

International Court of Justice

Why in news?

South Africa has moved the International Court of Justice (ICJ), invoking the Genocide Convention, 1948, against [Israel](#), accusing it of committing genocide during its ongoing military campaign in Gaza.

What is ICJ?

- **World's court-** It is the **principal judicial organ** of [United Nations](#), it is the only principal organ of UN to be not located in New York.

ICJ 	
Founded in	1945
Headquarters	Hague, Netherlands
India's membership	India is a member

- **Composition-ICJ** is composed of 15 judges elected to **9-year terms** of office by the UN General Assembly (UNGA) and the Security Council.
- Of the 15 judges, it is mandated that -

Judges	Countries
3	Africa
2	Latin America and the Caribbean
3	Asia
5	Western Europe and other states
2	Eastern Europe

- **Election-** They are conducted *triennially*, and five among these 15 judges are elected every three years for a nine-year term to ensure a sense of continuity especially in pending cases.
- The President and Vice-President are elected by *secret ballot* to hold office for 3 years.
- **Jurisdiction-** There are **two types** of jurisdiction.
 - **Contentious jurisdiction** - Resolving legal disputes between consenting states
 - **Advisory jurisdiction** - The UNGA, the Security Council and other specialized bodies of the organization can request the ICJ for an opinion on a legal question
- **Role-** It hears cases related to war crimes, illegal state interference, ethnic cleansing, and other issues.
- It settles legal disputes between states and gives advisory opinions to the UN and its

specialized agencies.

- **Legal disputes**-The Court settles legal disputes between nations only and not between individuals, organizations and private enterprises in accordance with international law.
- **State's consent**-The Court can ***only hear a dispute when requested to do*** so by one or more States, it cannot deal with a dispute of its own motion.
- **Verdict**- The judgment is ***final***, binding on the parties and without an appeal, though the rulings of the ICJ are binding some countries ignored them, as ICJ has no direct means of enforcing its orders.
- **Wider scope**- It has rules on cases involving human rights and environmental violations.
- **Increased participation of states**- It has attracted more states to accept its jurisdiction by using dispute settlement clauses or special agreements.
 - For example, Romania and 30 other states have joined a declaration supporting the court's authority.
- **Successful reparations**- Uganda paid 325 million dollars to the ***Democratic Republic of the Congo*** for its military intervention.
- **Advisory role**- The ICJ has provided legal opinions on various issues of global concern, such as nuclear weapons, the Israeli wall, and the occupation of Palestinian territories.

Why South Africa approached ICJ?

- South Africa has sought the indication of ***provisional measures*** to stop the genocide by invoking Genocide Convention, 1948 to which both countries are signatories.
- It accused Israel of causing hunger, dehydration, and starvation in Gaza by impeding ***sufficient humanitarian assistance*** and failing to provide shelter to Palestinians in Gaza, including its 1.9 million internally displaced people.
- South Africa argues that ***urgent relief*** is necessary to protect against further, severe, and irreparable harm to the rights of the Palestinian people which continue to be violated, and to prevent any aggravation or extension of the dispute.
- It wants Israel to report on the measures taken to implement the court's order, and to refrain from acts and to immediately suspend all military operations in Gaza which might aggravate the dispute.
- Israel denied any genocidal intent and claimed its ***right to self-defence*** against Hamas which used civilians as human shields.
- It said its actions were lawful and not aimed at destroying the Palestinian people and accused South Africa for relying on statistics provided by Hamas about casualties.
- It argued that the ***unintended civilian casualties*** occurring during the pursuit of lawful military objectives do not indicate genocidal intent.

Convention on the Prevention and Punishment of the Crime of Genocide, 1948

- It is an instrument of international law that codified for the ***first time*** the crime of genocide in 1948.
- As of 2022, the convention has 152 state parties.
- The Convention calls on all States to maintain vigilance, and push for action to prevent genocide, everywhere.
- According to the convention, **genocide** means any of the following acts committed with intent to destroy a national, ethnical, racial or religious group, as such:
 - Killing members of the group
 - Causing serious bodily or mental harm to members of the group
 - Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
 - Imposing measures intended to prevent births within the group
 - Forcibly transferring children of the group to another group.
- A genocide is a crime that can take place both in time of ***war as well as in time of peace***.
- India ratified the convention in 1959.

What are the concerns about ICJ?

- **Non-compliance**- The court ruling is final, but the enforcement mechanism lies with the UNSC which will have the interference of permanent members.
- **Non-participation of powerful states**- Russia and the US have rejected the court's jurisdiction in cases involving Ukraine and Nicaragua respectively.
- **Lengthy procedure**- Gambia-Myanmar case over the treatment of Rohingya refugees is still in trial which started in 2019.
- **Bosnia-Serbia case** took 14 years which involved Genocide Convention, 1948. Hence ICJ's final ruling on South Africa's genocide case against Israel may take years to emerge.

What lies ahead?

- ICJ may issue provisional measure to stop the alleged genocide in Gaza, it cannot enforce its order and depends on UN Security Council for action.
- The US may veto any action against Israel if the ICJ rules against it.
- The need of the hour is decentralised judiciary which could foster judicial independence.

References

1. [The Hindu- South Africa dragged Israel to ICJ](#)
2. [The Hindu- ICJ justice without power](#)