



International Court of Justice (ICJ)

www.icj-cij.org

1945 by the UN Charter

The Hague, Netherlands

UN Charter, treaties and conventions

- Official principal judicial organ of the UN (“World Court”) to settle legal disputes submitted by states (contentious cases) in accordance with international law (binding judgements) and to give non-binding advisory opinions on legal questions referred to it by the UN.
- Rules on **state** responsibility.

Disputes regarding any question of international law, including sovereignty, boundaries, maritime disputes, trade, natural resources, human rights, treaty violations, environment protection, genocide, etc.

15 judges elected by the UN General Assembly and the Security Council, including the ICJ President and Vice-President

- Can determine whether a state party breached international law and order reparations.
- Can issue “provisional measures” to preserve rights that are believed to be in immediate danger until the case proceedings are completed.
- But: Lacks direct enforcement powers and relies on the UNSC to enforce its decisions.

193 (as per Art. 93 of the UN Charter, all 193 UN members are automatically parties to the court's statute)

No, as no UN member state yet. But declared in July 2018 that it accepts the ICJ's competence and all obligations of a UN member [<https://www.icj-cij.org/index.php/states-not-parties>].

Yes. As per UN membership

HE Judge Nawaf Salam (since 6 February 2024)

Limited to states.

(1) Settling legal disputes. UN member states can file cases against other states accused of violating international law. In principle, ICJ can deal with cases brought by any state. However, ICJ cases come before the court only with the disputing states' consent (In the case South Africa vs. Israel, Israel provided consent to resolve disputes before the ICJ with its signing of the treaty in 1950 (though it did not ratify it). ICJ judgments are final and binding on all parties, but the court cannot be enforced.

(2) Issue “advisory opinions” on matters concerning international law, which are not legally binding but considered “authoritative” and often followed by states.

UN

Can consider whether a State has committed genocide under the Genocide Convention, which defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group:

- 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.

- On 29 December 2023, South Africa brought a case against Israel before the ICJ, accusing it of genocide in Gaza under the Genocide Convention.
- On 26 January 2024, the ICJ ruled that South Africa had a right to bring its case against Israel and that Palestinians had “plausible rights to protection from genocide”. Provisional measures instructed Israel to prevent its military from committing acts which might be considered genocidal, to prevent and punish incitement to genocide, and to enable humanitarian aid to Gaza [For details see <https://opiniojuris.org/2024/04/05/the-icjs-findings-on-plausible-genocide-in-gaza-and-its-implications-for-the-international-criminal-court>].
- On 24 May 2024, the Court ordered Israel to “Immediately halt its military offensive, and any other action in the Rafah Governorate, which may inflict on the Palestinian group in Gaza conditions of life that could bring about its physical destruction in whole or in part” [<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240524-pre-01-00-en.pdf>].
- The evidentiary proceedings in South Africa's case accusing Israel of genocide in the Gaza Strip will be heard at the ICJ in June and October 2025.

- **2004:** Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. Request for Advisory Opinion was submitted in December 2003, and in July 2004 the Court ruled that the construction of the Wall was “contrary to international law” and asked Israel to stop working on it, return seized property and compensate Palestinian landowners for done damages [<https://www.icj-cij.org/case/131>].

- **2023:** Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem. Request for Advisory Opinion was submitted in January 2023. Comments were received by numerous countries and several hearings were held. On 19 July 2024, the findings were announced: “the Palestinian territory occupied since 1967” is “illegal,” and that Israel is obligated to bring its presence in that territory to an end “as rapidly as possible” [<https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-pre-01-00-en.pdf>].



VS.

International Criminal Court (ICC)

www.icc-cpi.int

Established

2002 by a treaty, the Rome Statute

Headquarters

The Hague, Netherlands

Governance

The Rome Statute

Mandate

- Independent international tribunal that seeks to establish individual criminal responsibility for the most serious international crimes.
- Investigates and prosecutes **individuals** charged with such crimes and holds trials and appeal proceedings to determine the guilt or innocence of the accused and to ensure justice is served.

Subject Matter

Only the four crimes listed in the Rome Statute: genocide, war crimes, crimes against humanity, and crimes of aggression

Composition

18 judges elected by the Assembly of States Parties for 9-year, non-renewable terms. These elect from among themselves the ICC President and two Vice-Presidents, for a three-year renewable term.

Powers

- Can issue arrest warrants for individuals believed to have committed those crimes, with which state parties are obliged to comply.
- Can impose prison sentences, order fines and seizure of assets, and issue reparations to victims.
- But: Relies on the cooperation of member states and other international bodies to apprehend suspects and enforce its rulings.

Member States

124 (not including – among others - the US, China, Russia, and Israel)

Palestine Membership

- Yes. State party with effect from 1 April 2015. Became the 123th member.
- Due to a declaration by Palestine under Art. 12(3) of the Rome Statute, the ICC prosecutor has retroactive jurisdiction back to 12 June 2014.

Israeli Membership

No. Israel was one of 7 countries voting against the treaty serving as the Court's statute in July 1998

President

Judge Tomoko Akane (Japan)

Jurisdiction

- Targets individuals.
- Prosecuting crimes within its mandate committed in the territory of, or by the nationals of, one of the member states of the Rome Statute [which is why some argue that the ICC has no jurisdiction when it comes to issuing arrest warrants over the conflict in Gaza].
- Any of the member states can refer a situation to the court, asking the prosecutor – currently Karim Khan – to conduct a preliminary investigation.
- If asked by the UN Security Council, the ICC can also deal with crimes conducted anywhere in the world.
- The ICC prosecutor himself can also initiate an investigation, upon which the ICC judges have then to decide. This happened with his application for international arrest warrants for Israeli Prime Minister Netanyahu, defense minister Gallant, and three Hamas leaders, for war crimes, issued on May 20

Funding

Contribution from state parties; voluntary contributions from UN, governments, other entities or individuals.

Genocide

- Has the same definition of genocide as the ICJ but prosecutes genocide as a crime committed by individuals.
- Has also jurisdiction over other crimes that the ICJ cannot consider, such as war crimes and crimes against humanity, i.e., an atrocity does not need to meet the threshold of ‘genocide’ to be prosecuted.

Gaza

- As Palestine is a state party to the ICC, the court is allowed to exercise territorial jurisdiction over crimes committed in the occupied Palestinian territories.
- An ICC investigation opened in 2021 into alleged war crimes committed by Israel and Palestinian armed groups in the occupied territories since June 2014 is ongoing and now includes the escalation of violence since 7 October 2023.
- On 20 May 2024, ICC prosecutor Karim Khan announced that he requested arrest warrants for Israeli Prime Minister Benjamin Netanyahu, Defense Minister Yoav Gallant, and Hamas leaders Ismail Haniyeh, Yahya Sinwar, and Mohammed Al-Masri (aka Deif) over alleged war crimes. A panel of ICC judges will now consider Khan's application for the arrest warrants.

Other Palestinian Cases

- **2009:** In the wake of the Israel's 'Operation Cast Lead' in Gaza in 2008/09 that left almost 1,300 Palestinians killed, submitted a declaration on 22 January 2009, accepting the ICC's jurisdiction for "acts committed on the territory of Palestine since 1 July 2002" and asked it ICC to investigate war crimes. However, in April **2012**, the ICC rejected the PA's recognition of its jurisdiction, effectively blocking the creation of an inquiry, because it was no “state” within the UN.
- **2015:** On 25 June 2015, after Palestine had acceded to the Rome Statute, the PA presented a file of case material to the ICC chief prosecutor concerning alleged Israeli war crimes with regard to settlements, detainees, and actions during the 2014 Gaza War. On 3 August, a report on settler violence was filed (following the settlers arson attack in Duma), and on 30 October, another one on Israeli “extrajudicial killings” and home demolitions.
- **2018:** The PA asked the ICC to investigate Israeli settlement policies.
- In December **2019**, the preliminary examination of then-ICC Chief Prosecutor Fatou Bensouda found that “war crimes have been or are being committed in the West Bank, including East Jerusalem and the Gaza Strip” and therefore the ICC has the legal basis to probe Israel [<https://www.palquest.org/en/historictext/36787/statement-icc-prosecutor-fatou-bensouda-opening-investigation-war-crimes-palestine>]. On 28 January **2020**, the Pre-Trial Chamber I issued an order setting the procedure and the schedule for the submission of observations on the Prosecutor's request. On 5 February **2021**, the ICC ruled that its territorial jurisdiction extends to all of the territories (the West Bank, East Jerusalem, and the Gaza Strip), hence it now can pursue investigation regarding potential violations of the Rome Statute.