

#### PERMANENT COURT OF INTERNATIONAL JUSTICE

- At the end of the First World War, & with the creation of the League of Nations, under a mandate of the Article 14 of the Covenant of the League of Nations, a Permanent Court of International Justice was established (1922).
- The Permanent Court was established with 15 judges
- Elected by the Assembly & the Council of the League of Nations.
- The Statute, which governed the operation of the Permanent Court, was however an instrument independent from the Covenant of the League of Nations.
- Only States could be parties before the Permanent Court
- But it was empowered to give advisory opinions to the Assembly & the Council of the League of Nations.
- The Permanent Court, which came into operation in 1922 and ceased functioning in 1940 with the outbreak of the Second World War.

#### INTERNATIONAL COURT OF JUSTICE

- The Permanent Court was dissolved in 1946, followed by a decision at the San Francisco Conference to create a new International Court of Justice, but as a principal judicial organ of the United Nations (Article 92 of the UN Charter).
- Both instruments were adopted on 26 June 1945, & came into force on 24 October 1945.

#### ORGANIZATION

- The Charter of the United Nations, Articles 92 to 96, establishes the general lines of the work of the Court;
- The Statute of the Court, which determines its organization, competence & procedures;
- The Rules of the Court, deal with matters concerning the judges & assessors : – the presidency of the Court, the work of the chambers, the internal functioning of the Court & of its registry, as well as the proceedings in the contentious & advisory cases.
- It is composed of 15 judges elected for a period of nine years; no more than one national of any State may be a member of the Court.
- President & Vice-President of the Court will be elected for a term of three years.
- The Court is assisted by a Registry, headed by a Registrar.
- Elections are held every three years for five vacancies of the Court each time.
- Eligible as judges are persons of high moral character & possessing the qualifications required

in their respective countries for appointment to the highest judicial offices.

- The election is held simultaneously both in the General Assembly & in the Security Council, each voting independently of the other.
- In order to get elected, a candidate must obtain an absolute majority in both forums.
- The Court may establish chambers composed of three or more judges.
- The Court also established a special chamber for environmental matters.
- A judgement rendered by a chamber is considered a judgement of the Court.
- All the judges of the Court, including ad-hoc judges, constitute the Bench of the Court in a case.
- No member can be dismissed unless, in the opinion of other members, he/she has ceased to fulfil the required conditions (Article 18 of the Statute).
- During his/her term of office, no judge should engage in any political or administrative functions or in any other occupation of a professional nature (Article 16 of the Statute).
- A member of the Court may declare that he/she should not take part in the decision in a particular case.
- President of the Court suggest, that for some special reasons one of the members of the Court should not sit in a particular case and should give his/her notice accordingly.
- Where a judge of the nationality of one of the parties is sitting on the bench, the opposing party may choose an additional judge.
- Such a judge need not be a national judge, but should be a national of the party which is no represented on the bench.
- Further, each of the parties may choose such a judge if neither of them has its national sitting on the bench.
- Judges so chosen by the parties have the same rights & duties as the members of the Court for the duration of the proceedings (Article 31 of the Statute).
- The International Court of Justice possesses two types of jurisdiction: (i) Contentious jurisdiction involves States that submit the dispute by consent to the Court for a binding decision. (ii) Advisory jurisdiction.
- Advisory jurisdiction, concerns questions referred to the Court by the General Assembly, the Security Council or other organs & specialized agencies of the United Nations.
- Advisory opinions given by the International Court of Justice are not binding.

- Incidental jurisdiction relates to a series of miscellaneous & interlocutory matters; for example the power of the Court to decide a dispute as to its own jurisdiction in a given case;
- Mainline jurisdiction, concerns the power of the Court to render a binding decision on the substance and merits of a case placed before it.
- The Statute of the ICJ establishes that for contentious jurisdiction, only States can be parties before the Court (Article 34(1) of the Statute of the ICJ). However, States are entitled to sponsor the claims of their nationals against other States.
- Exhaustion of local remedies is more than a procedural requirement.
- Without their exhaustion, no remedies for legal injury can be envisaged at the international level.

#### BASIS OF JURISDICTION

- The basis for jurisdiction is the consent of the States parties to a dispute.
- Consent can be expressed in one of the following ways ,
  - Special Agreement - The conclusion of a special agreement (compromis) to submit the dispute after it has arisen.
  - Jurisdictional Clause - Another way of conferring jurisdiction on the Court is through the inclusion of a jurisdictional clause in a treaty.

#### APPLICABLE LAWS

- According to the Statute, the Court is required to apply:
  - a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
  - b) International custom, as evidence of a general practice accepted as Law;
  - c) The general principles of law recognized by civilized nations;
  - d) Subject to the provisions of Article 59 :--judicial decisions & the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
- A State which is not a party to a dispute can intervene in the case if it has an interest of a legal nature that is likely to be affected by a decision in the case. However, it is for the Court to decide upon its request.
- Proceedings before the Court take place in two phases: the written & the oral proceedings.
- Where service of a notice upon a person other than the agents, counsel and advocates is necessary, the Court sends such a notice to the govt of the State in whose territory the notice has to be served.
- A similar procedure is also applied to obtain evidence on the spot (Article 44 of the Statute).
- The Court may entrust any individual, body, bureau, commission, or other organization that it may

select, with the task of carrying out an inquiry or giving an expert opinion (Article 50 of the Statute).

- A judgement is binding upon the parties in accordance with Article 2 & Article 94(1) of the United Nations Charter.
- In case of failure by one party, to comply with the obligations arising from the decision of the Court, the other parties can have recourse to the Security Council for the enforcement of the decision.
- Cases were classified into three categories:
  - Where economic facts, factors & circumstances are relevant to a case but fall outside the scope of judicial function;
  - Those which are relevant but do not constitute the core of the matter; &
  - Economic rights & obligations which have been the subject matter of the dispute.
- The ICJ has its seat at The Hague, the Netherlands & has the jurisdiction to settle disputes between countries and examine cases pertaining to violation of human rights
- It is the judicial arm of the United Nations : – The UN Security Council is authorised by Chapter XIV of the United Nations Charter to enforce Court rulings, but enforcement is subject to veto by permanent members of the Security Council.
- Judges are eligible to stand for re-election.
- Elections are held in New York during the autumn session of the United Nations General Assembly and the elected judges enter office on February 6 of the subsequent year.
- If a judge were to die in office, resign, or be incapacitated to perform the duties expected of her, a special election is held as soon as possible to fill the vacancy for the unexpired duration of her tenure.
- The Court also adheres to a rigid ethno-cultural matrix to ensure that it is representative of the 'main forms of civilization & the principal legal systems of the world.
- At every election to the ICJ Of the 15 judges, it is mandated that three should be from Africa, two from Latin America and the Caribbean, three from Asia, five from Western Europe and other states, and two from Eastern Europe.
- All states party to the Statute of the Court are eligible to propose candidates.
- The selection process is meant to be apolitical, & is made not by the government of the state concerned, but by the members of the Permanent Court of Arbitration designated by that state to represent its interests in the Court.
- Each group can propose a maximum of four candidates, not more than two of whom may be citizens of the said country.
- Basis of Selection of judges - It is held that all nominees should have a 'high moral character,' &

credentials commensurate with those expected from the highest judicial officials of those countries.

- The Charter also makes it mandatory for judges to have recognised competence in international law.
- Every judge receives an annual base salary of \$172,978, with the President receiving a supplementary allowance of \$15,000.
- No judge can be dismissed, unless in the unanimous opinion of all peers, he is deemed to no longer fulfil the required conditions.
- Article 33 of the United Nations Charter lists the following methods for the pacific settlement of disputes between States: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, & resort to regional agencies or arrangements, to which should also be added good offices.
- Historically, mediation & arbitration preceded judicial settlement.
- The former was known in ancient India & 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, & in Papal practice.
- As per Article 94 of the Charter of the United Nations, all member states are required to comply with decisions of the ICJ.
- When a state fails to comply, the Security Council has the power to impose sanctions against it & ensure compliance when international security and peace are at stake
- Any one of the five permanent members of the Security Council with veto powers can block the enforcement of an ICJ decision against itself or its ally.
- Jay Treaty of 1794 between the United States of America and Great Britain. Considered as history of arbitration.
- Treaty of Amity, Commerce and Navigation provided for the creation of three mixed commissions, composed of equal numbers of American and British nationals, whose task it would be to settle a number of outstanding questions between the two countries.
- The Alabama Claims arbitration in 1872 between the United Kingdom and the United States marked the start of a second, even more decisive, phase
- Treaty of Washington of 1871, the United States and the United Kingdom agreed to submit to arbitration claims by the U.S.A. for alleged breaches of neutrality by the U.K. during the American Civil War.
- 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.
- The Permanent Court of Arbitration was established in 1900 and began operating in 1902.

- 1907, a second Hague Peace Conference, to which the States of Central and South America were also invited, revised the Convention and improved the rules governing arbitral proceedings.

#### CASE AGAINST ISRAEL

- On 29 December 2023, South Africa moved the ICJ to hold Israel responsible for the violation of the genocide convention.
- The immediate objective is to get a court order for the provisional measures to bring a halt to the indiscriminate killings and destruction in Gaza.
- While making such a case, through its application and statements in courts by its counsels, South Africa has presented a horrifying and alarming picture of the unfolding calamity in Gaza.
- South African argument emerges from the acts perpetrated by Israel being genocidal, for they are violative of Article II of the genocide convention.
- Primarily based on the evidence from various United Nations (UN) agencies (such as UNRWA, UNICEF, OCHA, WHO, FAO, and ICRC) and statements from UN officials.
- It is posited that Israeli actions of  
(i) Mass killing of civilians in Gaza (including a large number of children and women);  
(ii) Causing serious mental and bodily harm to Palestinians in Gaza;  
(iii) Deliberately inflicting on them the conditions of life calculated to bring about their physical destruction in whole or in part, which includes expulsions from homes and mass displacement, alongside the large-scale destruction of homes and residential areas; deprivation of access to adequate food and water, medical care, shelter, clothes, hygiene and sanitation, and the destruction of the life of the Palestinian people in Gaza;  
(iv) Reproductive violence constitute the violations of Articles II(a), II(b), II(c), and II(d), respectively.
- South African case seeks to establish the “intent” behind genocide through the statements from Israeli leaders, including the Prime Minister, President, Minister of Defence and other ministers and deputy speaker of the Knesset that have dehumanised Palestinians, attributed criminal/terrorist intent to the entire population and called for their total destruction.
- South Africa considers that the conduct of Israel in relation to Palestinians in Gaza is in violation of its obligations under the genocide convention, including Articles I, III, IV, V, and VI, read in conjunction with Article II.
- This entails failure to prevent genocide, committing and conspiring to commit genocide, complicity in and incitement to genocide, and failure to punish any of these.
- The Israeli response in the ICJ betrayed a singular lack of engagement with the South African charges & essentially stuck to its ad nauseam justification

hinged on the 7 October 2023 attacks by Hamas and the right to self-defence.

- It did not respond to the South African position that the obligation to prevent genocide is an absolute one and nothing can justify genocidal acts, even the ghastly attacks on 7 October
- This invocation of the right to self-defence is itself contested as the ICJ had ruled in 2003 that as an occupying force, Israel does not have the right to self-defence
- Moreover, Israel in order to justify the destruction of civilian life by positing that Hamas is embedded in civilian life in Gaza, thus effectively arguing that civilians are indistinguishable from Hamas
- This is consistent with the Israeli President's statement that "its an entire nation that is responsible" and wild accusations from Israel to the effect that South Africa and Turkey are legal arms and executive arms of Hamas, respectively
- In general, it could not justify its bombing and destruction of hospitals. Furthermore, the "Hamas argument" does not justify the increasing aggression in the occupied West Bank.
- Israeli legal response could not respond to the South African case of Israeli bombings in areas declared as safe – even using 2,000-pound bombs for at least 200 times in south Gaza where the north Gazans were told and forced to move
- In the last few days, the world has also witnessed the macabre spectacle of Israeli forces firing on desperate civilians in north Gaza while they were trying to access aid.
- Based on the facts & arguments, international legal experts & scholars seem to be veering towards an opinion that the South African case is strong, and legally speaking, the ICJ may well order provisional measures that it has asked for—either fully or partially.
- However, there is also a general scepticism about such an outcome based on the reality of ICJ after all

being a part of the order dominated by the powerful Western countries

- Responses from these countries, ranging from the dismissal of the South African case by the United States (US), United Kingdom (UK), Canada, etc, to the active support to Israel by Germany have further underscored their prioritisation of vested interests over moral obligations.
- This came into sharp relief in the US–UK-led bombing of Yemen on the second day of the ICJ hearing, as the Yemeni Houthis have been targeting Israel-bound ships in the Red Sea with the stated objective to economically pressurise Israel towards a ceasefire.
- Instead of using their leverage over Israel to bring about a ceasefire, the US–UK-led maritime alliance (with no Gulf or Arab country joining it) has characteristically privileged trade interests over human lives.
- Countries such as the US, UK, Netherlands, France, Denmark, and Canada in their declaration of intervention in the Gambia v Myanmar ICJ case had advanced an expansive understanding of genocide but have refused to do so in this case, thus underscoring the impunity that they have been according to Israel.
- South African actions have highlighted its sense of moral responsibility, which has its source in their own struggle against the apartheid regime—actively supported by Israel— & steadfast commitment to the liberation of Palestine being inextricable from its own liberation.
- It is gaining support from several countries, invariably & inevitably with the history of suffering at the hands of colonial & hegemonic powers
- Thus, along with putting the dominant world order on trial, this case has also highlighted the significant global fault lines & hastened the mobilisation for peace and justice for Palestinian people.