

INTERNATIONAL COURT OF JUSTICE

Topic: Important International institutions, agencies and fora, their structure, mandate.

Context

Pakistan was directed by International Court of Justice (ICJ) to review the conviction order of Kulbhushan Jadhav and, until then, put his death sentence on hold. Pakistan was asked to allow India consular access at earliest. And Also re-Election of an incumbent Indian Judge Dalveer Bhandari (in Nov 2017) to ICJ defeating Britain, a UNSC permanent member.

- Role and Functions of ICJ in International dispute resolution and limitations therein
- Significance of re-Election of an Indian Judge after defeating a Permanent UNSC member.
- Significance of Jadhav Case verdict

About ICJ:

The International In United Nations Charter in Chapter XIV authorizes the UN Security Council to Court of Justice (ICJ) is the principal judicial organ of the United Nations (UN). It was established in June 1946 to replace the Permanent Court of International Justice. The statute of ICJ forms an integral part of United Nations Charter. by the Charter of the United Nations charter and began work in April 1946.

The seat of the Court: The Peace Palace in The Hague (Netherlands).

Function

The most important role played by the Court is to settle, in accordance with international law, legal disputes submitted to it by States.

To give act as an advisory board opinions on legal questions/issues referred to it by authorized International Organisations. United Nations organs and specialized agencies.

In United Nations Charter in Chapter XIV authorizes the UN Security Council to enforce Court rulings. However, such enforcement is subject to the veto power of the five permanent members (France, U.K, China, U.S, and Russia) of the Council.

Composition

The Court is composed of 15 judges, who are elected for terms of office of nine years terms of office by the United Nations General Assembly and the Security Council. These two organs vote simultaneously but separately. A candidate must receive an absolute majority of votes in both sides for getting elected.

There are 15 judges in the Court and they are distributed as per the regions:

- 3 from Africa.
- 2 from Latin America and Caribbean.
- 3 from Asia.
- 5 from Western Europe and other states.
- 2 from Eastern Europe.

Who nominates the candidates?

Every state government, party to the Charter, designates a group who propose candidates for the office of ICJ judges.

What are the qualifications of ICJ judges?

- High moral character.
- The judge should fit to the qualifications of appointment of highest judicial office as prescribed by their respective country or.
- He or she should be jurisconsult of recognized competence in international law.

Election Procedure

- Elections are conducted once in 3 years, and five among these 15 judges are elected for a nine-year term. This is to ensure continuity, especially in pending cases.
- A candidate needs to get an absolute majority in both bodies chambers i.e. the UNGA and UNSC, to get elected.
- Judges are eligible to stand for re-election.

Jurisdiction

ICJ acts as a World Court and is the principal legal organ body of the UN. The court's jurisdiction is two-fold: Contentious Cases

- ICJ, in accordance with International Law, settles the disputes of legal nature that are submitted to it by states.
- Only countries can apply and appear before the ICJ. International Organizations, other authorities, and private individuals are not entitled to institute proceedings before the court.
- The Court can only deal with a dispute when the States concerned have recognized its jurisdiction.
- The judgment is final, binding on the parties to a case and without an appeal (at the most it may be subject to interpretation or, upon the discovery of a new fact, revision).

Advisory Opinions

- Advisory Procedure is available to five UN Organs, fifteen Specialized Agencies, and one Related Organization.
- 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.

Limitation on the Functioning 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 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.
- Court can only hear a dispute when requested 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

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

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.
- 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.
- 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.
- Recently, the International Court of Justice (ICJ) has directed Pakistan to review 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 earliest. This is a major diplomatic and legal victory for India in Kulbhushan Jadhav case.

Key Highlights of Judgement

- Pak Violated 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 '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.

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.

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 powerful Security Council.
- 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 United Nations that the U.K. 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.