

International Courts and Climate Change

Why in news?

A group of 16 countries has launched a gallant effort to fight the problem of climate change at the United Nations (UN).

What is the issue?

- Led by **Vanuatu**, an island country in the **South Pacific Ocean**, the group seeks an advisory opinion from the International Court of Justice (ICJ) on the issue of climate change.
- In the 27th UN Climate Change Conference (COP-27), countries failed to narrow their differences on critical issues such as reducing greenhouse gas emissions.
- This perfectly exemplifies the failure of the international community to get its act together on the issue of climate change.

What is the initiative taken by Vanuatu?

- **Small Island Developing (SID)** states such as Vanuatu are most vulnerable to rising temperatures and sea levels.

Small Island Developing States (SIDS) are a distinct group of 38 UN Member States and 20 Non-UN Members/Associate Members of United Nations regional commissions that face unique social, economic and environmental vulnerabilities.

- Vanuatu launched an initiative, through the UNGA, which seeks advisory opinion from the ICJ to clarify the legal obligations of all countries to prevent the adverse effects of climate change.
- Since then, the initiative has gathered momentum with reportedly more than 100 countries backing the idea.

To know about Vanuatu - [Click Here](#)

What are the functions of the International Court of Justice (ICJ)?

- The ICJ has two types of jurisdictions - contentious and advisory.
- **Contentious jurisdiction** - It refers to resolving legal disputes between consenting states, under advisory jurisdiction.
- The UN General Assembly (UNGA), the Security Council (SC) and other specialised bodies of the organisation can request the ICJ for an opinion on a legal question.
- **Advisory jurisdiction** - Unlike decisions given under the contentious jurisdiction, the ICJ's advisory opinions are non-binding.

- The ICJ's advisory opinion on climate change will also be handy in climate-related litigation at the national level.

To know more about the ICJ - [Click Here](#)

What are the legal questions arising out of the initiative?

- If Vanuatu's request for an advisory opinion goes through, the ICJ will have multiple questions to address regarding climate change and reparations.
- **International Obligations** - There comes a question on the international obligations of countries toward the protection of the climate system from anthropogenic emissions of greenhouse gases.
- The ICJ will interpret and clarify the existing international climate change law enshrined in various international environmental treaties.
- It will also use the general and customary international law (CIL) to fill the gaps in these treaties.
- Thus, the ICJ can use the '*no-harm*' principle, an important part of CIL, to shed light on unclear provisions of the Paris Agreement.

No-harm principle - states are under an obligation that activities within their jurisdiction do not damage other countries.

- **Legal Consequences** - Another question is regarding the legal consequences for states that have caused significant harm to the climate system.
- The rich countries that have historically caused maximum greenhouse gas emissions should compensate the developing countries bearing a disproportionate brunt of climate change.
- At COP-27, while it was agreed to establish a "[*loss and damage*](#)" fund to financially assist vulnerable developing countries, there is little clarity on which countries will provide the funding.
- Moreover, the connection between funding and the historical responsibility of developed countries in emissions is yet to be determined.
- **Role of ITLOS** - The International Tribunal for the Law of the Sea (ITLOS) has been requested to determine the specific obligations of the countries about preventing, controlling, and reducing pollution of the marine environment.

*The ITLOS is an independent judicial body established by the **United Nations Convention on the Law of the Sea** to adjudicate disputes arising out of the interpretation and application of the Convention.*

What is the way forward?

- The challenges of ocean warming, sea level rise and ocean acidification are all linked to the marine environment.
- As part of a multi-pronged approach to save our planet, one should welcome the role of

international courts.

- Developed countries and groupings like the G-20 should support these laudable initiatives of the SID states.
- India, as the president of the G-20, should take a lead given its relentless emphasis on [LiFE campaign](#).

References

1. [The Hindu | International courts and climate change](#)
2. [Amnesty | International court should play key role in delivering climate justice](#)

