment of the International Court of Justice is an interesting one with many relevant factoids. They have been listed below;

- There have been numerous systems all across the world that displayed international settlements and pacification as a method of mediation and arbitration.
- International arbitration has seen some changes in modern history;
 - **The Jay Treaty of 1794** was signed between the USA and Great Britain, marking the first phase of international settlements.
 - **The Alabama Claims** arbitration of 1872 happened between the USA and the UK, which was the divisive second phase.
 - **The Hague Peace Convention** of 1899 got together on the initiative the Russian Czar Nicholas II took, hence, marking the third phase of international mediation.
 - These conventions launched the setting up of the PCIJ in 1920, with its operations beginning in 1922. This later became the ICJ in 1946, after the end of the second World War.
- There was a permanent Bureau that was set up in the Hague that acted as a secretariat to the court and laid down the rules that governed the procedures and conduct.
- G.H. Hackworth Committee (USA) was given the responsibility for the preparation of a draft Statute for the to-be International Court of Justice in 1945.
- The PCIJ dissolved formally in the April of 1946. The first meeting of the International Court of Justice was held and Judge José Gustavo Guerrero, from El Salvador, was elected its President.

Functions and Jurisdiction of the International Court of Justice

The International Court of Justice is an important body of the UN. It functions in different ways;

- The ICJ is the world's court and operates with a two-fold model of jurisdiction. It settles disputes between countries that have submitted their issues to them. And it is also responsible for providing legal advice submitted by the UN organs and special agencies.
- The states that are members of the UN and are parties to the Statute of the Court (have accepted its jurisdiction) can exclusively become parties to contentious cases.
- The representatives of the States are not permanent in the Court. The communication is usually held through the particular countries' Foreign Affairs ministers or their diplomats in the Netherlands.
- An agent represents the said parties for case proceedings in the Court. Since the scale of these cases is international, the representative agent may be the head of a specialised diplomatic mission with committed powers to a sovereign state.
- The judgement by the ICJ is binding and final for the parties involved and doesn't offer the right to appeal. Though these may be subject to revision.
- A member State of the UN signs the Charter and is subjected to comply with these decisions of the Court.
- Either of the parties involved in the judgement can have either side be presented before the Security Council for incumbency towards the advices made by the Court.
- The Security Council has powers to suggest and decide measures to aid the actualisation of the judgement. This is the normal conventional procedure. There are provisions for incidental proceedings as well.
- There could be establishment of ad-hoc chambers for specific cases even when the Court assigns its duties as a full court for specific cases.
- Advisory proceedings are open to the five bodies under the UN and the 16 specialised agencies of the UN (and affiliated bodies)
- The opinions are advisory in nature and not binding.

Types of Jurisdiction of the ICJ

The ICJ has two types of jurisdictions:

1. Contentious cases

- The ICJ follows international law to settle legal disputes that have been submitted to them by the states.
- The application of the cases precedes the hearing of the cases.
- The recognition of the ICJ's jurisdiction is vital for any court proceedings to follow.
- The Court's judgement is final and binding on the parties. It doesn't have the option to make an appeal.

2. Advisory opinions

- This particular procedure is viable for the 5 UN bodies, 16 specialised bodies and their associated affiliations.
- There is a legal weight to the court's verdicts, even when they aren't legally binding.

There is also a classification between mainline and incidental jurisdictions.

- **Incidental Jurisdiction:** This is related to matters of miscellaneous and interlocutory nature. For instance, the Court's power to decide a dispute and its jurisdiction in a specific case, the Court's authority over the proceedings, etc.
- **Mainline Jurisdiction:** This concerns itself with the power extended by the court, the binding nature of the verdict, etc.

Structure of the ICJ

There is set structure of the ICJ which has been discussed below;

- There is a total of 15 judges in the International Court of Justice, each selected to serve a term of nine years by the UN General Assembly and the Security Council. The voting occurs in these organs separately but simultaneously.
- There 15 judges are distributed demographically and geographically;
 - Three judges come from Africa
 - Two judges from Latin America and the Caribbean
 - Five judges come from Western Europe and other states
 - Three judges from Asia
 - Two from Eastern Europe
- For the successful election of a judge in the ICJ, there must be an absolute majority for a candidate in both organs of the UN.
- The judges are allowed to be re-elected. Elections are held every three years where one-thirds of the cabinet retires.
- The ICJ is not comprised of diplomats/representatives of different States like all international organisations. The judges in the ICJ are independent judges who take an oath for the fair use of their judicial powers to make impartial decisions.
- For the complete independence of the judiciary, the dismissal of the judges can't happen unless there is a unanimous vote from the other members of the Court. This has never happened in the history of ICJ.

International Court of Justice Judges

The ICJ has 15 members as judges at a time. However, this cabinet has 14 members. The names have been enlisted below in the table;

Name	Country
1. President Joan E. Donoghue (President)	United States of America
2. Kirill Gevorgian (Vice-President)	Russian Federation
3. Peter Tomka	Slovakia

4.	Ronny Abraham	France
5.	Mohamed Bennouna	Morocco
6.	Abdulqawi Ahmed Yusuf	Somalia
7.	Xue Hanqin	China
8.	Julia Sebutinde	Uganda
9.	Dalveer Bhandari	India
10.	Patrick Lipton Robinson	Jamaica
11.	Nawaf Salam	Lebanon
12.	Iwasawa Yuji	Japan
13.	George Nolte	Germany
14.	Hilary Charlesworth	Australia

India and the International Court of Justice

There have been four judges in total of Indian nationality in the International Court of Justice. The first Indian judge at the ICJ was Sir Benegal Rau (1952-1953). He was followed by Nagendra Singh (1973-1988). Raghunandan Swarup Pathak served his term from 1989-1991. Currently, Judge Dalveer Bhandari has been a Member of the Court since 27 April 2012 and has been re-elected unianimously. His term ends in 2027.

India has a few brushes with the ICJ over the years. One such case was that of Kulbhushan Jadhav, an Indian naval officer, who was arrested by security forces of Pakistan in March 2016 near the Balochistan province. He was accused of allegedly entering from Iran.

The highlights from the case's trajectory and verdict have been listed below;

- Pakistani Military court sentenced him to death on espionage charges along with terrorism charges in the April of 2017.
- The ICJ stayed of the Pakistani verdict in May 2018 making India move a petition before the UN to seek justice. India put forth a stance that alleged the Vienna Convention's violation.
- India stated that Pakistan's custody of the Indian national Kulbhushan Jadhav without any consular access was unlawful under the Vienna Convention. The ICJ directed the Pakistani forces to hold off the death sentence till Jadhav's conviction was reviewed.
- The ICJ asked for consular access to be arranged between New Delhi and Islamabad as soon as possible. This turned out to be a big diplomatic win for India. Pakistan obliged with this request.
- The ICJ upheld that Pakistan had indeed violated the Vienna Convention's article 36 on Consular Relations of 1963 when they did not inform India of Jadhav's arrest when they took him in custody.

- There was deprivation in the 'right to communicate' when India was not allowed connection with Jadhav, arrange for his legal representation or visit him in detention.
- Pakistan was in breach of the obligations under Article 36 paragraph 1 (a) and ©.

Limitations of the International Court of Justice

ICJ has from some limitations which are mostly structural, circumstantial and/or related to the availability of the material resources to the Court.

- The ICJ has no jurisdiction over individuals who are accused of crimes against humanity and war crimes. It is not a criminal court and hence, it cannot have a prosecutor to initiate proceedings.
- National courts can't turn to the ICJ as it is not an Apex court. It also is not a court that can serve as a last resort to countries. It is not an appeal court but can give rulings on the validity of the arbitration awards.
- It does not have suo moto provisions and hence, cannot take up cases on will and has to be requested to do so by the States. It has no powers to investigate or rule on acts.
- The ICJ's jurisdiction is consensual and cannot be exercised on countries that don't accept it.
- There is no complete separation of powers as the Security Council's permanent members can always veto the verdicts.