

FACULTY OF LAW

LUND UNIVERSITY

Drishti Alagh

Aesthetics, Emotions and Time in International law

Re-Reading Jurisdictional Immunities of the State (Germany v. Italy) through Objects, Affect, and Temporality

JAMM07 Master Thesis

International Human Rights Law

30 higher education credits

Supervisor: Valentin Jeutner

Term of graduation: Spring 2026

TABLE OF CONTENTS

SUMMARY **4**

PREFACE **6**

INTRODUCTION **9**

Preview to the main argument **11**

Problem statement and hypothesis **11**

Statement of the research question and its significance **12**

Brief contextualization of *Germany v. Italy* as the site of analysis **13**

Research methodology **14**

Chapter mapping **15**

CHAPTER 1: INTRODUCING AESTHETICS IN INTERNATIONAL LAW **17**

1.1 Defining Aesthetics in the Legal Context **17**

1.2 Aesthetics as a Method of Legal Analysis **20**

1.3 Aesthetics as a Method for Reimagining International Law **23**

CHAPTER 2: AN AESTHETIC ANALYSIS OF THE JURISDICTIONAL IMMUNITIES CASE **26**

2.1 The Aesthetic of the Judgment and how it shapes the authority of the Immunity doctrine **26**

2.2 Aesthetics and Legitimacy: The first analytical layer of tension **30**

CHAPTER 3: AN AESTHETIC AND EMOTIONAL ANALYSIS OF THE JUDGEMENT **34**

3.1 Theorising Emotions in International Law **34**

3.2 Emotional Dimensions of the Jurisdictional Immunities judgement **36**

3.3 A conjoined analysis of Emotions and Aesthetics in context of the judgement **38**

3.4 Aesthetics, Emotions and Legitimacy: The second analytical layer of tension **40**

CHAPTER 4: AN AESTHETIC, EMOTIONAL AND TEMPORAL ANALYSIS OF THE JUDGEMENT **43**

4.1 Theorizing Time in International Law **43**

4.2 Temporal Dimensions of the Jurisdictional Immunities judgement **45**

4.3 How temporal shifts transform emotional responses to law's enduring aesthetics **48**

4.4 Aesthetics, Emotions, Time and Legitimacy: The third analytical layer of tension **50**

CHAPTER 5: REIMAGINING INTERNATIONAL LAW THROUGH AESTHETIC ENGAGEMENT **53**

5.1 Aesthetics as a Method of Critique **53**

5.2 From Representation to Metaphysical Function **54**

5.3 Towards a Reimagination of International Law **55**

CHAPTER 6: CONCLUSION **57**

BIBLIOGRAPHY **61**

SUMMARY

This thesis titled ***'Aesthetics, Emotions and Time in International law: Re-Reading Jurisdictional Immunities of the State (Germany v. Italy) through Objects, Affect, and Temporality'*** investigates how the aesthetic, emotional, and temporal dimensions of international law shape its legitimacy, authority, and meaning. The central object of the analysis is the International Court of Justice's 2012 judgment in *Jurisdictional Immunities of the State* (Germany v Italy: Greece Intervening), wherein the Court upheld Germany's immunity from civil suit in Italian courts brought by survivors and descendants of Nazi wartime atrocities. The problem this thesis addresses is structural rather than doctrinal, implying that the problem addressed here is not whether the Court applied the correct legal rule, but that the standards the Court applied are themselves aesthetic commitments with political and moral consequences.

This thesis primarily addresses a persistent and intensifying tension in international legal theory between the formal authority of international institutions and their substantive legitimacy in the eyes of those most affected by their decisions. At a moment when international law faces mounting challenges to its authority from contesting states, excluded communities, and critical scholars, this thesis proposes aesthetic analysis as a method for assessing where and how law's authority is produced and how that consequently influences its legitimacy. The thesis attempts to make a methodological contribution to international legal scholarship by demonstrating that aesthetic, emotional, and temporal dimensions are not peripheral to legal reasoning but mutually constitutive of it. The *Germany v. Italy* judgment is a crucial site for this analysis for it sits at the intersection of all three analytical dimensions. It is aesthetically paradigmatic of the International Court of Justice's formalism, emotionally charged by the acknowledged gravity of unremedied atrocities, and temporally complex in its management of the distance between wartime violence and present adjudication.

The thesis adopts a qualitative and critical methodology that combines a doctrinal analysis of the *Germany v. Italy* judgment with interdisciplinary theoretical frameworks drawn from aesthetic philosophy, affect theory, and the temporality of law. It treats the judgment not only as a legal instrument but as a material and aesthetic object carefully composed through both perceptual and semantic choices of language, formatting, structure, voice, compositional order, and rhetorical strategy that produce legal authority independently of, and in addition to, the substance of the legal reasoning. Throughout, the primary empirical material is the judgment itself, read closely as a text and supplemented by the dissenting opinion of Judge Cançado

Trindade, which is analysed as an alternative aesthetic that demonstrates the contingency of the majority's formal choices.

The thesis advances a central argument across three analytical layers, each building on the last. The first layer establishes that the *Germany v. Italy* judgment's formalist aesthetic actively produces the authority of the state immunity doctrine. The second layer introduces emotions as a dimension of aesthetic analysis and posits that the judgment performs selective empathy as an institutional technique. The third layer demonstrates that the judgment's temporal positioning of wartime atrocity as historical background rather than as a living injustice with present legal significance for the victims deepens the authority-legitimacy gap identified in the preceding chapters. The thesis concludes that international law's aesthetic commitment to doctrinal purity sustains authority while simultaneously undermining legitimacy by suppressing emotion and producing meaning through temporal distancing from violence. This irreconcilability is not a contingent failure of the *Germany v. Italy* judgment in particular but a structural condition of international law's engagement with mass atrocity.

KEYWORDS: ***Aesthetics, Emotions, Temporality, State Immunity, Authority, Legitimacy, Legal Form, Affect theory***

PREFACE AND ACKNOWLEDGEMENTS

This thesis did not begin with a single dramatic moment of conviction but with an interest in international law that accumulated gradually, over the course of pursuing a Bachelors and a Masters in International law, through a growing awareness that the questions the discipline raised were never quite as settled as its formal language suggested. The more I read international legal texts, the more I found myself attending not only to what they said but to how they said it. The curiosity about the relationship between legal form and legal authority eventually became an inspiration for this project.

The direction of this thesis owes a great deal to my experiences, over the past two years, at Lund University and specifically by being a part of the Museum of International Law (MOIL). Encountering international law not just through texts, but through its material and aesthetic objects opened up a dimension of the discipline that had always been present but rarely mentioned. The Museum gave me a way of seeing law, and this thesis is, in many respects, an extended working-out of what that way of seeing reveals when applied to one of the most significant judgments in recent international legal history.

Writing this thesis was intellectually one of the most stimulating experiences of my academic life. The argument sat across several disciplines, such as aesthetic philosophy, affect theory, and temporality in international law. And constructing a framework by bringing these theoretical dimensions in conjunction to perform an analysis was the central challenge of the project. There were moments of genuine excitement when a theoretical connection clarified something that had resisted articulation, or when a close reading of the judgment yielded an insight that only the aesthetic lens could have produced. And there were, equally, moments when holding the different threads together tested the limits of what felt manageable.

I would like to acknowledge the support of my professor of international law, Prof. Dr. Valentin Jeutner, whose constant guidance, generosity, and scholarly rigour shaped this thesis at every stage. His own works *'The Aesthetic Authority of International law'* and *'[l]ex machina: Unlikely encounters of international law and technology'* provided not only a theoretical foundation for this thesis but a demonstration that international legal scholarship can attend to form without sacrificing precision. I am profoundly grateful for his time, his critical engagement, his patience and his confidence in this project from its earliest and most uncertain stages through to its completion.

I am grateful to the Faculty of Law at Lund University for providing me an intellectual environment to undertake this interdisciplinary legal research, and to the LLM programme in International Human Rights for bringing together a community of peers and scholars whose conversations, challenges, and shared commitments made these two years formative.

I would like to thank my friends and fellow classmates at Lund. The experience of writing a thesis is in many ways a solitary one, but it is made possible by the people around you. I am glad to have shared this year with each of you.

Above all, I am grateful to my family. Their support has been the constant beneath every endeavor I have undertaken, and this one is no different. They have sustained me not by understanding every argument in this thesis, though their curiosity has always been genuine, but by believing, without reservation, that the work was worth doing. Whatever I have been able to accomplish in my academic life, I owe in no small part to the foundation they have provided. This thesis is dedicated to them.

Lund, May 2026

"This is how one pictures the angel of history. His face is turned toward the past. Where we perceive a chain of events, he sees one single catastrophe which keeps piling wreckage and hurls it in front of his feet. The angel would like to stay, awaken the dead, and make whole what has been smashed. But a storm is blowing in from Paradise; it has got caught in his wings with such a violence that the angel can no longer close them. The storm irresistibly propels him into the future to which his back is turned, while the pile of debris before him grows skyward. This storm is what we call progress."

- Walter Benjamin on Angelus Novus,
Theses on the Philosophy of History

INTRODUCTION

The international legal discipline has, for the most course of its history, been tied thoroughly through a thread of systematic reason, with the law's authority itself being a reflection of formalised structures, doctrinal coherence, procedural regularity, and the disciplined suppression of all that cannot be formalised. Yet, parallel to this long running thread in the discipline, also run many aesthetic, sensory and affective fibres that not only produce meaning in law but also bring out other perspectives of seeing things, beyond the ones that are authorised, in the discipline. This thesis therefore overarchingly proposes that the path to (international) law's actual realisation is not complete without attending to its aesthetic, emotional and temporal dimensions.

In legal terms, aesthetics may be defined as the study of law as an art form, encompassing its rhetoric, the law's performance in the court along with its symbolic representation.[1] While this definition might seem slightly colloquial, the concept of aesthetics and its engagement with law, as deployed in this paper, draw from the more philosophical sensibilities of aesthetics. In such a sense, it refers not just to the beauty, ornamentation, physical form and structure or visual elements of law but to the organisation of the sensible and the relative structuring of that which can be seen, said, felt and legitimately claimed within society or a legal order.[2] Such a sensibility of aesthetics, among other things, draws inspiration from Rancière's concept of *'Distribution of the Sensible'* which illustrates a systematic division of that which is perceptible, that which is speech and not noise and of that who qualifies as a speaking subject.[3] In light of this, the aesthetics so conceived are not purely ornamental but constitutive of legal authority themselves for it is the aesthetic form of a judgement that determines which arguments or parts of it are to be considered to be legible as law and which are to be dismissed as sentiments, thereby which claims count as reasonably legal and which are relegated to the margins of a footnote.

The second analytical lens of the study of Emotions in international law has also long been attributed to be law's constitutive outsider so to give way to the transcending legal reasoning of jurisprudential texts and achieve objectivity. However, recent scholarship on the subject

[1] Kamil Zeidler and Joanna Kamień (eds), *Aesthetics of Law: From Methodology to Manifestations* (1st Edition, Springer Cham, 2024)
[2] Jacques Rancière, *The Politics of Aesthetics: The Distribution of the Sensible* (Gabriel Rockhill tr, Continuum 2004)
[3] Ibid

increasingly recognises emotions to be intrinsically embedded in law and legal reasoning and far from being antithetical to the latter.[4] Emotions shape the perceptions of injustice, whom the law constructs as a victim rightful of a remedy and what forms of suffering are rendered legally cognisable, thereby altogether shaping authority and legitimacy in law. A general understanding of affect theory posits emotions as social and relational forces with the capabilities of swaying subjects towards and away objects, institutions and norms.[5] In the international legal context, this would imply that emotional structures are operative in determining whose suffering is made visible and whose is aestheticized into abstraction, and consequently, in producing legal authority.

The third analytical lens of time in international law stems primarily from the law's inherent temporality for it selectively operates in determining which past events acquire legal significance in the present and how far the present is to be bound by the obligations and injuries of the past. This third analytical layer therefore traverses through the doctrine of temporal limitation,[6] the gradual transformation of atrocity into precedent,[7] and the aestheticization of historical suffering into the language of settled legal jurisprudence to understand, in the context of aesthetics of law, how international adjudication distances itself from the violence it adjudicates.[8]

Conclusively, this thesis examines primarily how aesthetics, individually and in supplementation with emotions and time, interact in and with international law to shape its legitimacy, authority and meaning. This examination is undertaken through a re-reading of the International Court of Justice's 2012 judgement in the Jurisdictional Immunities of the State (*Germany v. Italy*)[9].

---

[4] Megan Boler, *Feeling Power: Emotions and Education* (1st Edition, Routledge, New York 1999); see also Martha C Nussbaum, *Upheavals of Thought: The Intelligence of Emotions* (Cambridge University Press 2001)
[5] Sara Ahmed, *The Cultural Politics of Emotion* (2nd edn, Edinburgh University Press 2014) 1-19
[6] Sarah Verstraelen, 'The Temporal Limitation of Judicial Decisions: The Need for Flexibility Versus the Quest for Uniformity' (2013) 14(9) German Law Journal 1687 <https://www.cambridge.org/core/journals/german-law-journal/article/temporal-limitation-of-judicial-decisions-the-need-for-flexibility-versus-the-quest-for-uniformity/7B81223537D08D2DEEC5FBE9188BF7C3> accessed 16 March 2026
[7] Jens Meierhenrich, 'A jurisprudence of atrocity' (2023) 14(2) Jurisprudence pp. 262-274 <https://researchonline.lse.ac.uk/id/eprint/118698/1/A_jurisprudence_of_atrocity.pdf> accessed 16 March, 2026
[8] Ruti G. Teitel, *Transitional Justice* (Oxford University Press 2000) 3-10
[9] *Jurisdictional Immunities of the State (Germany v Italy: Greece intervening)* [2012] ICJ Rep 99 <https://icj-cij.org/sites/default/files/case-related/143/143-20120203-JUD-01-00-EN.pdf>
Hereinafter, Jurisdictional Immunities of the State.

PREVIEW TO THE MAIN ARGUMENT

The central argument of this thesis is that law's aesthetic commitment to doctrinal purity sustains legal authority, but simultaneously undermines legitimacy by suppressing emotion, and meaning is produced through temporal distancing from violence. Such an aesthetic commitment therefore renders atrocity historical, abstract and legally settled at the cost of the victims of such a suffering. Therefore, building on scholarship that has highlighted the visual and material dimensions of law, the role of emotions in shaping judgment and the historical constitution of legal meaning, this thesis argues that international law's claim to authority does not solely rely on rational, text-based jurisprudence but is rather requisite of an aesthetic-emotional-temporal architecture that builds, maintains and often also cripples its perceived legitimacy. Such an architecture encompasses the visual representation of law, the emotional responses it evokes and its temporal framing.

The overall argument proceeds through three analytical concepts, first discussed in isolation and then brought into conjunction. The first concept establishes as to what an aesthetic comprehension of international law, and of the *Germany v. Italy* judgement in specific, reveals about the relationship between legal form and authority. The second aspect projects emotion as a site of aesthetic analysis and examines how, in general and in the context of the judgement, the aestheticization of law not only leads to a selective production of empathy in society but also silences suffering. Finally, the third aspect analyses how temporal distancing influences the affective register of the judgement and how the three dimensions, in conjunction, give way to a legal meaning generating mechanism that helps sustain doctrinal authority while undermining legitimacy.

PROBLEM STATEMENT AND HYPOTHESIS

International adjudication is often evaluated on doctrinal grounds as to whether the Court applied the proper legal principles, followed the correct procedure and based its reasoning on precedent. However, such a method of evaluation obscures the aesthetic, emotional and temporal reverberations of the Court's reasoning. In this sense, the problem is not that of the malfunctioning of the adjudication process, but of the adjudication and reasoning process itself. The mannerisms that the Court adopts in structuring its reasoning and in ascertaining what counts as a proper legal argument and what gets dismissed as a mere (political) sentiment, the

choice of these mannerisms is not neutral for it reflects a particular aesthetic of what should the 'law' look like, with that aesthetic encompassing actual consequences for individuals.

The problem that this thesis aims to address, is therefore, rather structural. To elucidate the problem further, when the International Court of Justice acknowledges the suffering of Italian victims of Nazi massacres during the Second World War and then proceeds to immunise the State responsible from accountability on procedural grounds, it is not being cruel, rather principled, in implying that suffering cannot override the procedural rule of immunity in international law. However, the standard set here, that doctrinal coherence takes priority over accountability for atrocity, is in itself not an objective legal truth, but a choice of what law should look like and what language it should speak. Such an action of the Court therefore produces a certain kind of meaning, a meaning in which suffering is made visible only to be legally irrelevant and in which historical violence is aestheticized as or subsumed into the symmetrical language of customary international law.

In such a context, the problem lies not in the fact that the Court reasons insufficiently in regards to its own international standards, but that those standards themselves are aesthetic commitments encompassing political and/or moral consequences.[10] The hypothesis here is that aesthetic, emotional and temporal dimensions of international law are not peripheral to legal reasoning or doctrinal coherence but constitutive of it.

STATEMENT OF THE RESEARCH QUESTION AND ITS SIGNIFICANCE

The core research question that this thesis aims to address is ***"How do the aesthetic, emotional, and temporal dimensions of international law shape its legitimacy, authority, and meaning, as illustrated by the ICJ's judgment in Jurisdictional Immunities of the State (Germany v. Italy)?"*** The significance of this question is three-fold. First, the question focuses on the persistent strain in international legal theory between the formal authority of international legal institutions and their substantive legitimacy in the eyes of those most affected by their decisions.[11] Second, it attempts to step beyond the internal doctrinal analysis of international law and shift towards methodologies attentive to the social, political and cultural preconditions

[10] Terry Eagleton, *The Ideology of the Aesthetic* (Blackwell 1990) 1-3
[11] Martti Koskenniemi, 'The Politics of International Law' (1990) 1 European Journal of International Law 4, 7

of law's production.[12] Third, and most distinctively, the question introduces the theory of Aesthetics as capable of illuminating those dimensions of international adjudication which other approaches/methods of legal analysis may not be able to sufficiently address, thereby posing it as a conscientious method of legal analysis while also evaluating the position.

Conclusively, therefore, while international law as a whole faces intensifying challenges to its authority and legitimacy, from states on contestation of jurisdictions, from communities whose voices are systematically excluded, and from legal scholars critiquing the structural biases embedded in the international legal order,[13] there emerges a pressing need for novel legal tools and methods for assessing law's authority and legitimacy, the relation between the two and where the two are produced and where they die off. This thesis, through its research focus, posits aesthetic analysis and critique as one such tool.

CONTEXTUALISING GERMANY V. ITALY AS SITE OF ANALYSIS

The International Court of Justice's 2012 judgement in the case of Jurisdictional Immunities of the State (*Germany v Italy: Greece Intervening*) provides a rather comprehensive point of departure, in both jurisprudential and methodological terms, and thereby proves to be a fruitful site of analysis. To begin with a brief introduction to the case, it revolves primarily around Italy permitting civil claims by survivors/descendants of victims of Nazi atrocities against the Federal Republic of Germany to proceed before the Italian Domestic Courts.[14]

Consequent to this, Germany brought proceedings before the ICJ on the basis that the Italian domestic Courts had violated the customary international law rule conferring jurisdictional immunity on states from the civil jurisdiction of foreign courts. The Court upheld the German government's claim by a majority and held that customary international law continues to require a grant of immunity even where the defendant state had allegedly committed serious violations of international humanitarian law.[15] While the judgement's doctrinal emphasis lies primarily on the Court's refusal to recognise a Jus Cogens exception to State Immunity,[16] this

[12] Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law* 1870-1960 (Cambridge University Press 2001) 4-7
[13] China Miéville, *Between Equal Rights: A Marxist Theory of International Law* (BRILL 2005) 1-4
[14] Lorna McGregor, 'State Immunity and Human Rights: Is There a Future after *Germany v Italy*?' (2013) 11 Journal of International Criminal Justice 1 125, 127-130 <https://academic.oup.com/jicj/article-abstract/11/1/125/938046?redirectedFrom=fulltext&login=false>
[15] *Jurisdictional Immunities of the State* (n 9) paras 91-97
[16] Carlos Espósito, 'Of Plumbers and Social Architects: Elements and Problems of the Judgment of the ICJ in Jurisdictional Immunities of States' (2013) 4 Journal of International Dispute Settlement 3 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2307688>

thesis attempts to approach and analyse the case from a widely distinct point of view. Jurisprudentially, while the judgement represents an essential modern engagement of the customary international law with principles of state immunity, methodologically it is a key site of analysis because of the precise intersection between the three analytical lenses of aesthetics, emotions and time illustrative in the judgement itself. Aesthetically, the judgment offers a paradigmatic view of the ICJ's formalism. Emotionally, it enunciates a pronounced tension between the acknowledged gravity of the historical atrocities and the procedural coldness with which those atrocities are ultimately rendered legally irrelevant. Temporally, the judgement is a key example of how temporal distancing reduces suffering to legal history. Therefore, this thesis aims to view the ICJ's judgement from an intersectional lens of aesthetics, emotions and time and use it as a tool for the analysis therein.

RESEARCH METHODOLOGY

This thesis adopts a qualitative and critical methodology that combines doctrinal analysis with interdisciplinary theoretical approaches to examine international law as an aesthetic, emotional, and temporal experience. Grounded in affect theory, object-oriented and material legal studies, and scholarship on temporality in international law, the study treats judicial decisions as material and aesthetic objects that shape perception, emotion, and authority. Following on these lines, the thesis aims to read the closely the ICJ's judgment in Jurisdictional Immunities of the State (*Germany v. Italy*), and analyse its precedential reasoning and doctrinal architecture, while simultaneously subjecting the text of the judgement to forms of analysis drawn from outside the law's own self-understanding. Therefore, through an interpretive reading of the ICJ's judgment, the thesis analyses legal form, language, structure, and temporal framing as mechanisms of inclusion and exclusion to reveal how doctrinal coherence is maintained through emotional restraint and temporal distancing.

The emotional methodology in the second analytical layer draws on the affect theory. When applied to the *Germany v. Italy* judgment, this methodology asks how the emotional register of the text of the judgement, for instance its acknowledgements, its silences, and its rhetorical framings of suffering, structures the selective production of legal empathy, and how the aestheticization of emotion contributes to the suppression of victims' claims.

The temporal methodology in the third analytical layer draws on scholarships on philosophy of historical time, transitional justice and legal memory.[17] It approaches the judgment as a temporal artefact and a document that simultaneously inhabits the present moment of legal adjudication and the historical moment of the violence it adjudicates.

Throughout, the thesis proceeds through close textual analysis of the primary empirical material which is the ICJ judgment read in light of the secondary literature in international law, legal theory, aesthetic philosophy, and affect theory. The methodology therefore does not seek to vindicate or condemn the outcome of the case, but to make visible the structural operations that made that outcome possible. This integrated framework then enables a reimagining of international law beyond purely rational or textual analysis, foregrounding the role of aesthetics, affect and time in producing legal legitimacy and meaning.

CHAPTER MAPPING

The thesis proceeds in five chapters, each building on the analytical foundations established by those preceding it.

Chapter One establishes the theoretical and methodological groundwork. It defines aesthetics in the legal context, distinguishing the aesthetic as a structuring force from its colloquial association with beauty or style. It introduces the specific theoretical frameworks drawn primarily from Rancière, Kant, Eagleton and Bourdieu that will be deployed in the subsequent analysis. It concludes by articulating a conception of aesthetics as a deciphering practice and as a method for identifying the rules that govern coherence in international legal order, and for revealing how those rules aestheticize violence and foreclose contestation.

Chapter Two applies the aesthetic analysis in isolation to the case, before the introduction of emotion and time. It examines the formal and compositional properties of the *Germany v. Italy* judgment, for instance its language, structure, and rhetorical choices as aesthetic decisions with jurisprudential consequences. It argues that the judgment's formalist aesthetic functions as a performance of institutional authority, and that its doctrinal coherence is itself an aesthetic value with ideological content. It closes by identifying the first layer of the thesis's central

[17] Walter Benjamin, 'Theses on the Philosophy of History' in Hannah Arendt (ed), *Illuminations* (Harry Zohn tr, Schocken Books 1969) 253; See also Ruti G. Teitel, *Transitional Justice* (Oxford University Press 2000); and Sarah Verstraelen, *'The Temporal Limitation of Judicial Decisions: The Need for Flexibility Versus the Quest for Uniformity'* (2013) 14(9) German Law Journal 1687

tension: the same aesthetic that produces authority begins to strain legitimacy by suppressing contestation and foreclosing alternative readings.

Chapter Three introduces the emotional dimension, studying aesthetics and emotion in conjunction. It first develops a theoretical account of emotion in international law, drawing on affect theory to argue that emotions are constitutive of rather than opposed to legal reasoning. It then examines the emotional architecture of the *Germany v. Italy* judgment: how victims' suffering is acknowledged but aesthetically marginalised; how procedural reasoning displaces emotional claims; and how the Court's formal language renders atrocity abstract and manageable. The chapter poses the central question of the second analytical layer: do emotional responses to aestheticized representations of international law sustain or challenge international legal authority?

Chapter Four brings all three dimensions into conjunction. It introduces temporality as a dimension of legal meaning and examines how the *Germany v. Italy* judgment manages the tension between Nazi-era violence and contemporary legal doctrine through temporal distancing. It argues that the judgment's aesthetic form, its emotional suppressions, and its temporal positioning are mutually constitutive, forming together the aesthetic-emotional-temporal architecture through which the Court's authority is produced and its legitimacy is simultaneously constrained.

Chapter Five moves from analysis to reimagination. It synthesises the insights of the preceding chapters and articulates the broader implications of aesthetic critique for international law by developing an account of aesthetics as a method of critique, arguing for a re-reading of aesthetics that moves beyond engagement with representation toward an interrogation of its metaphysical function in framing not just the authority but also the legitimacy of law. The chapter closes by sketching what a reimagined international law, one that takes seriously the voices, emotions, and temporalities suppressed by its dominant aesthetic, might look like.

Chapter Six conclusively restates the research question, affirms the central argument, and reflects on the contribution of the thesis to international legal scholarship and method.

CHAPTER 1: INTRODUCING AESTHETICS IN INTERNATIONAL LAW

International law speaks in a particular fashion. Its judgments are measured, its language formal, its reasoning presented as the inevitable product of applying settled rules to established facts. This characteristic fashion in which international law presents itself is not accidental for it is the product of deliberate choices about form, structure, and style that together constitute what this thesis calls the aesthetic of international law. The central contention of this chapter is that these aesthetic choices are not superficial and that they do not merely decorate legal reasoning but constitute it, meaning thereby that aesthetics determine what counts as a proper legal argument, whose voice is heard and whose is dismissed, and which claims are legible within the legal order.[18]

1.1 DEFINING AESTHETICS IN THE LEGAL CONTEXT

The word 'aesthetics' carries significant meaning colloquially, with common associations being drawn to beauty, art, and visual appeal. This colloquial meaning, however, narrows down a rich philosophical concept. The philosophical discipline of aesthetics was first named by the German philosopher Alexander Baumgarten in the eighteenth century, who understood it not as the philosophy of art or beauty but as the study of the conditions of sensory perception or how human beings perceive, organise, and make sense of the world through their senses.[19] In Baumgarten's formulation, aesthetics was a form of knowledge pertaining to the senses running in parallel to reason. It was concerned primarily with the body, the affective and the felt reality of a sensible subject.[20]

Switch to present day, quite similar underpinnings of aesthetics can be located within the contemporary international legal scholarship, with a reference being made to aesthetics as the study of perception, experience and meaning beyond just art and beauty, encompassing also the manner in which individuals and societies interpret and make sense of what they

[18] Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (reissue with new epilogue, Cambridge University Press 2005) 1-7

[19] Alexander Baumgarten, *Aesthetica* (Hildesheim: Georg Olms Verlag, 1986 [1750]); see also Daniel Matthews and Illan Rua Wall, *'Legal Aesthesis: Affect, Space and Encounter'* (2023) 19(2) Law, Culture and the Humanities 186, 187

[20] Terry Eagleton, *The Ideology of the Aesthetic* (Blackwell 1990) 1. As Eagleton puts it, aesthetics refers to "the whole of our sensate life together, including the business of affections and aversions, of how the world strikes the body on its sensory surfaces." This formulation is cited and developed by Matthews and Wall (n 19) 186-187, discussing Baumgarten's original delimitation of aesthetics as the science of the conditions of sensory perception.

encounter.[21] An aesthetic conception of international law, therefore enables us to think of it as an experience rather than a social science.[22] Thus, in the context of this thesis, studying international law aesthetically equates to attending to the formal properties of international legal texts as the very medium through which legal authority and legal meaning are produced. It means asking not only what the law says, but how it says it, and what that 'how' does to the substance it purports merely to carry.

Eagleton, in this context, argues that aesthetics, far from being a neutral domain of taste and beauty, has always been entangled with questions of power, ideology, and social order.[23] The aesthetic names the attempt to ground social and political arrangements in something that feels natural, inevitable, and beyond dispute, thereby transforming the historically contingent into the apparently universal. When a legal system presents its doctrines as the logical outcome of neutral legal reasoning rather than the product of political choices, it performs exactly this aestheticizing function. It takes what is contingent and gives it the form of the inevitable.

Immanuel Kant, in his philosophy of aesthetic judgement, further argues that the judgement of taste occupies a peculiar middle position between objective knowledge and subjective preference for it is not merely a report of personal feeling, because the person who finds something beautiful expects others to agree.[24] Yet it is not a scientific claim, because it cannot be verified by reference to any objective property of the world.[25] The aesthetic judgement claims universal validity while remaining grounded in subjective experience. It is precisely this structure of universality, along with its political implications, that makes the aesthetic ideologically powerful.[26] A legal system that presents its formal choices as the inevitable expression of legal necessity is performing this particular Kantian move by disguising a set of political and moral commitments in the form of a universal legal principle. The reader consequently receives the legal outcome as objectively required rather than politically chosen.

Jacques Rancière further formulated the concept of the distribution of the sensible to illustrate a system of implicit rules that determines what is perceptible within a given social order, who

[21] Marina Aksenova, *Art, Aesthetics and International Justice* (Routledge 2025) 1-5; see also Marina Aksenova, 'Beyond the Binary: Law and Aesthetics' (IE Insights, 23 June 2025)
[22] Sebastian Machado, 'Towards an Aesthetic Epistemology of International Law' (2022) 91(3) *Nordic Journal of International Law* 509, 510-511
[23] Eagleton (n 20) 2-3
[24] Immanuel Kant, *Critique of the Power of Judgement* (Paul Guyer and Eric Matthews trs, Cambridge University Press 2000) §1, §9
[25] Ibid §9
[26] Eagleton (n 20) 3-9

has a voice, which claims count as legitimate speech and which subjects are visible as participants in communal life and which remain invisible.[27] For Rancière, it is through the organisation of the sensible and the determination of what can be perceived, said, and heard that social hierarchies are both established and contested.[28] Upon application to international law, Rancière's framework reveals that law has its own distribution of the sensible in the form of an implicit set of rules that determine which actors are recognised as legal subjects, which claims count as proper legal arguments and which forms of suffering are legally cognisable. These rules are not set out explicitly in any treaty or statute but are embedded in the form, language, and structure of the international legal practice, for instance in the way that judgments are written, arguments are organised, and legal reasoning is performed.[29]

Drawing from the works of these theorists, aesthetics may be defined as such to be concerned with notions of representation, appearance, integrity, harmony, form, and style in international law as opposed to aesthesis, which on the other hand is a rather broad concept that draws attention to the conditions of sensory perception themselves. Contrary to aesthetics, aesthesis focuses more on the material, affective, and somatic dimensions of lived experience and the ways in which law renders subjects sensitive or insensitive to a given set of phenomena.[30] This thesis works primarily aesthetics in international law but draws inspirations from the broad formulations of the philosophy of aesthesis and the recognition that law's power operates not only through what it says but through how it is felt, what it makes perceptible, and what it keeps in the background.[31]

Contemporary international legal scholarship, in relation to aesthetics, also postulates that the structure of international legal argument is not determined by the content of legal rules but by the formal requirements of legal discourse.[32] The aesthetics of a legal text, are therefore, features that determine how readers perceive that legal text, encompassing for instance the use of certain expressions, terms, page formats, fonts, registers, references, punctuation marks,

[27] Jacques Rancière, *The Politics of Aesthetics: The Distribution of the Sensible* (Gabriel Rockhill tr, Continuum 2004) 12-13
[28] Ibid 13
[29] Ibid 12
[30] Matthews and Wall (n 19) 187-188. The authors distinguish between Aesthesis, concerned with the sensory, affective, and material dimensions of lived experience, and Aesthetics in *stricto sensu*, which is confined to questions of representation, appearance, integrity, and form.
[31] Ibid 188
[32] Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (Cambridge University Press 2001) 4-7

colours and so on.[33] Anne Orford, in her reading of humanitarian intervention texts as narrative performances of heroism, further gives a narratological direction to this insight, arguing that legal texts are sites of cultural production and the narrative choices embedded in a legal text shape legal meaning and authority in an equivalent manner as does the doctrinal arguments,[34] thereby demonstrating that the aesthetic dimension of a legal argument has direct consequences for the legitimacy of international legal claims.[35]

1.2 AESTHETICS AS A METHOD OF LEGAL ANALYSIS

Viewing aesthetics as a method of legal analysis purports that aesthetics reveals dimensions of legal meaning that doctrinal analysis systematically obscures. The ideological work performed by legal form[36], the claims included or excluded by a text's compositional choices, and the formal properties of a judgment shape how its authority is received.

Conventional doctrinal legal analysis engages with the content of legal rules for instance what the rule prescribes, how it has been interpreted in previous decisions, and whether it was correctly applied to the case at hand, thereby treating legal form as a transparent medium through which legal content is communicated.[37] Aesthetic analysis inverts this assumption through the recognition that legal form is not solely of medium of travel for the actual substance but is in itself a source of meaning, authority, and exclusion for it does not simply transmit legal conclusions but actively produces them.[38]

The dictates of legal form, ranging from conventions governing fonts, punctuation, paragraph numbering, and the sanitisation of human experience into legal terminology are all but incidental to how law presents itself for they condition law's authority.[39] This leads up to the bottom-line that legal authority is not simply a property of legal reasoning but also that of legal form. On lines of this reasoning, a judgment can be made to feel more or less authoritative, and more or less definitive by the aesthetic choices that operate independently of its doctrinal

[33] Valentin Jeutner, *[l]ex machina: Unlikely Encounters of International Law and Technology* (Second and Revised Edition, Lund University Press 2025) 109
[34] Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge University Press 2003) 33-34
[35] Ibid 34
[36] Legal form, for the purpose of this thesis, refers to the way the rule is expressed, the structure of the judgment, and the rhetorical organisation of legal reasoning.
[37] Anne Orford, *'In Praise of Description'* (2012) 25 Leiden Journal of International Law 609, 611
[38] Koskenniemi, *From Apology to Utopia* (n 18) 59-69
[39] Valentin Jeutner, *The Aesthetic Authority of Law: Experiments with Legal Form* (Lund University Press 2025) 1-3

content. The Court's formal and aesthetic choices in the form of specific formatting conventions, the use of stars and structural dividers, the inclusion of maps, the distinctive layout of its operative clauses are not neutral but actively shape how judgments and advisory opinions are read and understood, convey institutional authority, and communicate messages to different audiences.[40] In this sense, any legal authority or court tends to adopt a specific institutional style, peculiar to the court in some instances, and uses that style with a purpose, thereby shaping substantive considerations about authority, consistency, and transparency.[41]

And in the midst of this process, judicial language, along with its impersonal, abstract, and objective reasoning style, strives to diminish moral and ethical judgements, social contexts, and uncertainties, producing the experience of authority and certainty for distant audiences even when the underlying assessments are deeply uncertain and contested.[42] Therefore, the formal properties of judicial texts produce the feeling of objectivity within the reader before the reader has even assessed a single substantive argument. This is precisely the structural aesthetic operation this thesis analyses in the ICJ judgement in *Germany v. Italy*.

When it comes to analysing the aesthetics of a court's judgement, it may be noted that the judgement may not simply deemed to be an announcement of a legal outcome. On the contrary, it is an international legal object carefully composed by the judge(s). That very judgement attempts to exert authority through its formal properties of systematic organisation of facts, issues, and conclusions, its citation of precedent as a demonstration of doctrinal continuity, its use of specialised legal language to signal institutional expertise and weight, and its characteristic distance from the human realities it adjudicates. These formal properties do not merely communicate the Court's reasoning but simultaneously produce the Court's authority as an institution capable of settling disputes with finality.[43]

In the context of the International Court of Justice, a reader who encounters the ICJ's judgment for the first time does not receive it as a neutral communication of conclusions. Rather, the reader receives it primarily through its form, which produces the experience of authority before the reader has assessed a single argument.

---

[40] Irene Miano, *'Doing Things with Style: A Study of the Aesthetic Features of the International Court of Justice's Judgments and Advisory Opinions'* (2026) 17 Journal of International Dispute Settlement 1, 2-4
[41] Ibid 4
[42] Livia Johannesson, *'The Symbolic Life of Courts: How Judicial Language, Actions, and Objects Legitimize Credibility Assessments of Asylum Appeals'* (2023) 24 Journal of International Migration and Integration S791-S809, S798
[43] Eagleton (n 20) 8-9

Rancière's framework is significantly illuminating in this context when he suggests that *"if the distribution of the sensible governs what is perceptible within a social order, then a legal text participates in that distribution by determining what is visible within the legal domain."*[44] The aesthetic reading of an ICJ judgment would therefore ask what does this text make visible, and what does it render invisible? Whose suffering does it acknowledge, and to what extent? Therefore, in Rancière's line of reasoning, the formal properties of a legal text are the true mechanisms through which the legal distribution of visibility operates.

Contemporary conceptions of law are conceived to be reasonable and separate from the more subjective features of art and dramatic representations, and the notion that this separation in itself is an aesthetic choice conceals the extent to which international legal proceedings are saturated with emotional and theatrical dimensions.[45] Parties in international trials often manipulate aesthetic and emotional registers to produce persuasive effects, a practice that the formal aesthetic of judicial reasoning purports to transcend, even as it relies upon it.[46] International law and legal adjudication, therefore, cannot be fully understood without paying attention to the aesthetics and emotions that permeate it.

An aesthetic reading and analysis, therefore pays close attention to and reveals knowledge about who actually speaks in the judgment, who is spoken for, and who is spoken about. These are questions on the distribution of legal subjectivity. The practical difference between a doctrinal and an aesthetic analysis becomes further concrete when applied to the ICJ's judgement in the Jurisdictional Immunities. This is because a doctrinal reading of the judgement would inevitably ask whether the Court correctly identified the customary international law rule on state immunity and whether it applied the rule consistently with precedent?

While these questions too are essential, they leave untouched the consequential features of the text by not inquiring why the Court chose to acknowledge victims' suffering in measured, passive language before proceeding to immunise the German state? And what that rhetorical choice does to the moral weight of such an acknowledgement? A doctrinal analysis does not deem it necessary to interrogate how the judgment's symmetrical structure produces the sense that the doctrinal outcome was inevitable, thereby foreclosing the capacity to imagine that the

[44] Rancière (n 27) 13
[45] Emiliano J. Buis, '*Aristotle in The Hague: Artistic Pleading and Emotional Theatricality in International Criminal Proceedings*' (2020) 114 AJIL Unbound 133, 133
[46] Ibid

law might have spoken differently. An aesthetic reading, by contrast, attends to what the judgment does in addition to what it says.[47] And in doing so, it reveals a dimension of legal authority that doctrinal analysis may be unable to reach: the way that aesthetic form shapes the experience of reading, producing the felt sense that the outcome was legally required when it was in fact legally chosen.[48]

1.3 AESTHETICS AS A METHOD FOR REIMAGINING INTERNATIONAL LAW

While the analysis developed in the previous sections tends to incorporate, to certain extent, critical or negative perceptions of aesthetic form in international law by suggesting that it mystifies power while supressing dissent, this section attempts to delve into to the positive connotations of aesthetics as a method of legal analysis and the consequent reimagination of international law. If aesthetics is the process through which the distribution of the sensible is organised and naturalised,[49] implying that aesthetics is the system that organises rules in any social (or legal order) and makes them feel natural rather than chosen and contingent, then an aesthetic critique would formulate the contrary practice of making that distribution visible, thereby opening it to contestation. In this context of aesthetic critique, to make visible the rules that govern legal coherence is not merely to denounce them, but to create the possibility of imagining different rules, and a different international law.

This section therefore moves towards a deciphering practice of reading legal texts to understand and ascertain the structural rules embedded within the legal form, for these rules govern in actuality how the text must be organised so to function as authoritative law. This deciphering practice reads legal form against its own self by using the text's own formal properties to reveal the conditions of its authority, and in this process, determines the spaces in between where that created authority is the most vulnerable to challenge. A further attention to the sensory and affective dimensions of a legal text also assists the aesthetic critique in constructing knowledge on how, within that particular text, law operates, thereby also revealing truths about power, suffering, inclusion and exclusion which remain obscured in a doctrinal analysis.[50]

[47] Orford, 'In Praise of Description' (n 37) 613-614
[48] Miano (n 40) 2
[49] Rancière (n 27) 13
[50] Aksenova, *Art, Aesthetics and International Justice* (n 21) 2-3

When it comes to the contemporary international legal discourse, the difficulty lies not in its pluralistic discourses, weak enforcement or potential fragmentation, but in an absence of self-reflection. However, employing the lens of aesthetic critique scrutinises the conditions through which law perceives the world and vice versa and creates necessary space around seemingly fixed legal categories, thereby opening up possibilities for constructing newer geometries within the field of international justice.[51]

For international law, the relevant regime is the formalist aesthetic that has governed legal reasoning since the late 19th century. The professionalisation of international law in the 1870s and beyond was, in this context, accompanied by the development of a distinctly formalist aesthetic which was systematic, doctrinal, and deliberately depoliticised in its self-presentation.[52] This aesthetic was not merely a stylistic preference but an ideological attempt to insulate international legal reasoning from political contestation by giving it the appearance of scientific rigour and objective neutrality. Jump to present day, the formalist aesthetic of contemporary ICJ judgments, evident especially in their measured tone, symmetrical reasoning, and a consistent preference for doctrinal continuity over moral enunciations, is an expression of this historical attempt.

The aesthetic, therefore, does not merely reflect social reality but actively produces it.[53] And the reimaginative potential of aesthetic critique lies in making the rules that govern international legal coherence visible. Once the rules are identified as aesthetic rules, they lose their appearance of necessity and are revealed as contingent.[54] This foundational move of aesthetic critique when applied to international law shows that the law's dominant aesthetic is a choice, not an inevitability. And choices, by definition, can be made differently, thereby leading up to a reimagination of international law. Therefore, the aesthetic critique's ability to diverge focus away from specific outcomes to the processes through which international law constructs its own authority is its primary contribution to reimagining international law.[55]

The ICJ judgment's aesthetic in *Germany v. Italy* is one of doctrinal closure and formalist symmetry mainly because it presents the rule of state immunity as the coherent, necessary outcome of customary international law, while simultaneously rendering the victims' claims

[51] Ibid 3
[52] Koskenniemi, *The Gentle Civilizer of Nations* (n 32) 7
[53] Eagleton (n 20) 196-197
[54] Rancière (n 27) 14-15
[55] Jed Odermatt, 'The Power of Perception - Aesthetic Theory and International Justice' (Opinio Juris, 10 July 2025) <https://opiniojuris.org/2025/07/10/symposium-on-symposium-on-art-aesthetics-and-international-justice-the-power-of-perception-aesthetic-theory-and-international-justice/> accessed 7 April, 2026

legally irrelevant without appearing to acknowledge the moral cost of that irrelevance at the formal level of its reasoning. An aesthetic critique, in the context of this judgement, would pose the question as to what it would take to organise the legal text differently? Would it be by offering the victims' suffering a different formal position within the judgment's structure or would it be by acknowledging the temporal gap between the wartime atrocities and the 2012 adjudication as a dimension of legal meaning rather than as historical background?

The ponderance upon these questions and alternate imaginabilities has already been undertaken by Justice Cançado Trindade in his dissenting opinion for the same case.[56] His dissent offers a distinct aesthetic than that of the majority judgement by weaving the victims into the text as legal subjects rather than historical objects, by engaging directly with their suffering and by perceiving and framing the lingering temporal distance as a legal question instead of a neutral fact. And he does the same not with the aim of making the judgement mean something different, but with that of disrupting the mechanical reading of the judgement.[57] The presence of this dissent within the legal proceedings demonstrates that the majority's formalist aesthetic is a choice among several possible aesthetic orientations and not the inevitable expression of what law requires.[58] This serves as an example of how aesthetic critique applied to judicial decisions is not the attempt to read and understand law from the outside but to read it from within and against its own alternatives.

The second chapter turns from the theoretical foundations of aesthetics as a legal method of analysis and reimagination to the first analytical layer of an aesthetic reading of the *Germany v. Italy* judgment in isolation, thereby assessing its formal and compositional properties to demonstrate that the judgment's formalist aesthetic is not a neutral medium for legal reasoning but a structuring force that actively produces the authority of the immunity doctrine. This analysis creates the first layer of tension between legal authority and legal legitimacy, which is the further traced across the chapters.

[56] *Jurisdictional Immunities of the State* (n 9), Dissenting Opinion of Judge Cançado Trindade <https://www.icj-cij.org/sites/default/files/case-related/143/143-20100706-ORD-01-02-EN.pdf>
[57] Jeutner, *[l]ex machina* (n 33) 117-118
[58] Koskenniemi, *From Apology to Utopia* (n 18) 601-615 (Epilogue: The Case for Formalism)

CHAPTER 2: AN AESTHETIC ANALYSIS OF THE JURISDICTIONAL IMMUNITIES CASE

Based on the theoretical and methodological foundations requisite for an aesthetic reading of international law discussed above, we now move to apply those foundations to the ICJ judgement in the Jurisdictional Immunities of the State (*Germany v. Italy*), which acts as the primary site of analysis for the purpose of this thesis. This application is first approached through aesthetics as the sole analytical layer before emotional and temporal dimensions are brought in in the further chapters. A primary aesthetic analysis in this context would help determining the judgement's formalist aesthetic, in the form of how it operates and what authority it produces, thereby constructing an aesthetic baseline to assess the effects of emotional and temporal dimensions as well in influencing the production of authority and legitimacy in law.

2.1 THE AESTHETIC OF THE JUDGMENT AND HOW IT SHAPES THE AUTHORITY OF THE IMMUNITY DOCTRINE

The International Court of Justice is the contemporary institutional embodiment of a formalist aesthetic project for the judgements delivered by the Court are governed by conventions that regulate language, structure, typography, thereby conditioning law's authority quite independently of its substantive content and sanitising human experience within legal form.[59] In this context, the rigidity and sterility of legal texts or judgements, especially when their form remains unaltered for a long time, suggests that they are beyond one's control and thus, one doesn't need to concern oneself with them[60], thereby creating a strong rift between law and its human element. The *Germany v. Italy* judgment is a paradigm specimen of this institutional aesthetic. Reading it closely, as an aesthetic object, reveals precisely how that aesthetic produces the authority of the immunity doctrine, for it does so not through the force of its reasoning alone, but through the force of its form also.

The ICJ often tends to adopt a specific institutional style and uses that style with a purpose.[61] The purpose here could be to perform authority, to construct audiences, or to mediate the

[59] Jeutner, *The Aesthetic Authority of Law* (n 39) Back cover text
[60] Jeutner, *[l]ex machina* (n 33) 110
[61] Miano (n 40) 2-4

Court's relationship with different communities of readers.[62] The same is also visible in the opening of the *Germany v. Italy* judgment. Before the text even begins and a single legal argument is made, the judgement displays its institutional style, a style which has been a consistent characteristic of ICJ judgements over decades, through certain aesthetic features for instance starred section dividers, paragraph numbering, punctuations, usage of a specific font and text colour, table of contents, the formal identification of parties etc.[63] This style is not corresponding simply to neutral formatting or administrative choices, but are explicit aesthetic choices that signal continuity with the tradition of international adjudication, authoritative judicial decision-making, and a stark distance from the contingent and contested nature of the dispute they frame. Because of these choices, the reader receives the judgment as an authoritative piece of text before even engaging with its actual substance and contents. In this manner, therefore, the judgment's form performs authority before its reasoning begins.

Furthermore, the formalist aesthetic of ICJ judgments has, over decades, neatly distributed what is perceptible within the legal domain.[64] This may be evident in the distinctions created between what is viewed as properly legal, what is to be treated as context, and what falls outside the field of legal cognisance altogether. In the specific context of *Germany v. Italy*, the distribution of legal subjectivity is established aesthetically before the doctrinal analysis begins and these distinctions reverberate in the opening paragraphs of the text itself, where the parties are named as sovereign states while the individual victims who brought claims before the Italian courts appear only as the occasion for a dispute between the two states.

Behind the ICJ's formalist aesthetic also lies an entire rhetorical and literary architecture through which the Court constructs its authority as a persuasive institution.[65] One of these rhetorical tools is that of compositional motivation, a technique of introducing fundamental legal motifs outside their argumentative context, thereby conditioning the reader to accept conclusions that later may seem to appear logically inevitable.[66] The ICJ employs this technique precisely in *Germany v. Italy*. For instance, before addressing the parties' substantive arguments, the Court introduces the proposition, in the sense of a disclaimer, that state

[62] Ibid
[63] Ibid 4; See also Jeutner, *The Aesthetic Authority of Law* (n 39)
[64] Rancière (n 27) 12-13
[65] Lorenzo Gasbarri, 'Courtspeak: A Method to Read the Argumentative Structure Employed by the International Court of Justice in its Judgments and Advisory Opinions' in Andrea Bianchi and others (eds), *Interpretation in International Law* (Oxford University Press 2015) 91, 93-94
[66] Ibid

immunity is essentially procedural in nature.[67] This characterisation has no immediate argumentative purpose early on in the judgement at paragraph 58, rather its purpose is compositional for it plants the motif that will resolve, at paragraph 93, the question of whether the jus cogens character of the norms violated affects the rule of immunity. The Court's insistence on the strict procedural character of state immunity might be, in this scenario, an attempt to insulate doctrinal reasoning from substantive moral and legal contestations.[68] Consequently, once the reader has accepted the procedural characterisation of state immunity as a settled baseline, the conclusion offered by the Court at paragraph 93, that procedural and substantive rules cannot conflict because they address different matters, follows with the appearance of logical necessity.

This deliberate reordering of argumentative motifs thus generates the sense that the argument structure imposes itself by logic, when it is in fact a series of aesthetic choices made by the judges in constructing the text.[69] In a similar fashion, the ICJ also presents its reasoning as proceeding progressively from established premises to inevitable conclusions. However, in actuality, the conclusions drawn in the judgement, specifically that Italy violated its obligation to respect Germany's immunity, were the starting point of the Court's argumentative construction. This implies that the aesthetic structure of the judgment works backwards from that conclusion to create the appearance of a forward-moving logical chain. The argument, therefore, arrives at its destination not because the law required it but because the judgment's compositional aesthetic made the destination appear inevitable.

The manner in which the judgment controls the factual record of the case is equally revealing as an aesthetic choice. In this respect, the Court acknowledges *"there can be no doubt that the conduct of the German armed forces and other organs of the German Reich in Greece and Italy during the Second World War gave rise to serious violations of the international law of armed conflict applicable at that time."*[70] Now the phrase 'there can be no doubt' is a high-certainty epistemic marker, identified by scholars as a 'booster' in legal discourse, that forecloses contestation by asserting a claim with maximum authority.[71] It is notable, therefore, that the Court deploys this maximally certain formulation precisely at the moment of acknowledging

[67] *Jurisdictional Immunities of the State* (n 9) para 58
[68] Espósito (n 16) 454
[69] Gasbarri (n 65) 97-99. The *Syuzhet* is the deliberate ordering of argumentative motifs in the text that creates the appearance of logical necessity.
[70] *Jurisdictional Immunities of the State* (n 9) paras 52 and 81
[71] Volodymyr O Pavlov, 'Lexico-Discursive Markers of Authority in International Legal Academic Writing'(2025) 30 *Scientific Journal of Mykhailo Dragomanov State University of Ukraine* 63, 65

the atrocities, thereby presenting the suffering of the victims as something beyond doubt. And yet, having established this baseline with maximum certainty, the judgment proceeds to render it legally irrelevant by concluding that a state is not deprived of immunity by reason of accusations of serious violations of human rights law or the law of armed conflict.[72]

Further down, the Court even establishes both the procedural and substantive distinctions that provide the doctrinal mechanism for this irrelevance by observing that the rules of state immunity do not bear upon the question whether or not the conduct in respect of which the proceedings are brought was lawful or unlawful.[73] This analysis overall posits that what was acknowledged beyond doubt at the factual level by the Court was later on converted, precisely through the aesthetic function of the judgment's structure, to a matter of no legal consequence at the doctrinal level.

The separation of procedure from substance is further performed through the compositional structure of the judgment by separating the factual acknowledgement (in the case of *Germany v. Italy*, in paragraph 52) and the procedural conclusion (paragraphs 91-93) by over thirty paragraphs of systematic doctrinal analysis. And through this intentional separation, the reader is taken on a systematic tour of state practice and precedent before arriving at the conclusion that the opening acknowledgement made morally urgent. By the time that conclusion is reached, the aesthetic architecture of the text has converted urgency into a settled doctrine.

The voice of the judgement, reflected as a third-person narration, is no less of an aesthetic feature that the Court often employs for the narration seems similar to that of empirical authors presenting legal conclusions as if they were objective truths, without indicating that they are the product of judicial choices.[74] Throughout the text of the case, we often come across phrases such as 'the Court considers', 'it is established', or 'under customary international law' which seem to exhibit the Court's conclusions as natural expressions of an objective legal order rather than as the contingent decisions of a group of judges applying contested interpretations to a disputed factual record. This impersonal style functions across judicial systems to diminish moral and ethical judgements, social contexts, and uncertainties, producing the experience of objectivity for distant audiences.[75]

[72] *Jurisdictional Immunities of the State* (n 9) para 91
[73] Ibid para 93
[74] Gasbarri (n 65) 102-104 on the extradiegetic and heterodiegetic voice in ICJ judgments
[75] Johannesson (n 42) S798

The use of passive constructions and nominalisations throughout the judgment reinforces this aesthetic of objectivity. For instance, going back to the previous example of state immunity, when the Court states that immunity is essentially procedural in nature rather than stating that the Court treats immunity as essentially procedural, the grammatical choice depersonalises the claim and removes the trace of judicial authorship.[76] Similarly, when the judgment refers to the conduct of the German armed forces rather than to the massacres of specific named individuals, the nominalisation aestheticizes the violence into an institutional category.

Conclusively, in terms of the visual and material dimensions[77], it may be stated that the judgement's text is a legal object in the form of a neatly formatted document that circulates in legal and scholarly communities, whose physical and digital appearance signals institutional weight, and that even the slightest of modifications to that document's typography and layout alter its perceived authority even without any change to its substantive content.[78] In this context, the ICJ's consistent visual aesthetic constitutes an accumulated aesthetic authority that exhibits itself at the level of perception rather than argument.

2.2 AESTHETICS AND LEGITIMACY: THE FIRST ANALYTICAL LAYER OF TENSION

The analysis in the previous section established that the judgment's formalist aesthetic is a powerful driver of legal authority, and that through this aesthetic, the judgment produces the authority of the immunity doctrine by giving the reader a sense that state immunity is not a political choice about how to balance state sovereignty against individual accountability, but a settled rule of customary international law that the Court has no discretion to depart from. However, the same aesthetic that produces this authority simultaneously also begins to strain legitimacy. An immediate symptom of this strain is the judgement's acknowledgement, with maximum certainty, that the wartime conduct of German forces gave rise to serious violations of the international law of armed conflict.[79] Now even though the acknowledgment is genuine and sincere, its placement within the judgment's aesthetic structure renders it only as a contextual prelude rather than a legally operative finding. Further down the judgement, and after traversing systematically through state practice and precedent, the acknowledgement gets

[76] Pavlov (n 71) 66
[77] Leif Dahlberg (ed), *Visualizing Law and Authority: Essays on Legal Aesthetics* (De Gruyter 2013) 1-10 (Introduction)
[78] Jeutner, *The Aesthetic Authority of Law* (n 39)
[79] *Jurisdictional Immunities of the State* (n 9) para 52

aesthetically pushed to the background.[80] Later on when the judgement observes "*it is not unaware of the moral, political and legal difficulties raised by the application of the immunity doctrine in cases such as this",*[81] such an observation becomes only a formality holding no legal or operative weight. In this manner, the actual claims and suffering of victims is first given hope through a sincere acknowledgement but then pushed into irrelevance by the text's aesthetic architecture.

It is this architecture that reveals the first analytical layer of tension between aesthetics, authority and legitimacy. Amidst this strain, the legal form of the judgment distributes what is legally perceptible in a way that renders certain claims visible and immediately forecloses them, rather than hearing and refusing them.[82] A consequence of the same is that the victims' claims do not fail on the merits but fail aesthetically due to their position within the structure of the text. The Court's procedural approach entails an aesthetic choice of values that draws a state-centric landscape at the expense of the contemporary value of individual access to justice, effective remedy for victims of gross violations of human rights, and the fight against impunity.[83] And this state-centric landscape is the result of the Court's aesthetic choices by way of the text's vocabularies and grammatical preferences that make states the subjects of the text and individuals the objects, the voice that presents sovereignty as an objective legal given rather than a political choice, the compositional structure that moves from factual acknowledgement to doctrinal closure without pausing on the moral weight of what it has acknowledged.

A comparison with Justice Cançado Trindade's dissenting opinion is particularly essential here for demonstrating that the judgement's formalist aesthetic is a choice rather than an inevitability.[84] The dissent offers to the reader a distinct aesthetic. While the majority judgement is written in a heterodiegetic voice, Justice Trindade writes using individual opinions and a homodiegetic voice.[85] While, dissenting opinions are commonly written in first person, Judge Trinidade's shift in voice feels not merely stylistic but signals personal commitment and moral engagement rather than institutional neutrality. For instance, where the majority judgement refers to the conduct of the German armed forces and other organs of the

[80] Ibid para 91
[81] Ibid paras 99, 104
[82] Rancière (n 27) 13
[83] Espósito (n 16) 455
[84] Dissenting Opinion of Judge Cançado Trindade (n 56), para 1
[85] Gasbarri (n 65) 103

German Reich, Justice Trindade writes of surviving family members of those who were murdered.[86] And this distinction between the two formulations is that of aesthetic orientations.

The dissent also showcases a different structural aesthetic by building upon questions that the majority text supresses. Justice Trinidade asks whether contemporary international law can be frozen in its state-centric form, treating state prerogatives as immutable in the face of the evolution of human rights norms?[87] He then goes on to argue that state immunities are, after all, a prerogative or a privilege, and they cannot keep on making abstraction of the evolution of international law in the light of fundamental human values.[88] The existence of Justice Trinidade's dissent within the judgement demonstrates that the majority judgement's aesthetic is contingent. There is no formal necessity that requires international law to distribute its sensible in the way that the majority judgment does for these are mere aesthetic choices with legal and political consequences.[89]

Now, the judgement delivered by the Court in *Germany v. Italy* is an authoritative legal piece for it settles a significant question in customary international law, and it has been used as a precedent several times by domestic courts in multiple jurisdictions. Therefore, there is no question to the fact that the judgement's legal form produces a real, actual sense of authority in the legal sphere. However, the argument drawn here is that the judgement produces that authority through a formalist aesthetic structure that tends to suppress contestation amidst everything else. And this is the first layer of tension that this thesis attempts to trace. International legal proceedings, and the processes of adjudication involved therein, are saturated with emotional and theatrical dimensions that the formal aesthetic of judicial reasoning purports to transcend.[90] The *Germany v. Italy* majority judgment transcends these dimensions not by resolving them but by converting the emotional elements of the victims' claims and the moral weight of the historical atrocities into the background of a doctrinal analysis whose formal closure make the outcomes appear necessary before the reader has had the chance to question it. And this is an aesthetic exercise that the Court performs.

Aesthetics as a legal method creates necessary space around seemingly fixed legal categories, opening possibilities for building new geometries within the field of international justice.[91] And

[86] Dissenting Opinion of Judge Cançado Trindade (n 56) para 232
[87] Ibid para 226
[88] Ibid para 40
[89] Koskenniemi, *From Apology to Utopia* (n 18) 601-615 (Epilogue: The Case for Formalism)
[90] Buis (n 45) 133-134
[91] Aksenova, *Art, Aesthetics and International Justice* (n 21) 2-4

that ‘fixed legal category’ at stake in *Germany v. Italy* is the customary rule of state immunity. The judgement presents it as settled, stable, and beyond the capacity of individual claims to unsettle. The aesthetic analysis in this chapter has shown that this fixity is a formal achievement rather than a legal given and is produced by the compositional structure, voice, use of epistemic boosters, and doctrinal purity. It is, therefore, the contingent presented as the necessary.[92]

Therefore, on one hand where the aesthetic of the judgement causes a strain between authority and legitimacy, employing an aesthetic critique on the other hand assists in resolving that very strain. International law’s aesthetic condition, in this sense, is that of a piece of literature that denies its own literary qualities.[93] Aesthetic critique, as developed in this thesis, does not simply expose this denial as deceptive. It goes one step further to ask what that denial costs, what claims are suppressed, what voices are rendered inaudible, and what legal meanings are foreclosed. The judgment’s formalist aesthetic therefore produces authority at the cost of the voices it excludes from its formal structure and that is the strain it causes with legitimacy. And making those exclusions visible is the primary step towards interrogating the legitimacy of the authority they sustain.

[92] Eagleton (n 20) 9

[93] Julia J. A. Shaw, ‘Aesthetics of Law and Literary License: An Anatomy of the Legal Imagination’ (2017) 38 *Liverpool Law Review* 83-104 <https://link.springer.com/article/10.1007/s10991-017-9195-5> accessed 11 May, 2026

CHAPTER 3: AN AESTHETIC AND EMOTIONAL ANALYSIS OF THE JUDGEMENT

3.1 THEORISING EMOTIONS IN INTERNATIONAL LAW

The previous chapters established that the aesthetic dimensions of law are constitutive rather than ornamental, and this chapter argues the same for the emotional dimensions for emotions are not the opposition of legal reasoning but are already inside it. This section therefore attempts to briefly theorise emotions in the international legal discourse, primarily by resisting the innate opposition between reason and feeling.

Emotions are not merely disturbances (or complementarities) of rational thought but are themselves forms of evaluative judgement and cognitive appraisals of how the world stands in relation to what we care about.[94] They are not irrational intrusions into deliberation but are indispensable to it. To empathise with another is to already have made a moral judgement that their suffering matters. To define emotions, therefore, would be to state that they are valenced (positive or negative) reactions to situations, people, or events that involve appraisals, physiological changes, action tendencies, subjective feelings, and expressive behaviour, and that motivate action or the refusal to act.[95]

Emotions do not simply reside within individual subjects, they circulate between bodies, stick to objects, and produce the very surfaces through which subjects and collectives come to be.[96] On this view, emotional responses are not pre-political raw material but something produced through cultural and institutional practices. International legal institutions such as courts and tribunals, along with their documentary outputs are among those practices for they produce particular emotional orientations, teaching their audiences what is worthy of grieving and what is not. The question, therefore here, is not whether international law encapsulates emotional judgements, but whose emotional judgements it privileges, and how it structures the expression and suppression of feeling as a matter of institutional form.

In theorising emotions in international law for undertaking a conjoined analysis of aesthetics and emotions, it becomes necessary to understand the relationship between emotions and

[94] Nussbaum (n 4) 19-88
[95] Susan A. Bandes and Jeremy A. Blumenthal, 'Emotion and the Law' (2012) 8 *Annual Review of Law and Social Science* 161, 163-164
[96] Ahmed (n 5) 1-19

international law first, for the two aspire to be a universal language.[97] Just as international law seeks to articulate norms that traverse across the diversity of political communities and bind them, certain emotional registers such as empathy, solidarity, indignation also claim a transcultural communicability. This shared aspiration creates conditions for interaction among both. Emotional appeals can reinforce or undermine legal claims, while legal determinations possess the ability to produce or suppress emotional responses. The influence of emotions on international law runs through interpretation, norm-creation, and legitimacy alike because emotions shape which readings of indeterminate legal texts are chosen, which injustices come to demand normative response, and whether legal outcomes are experienced as just or as mere impositions.[98] This is not an argument for sentimentalism for emotional discourses must be subjected to rational scrutiny, since they can serve both manipulative as well as emancipatory ends.[99]

Specifically within the ambit of international legal adjudication, the emotional dimensions in/of law have been receiving much of scholarly attention. Emotional norms operate even within institutions that officially deny them. For instance, sympathetic feelings remain structurally central to proceedings, with legal actors engaging in a deliberate emotion work to channel them to facilitate the judges' empathic imagination of the complainant's situation, while simultaneously the judges engage in the opposite emotion work to not affected by these sympathy cues.[100] Sympathy flows most freely toward complainants who conform to an implicit template of credibility, coherence and passiveness in their suffering, while those who departure from this template produce a sense of friction and suspicion.[101] The production of empathy in courts is thus selective and structured by criteria that pre-determine which suffering counts as legible.

This selectivity is not incidental but systemic. Institutional logics of procedural manageability narrow the construction of victimhood until only a symbolic subset of actual victims are recognised, with that recognition serving the court's own legitimacy interests rather than the

[97] Nicolás Carrillo Santarelli, 'The "Artistic" Influence of Emotions and Empathy in the Content, Interpretation and Effectiveness of International Law' (2017) XVII *Anuario Mexicano de Derecho Internacional* 65, 75 https://revistas.juridicas.unam.mx/index.php/derecho-internacional/article/view/11032/13058
[98] Ibid 70-74
[99] Ibid 77-78
[100] Nina Törnqvist, 'Drizzling sympathy: Ideal victims and flows of sympathy in Swedish courts' (2022) 28(3) *International Review of Victimology* 263, 264 https://journals.sagepub.com/doi/pdf/10.1177/02697580211035586 accessed 10 May, 2026
[101] Ibid 266-267

interests of those harmed.[102] The court, therefore, produces a symbolic inclusion alongside systemic exclusion, where victims are acknowledged in principle along with their suffering incorporated into the court's self-presentation, while procedural and doctrinal constraints ensure that this acknowledgment does not translate into substantive accountability.[103] This technique of legitimacy production in courts, accompanied with the management of emotional responses, generates only enough empathy to sustain that court's authority, but not so much as to destabilise its doctrinal commitments.[104]

These insights together frame the analysis as to what emotional work does the *Germany v. Italy* judgment perform and what is the relationship between the judgement's aesthetic/legal form and its emotional effects?

3.2 EMOTIONAL DIMENSIONS OF THE JURISDICTIONAL IMMUNITIES JUDGEMENT

The Jurisdictional Immunities judgment is not an emotionally inert document. The suffering of the Italian Military Internees, the Greek massacre victims, and their families is present in the record before the Court, and the judgment does not simply ignore it. What it does, however, is acknowledge the suffering while displacing it from the decisional structure. The victims do appear in the text, but do not determine the outcome.

The Court acknowledges the circumstances of the cases, for instance forced labour, massacre, deportation, brought before the Italian courts and states that these involve serious violations of the law of armed conflict, thereby encompassing practices that are to be deprecated.[105] However, with respect to the acts in question, the court's vocabularies signal more towards institutional distaste rather than moral outrage. It does not mention that the crimes were atrocities, that the victims were wronged beyond the reach of mere legal remedy, or that the systematic exclusion of the Italian Military Internees from German compensation programmes constituted an ongoing injustice demanding response. It expresses its disapproval, with a hint of restraint, by accepting that the acts were unlawful and it merely lists out the acts and sufferings but doesn't inhabit them. These passive constructions of the Court emotionally

[102] Karen Lønne Ring, 'The court ought to be in control of that: Producing victimhood at the International Criminal Court' (2025) *International Review of Victimology* 1, 2 https://journals.sagepub.com/doi/pdf/10.1177/02697580251383045 accessed 12 May, 2026
[103] Ibid 3
[104] Ibid 2
[105] *Jurisdictional Immunities of the State* (n 9) para 52

distance it from the victims, the audience and the reader. After taking note of the gravity of the underlying facts, the Court immediately pivots by stating that it is not called upon to rule on questions of whether the acts were unlawful or whether Germany had fulfilled its reparation obligations.[106] This immediate shift signals to the reader that the suffering just acknowledged falls outside the space where law will speak. And therefore, the gap between what the Court sees and what the Court does is not resolved but institutionalised.

The Italian Military Internees, now in their nineties, were dying without having received any meaningful reparation, thereby generating a justice/equity gap uniquely affecting that class of victims.[107] The time factor in this regard should have reflected a sense of urgency in the German governments' approach. But, by granting immunity without condition, the Court removed a significant external pressure on Germany to negotiate. It did so in full awareness of the background circumstances, including the Court's own observation in the judgment that the unresolved grievances between the two States, especially with respect to the military internees, could be the subject of further negotiation.[108] The Court's acknowledgment, therefore, only feels formal with the emotional weight it carries seeming minimal.

The judgement reflects a kind of rift between what the rule of the law requires and what justice demands.[109] Because in this sense, all the tools that the Court uses, from its voice to vocabularies, consequently render the justice dimension irrelevant. The victims, embodied, historical, and grieving, are sublimated into an abstract disputing party and the question as to what would be fair to those particular victims is converted into what does customary international law require of states as such?

The victims in the *Germany v. Italy* proceedings could be, in some sense, labelled as ideal because their suffering was historically documented, their claims were not frivolous, and the atrocities committed against them were acknowledged by the Court itself. Yet they failed the ideality test[110] that was defined not by the credibility of their suffering but by the institutional requirements of international adjudication. The law of state immunity requires courts to ask the victims not whether they suffered but whether the act that caused their suffering was sovereign

[106] Ibid paras 52-53
[107] Riccardo Pavoni, 'A Plea for Legal Peace' in Volpe et al (eds), *Remedies against Immunity?* (Springer 2021) 93, 103 https://link.springer.com/content/pdf/10.1007/978-3-662-62304-6_5.pdf accessed 13 May, 2026
[108] *Jurisdictional Immunities of the State* (n 9) para 104
[109] Valerio Onida, 'Moving Beyond Judicial Conflict in the Name of the Pre-Eminence of Fundamental Human Rights' in Volpe et al (eds), *Remedies against Immunity?* (Springer 2021) 331, 332 https://link.springer.com/content/pdf/10.1007/978-3-662-62304-6_17.pdf accessed 13 May, 2026
[110] Törnqvist (n 100)

in character? That question, formulated in the abstract register of sovereign equality, structurally excludes an individual victim's perspective.

Justice Cançado Trindade, in his dissenting opinion, has perceived the victims' exclusion with clarity and responded with an emotional tone contrasting with that of the majority judgement. Where the majority judgement simply lists out the practices to be deprecated, Justice Trindade writes of the suffering of the victims as a living legacy of impunity, and of the cries of the victims which international law is duty-bound to hear.[111] This is not mere rhetoric, it is an alternative emotional structure for legal reasoning, one in which the particularity of suffering, in the form of its embodied, temporal, irreversible character, is accorded a primary rather than a peripheral status. The dissent, therefore, demonstrates that the Court's emotional distancing was a choice, not a necessity.

3.3 A CONJOINED ANALYSIS OF EMOTIONS AND AESTHETICS IN CONTEXT OF THE JUDGEMENT

The analysis so far has considered aesthetics and emotions in parallel, but this section aims to consider them in adjacency to ask how the aesthetic/legal form of the judgment structures which emotions are legible within it, and how, in turn, the emotional displacements performed by the judgment are facilitated and stabilised by its aesthetic choices. The fundamental argument here is that the ICJ's formalist aesthetic is not merely an organisational preference but an emotional means.

Legal form seeks to condition a reader's feelings through the choice of language, structure, voice etc. Every aesthetic choice that the court undertakes is simultaneously a choice about which emotional responses are admitted into the legal analysis and which are pre-empted. When the Court employs nominalisation by rendering atrocities as an abstract phenomena, it is not simply producing a certain stylistic effect. It is converting the suffering of identifiable human beings into doctrinal input. Passivized constructions such as 'serious violations were committed' do not merely describe events but depopulate them by efficiently removing the agents who caused harm and the patients who received it. Conventional legal texts further offer a version stripped, in both substance and form, of facts and nuances deemed to be legally irrelevant.[112] The consequence of this capability of the legal language to render mass violence

[111] Dissenting Opinion of Judge Cançado Trindade (n 56) paras 176-180
[112] Jeutner, *[l]ex machina* (n 33) 112

aesthetically and cognitively opaque is an invisible atrocity effect[113] produced through a careful management of the law's language and form.

The aesthetic form of any given legal text therefore determines what shall be seen, heard, and felt within it. In this context, *Germany v. Italy* judgement organises its distribution of the sensible around the claims of states as juridical actors and what is visible is the pattern of customary international law, the entitlements of sovereign entities, and the procedural propriety of the Court's jurisdiction.[114] Whereas what is rendered peripheral is the experiential reality of individual human suffering. The victims justify the existence of the dispute without being permitted to reshape the terms of its resolution.

Conjoining emotional dimensions here with the aesthetic analysis, it may be stated that empathy is the one tool that can often guide interpreters to identify legal needs that more formalist readings would occlude.[115] The ICJ, had it adopted an interpretive posture of emotional intelligence[116], might have identified the absence of an effective remedy for the Italian Military Internees as a circumstance relevant to the scope and application of the immunity rule. The conditional relationship between immunity and alternative remedy, in the context of the judgement, is precisely an empathetic interpretive move for it asks the majority to consider the situation of those who bear the costs of the legal rule, rather than simply restating the rule in the abstract.[117] The Court, however, declined to take this interpretive path. And its refusal was not logically required but was aesthetically and emotionally motivated.

Furthermore, Italy as the respondent state resisting Germany's immunity claim had an interest in making the victims' suffering visible and emotionally compelling. The narratives of the Italian Military Internees and the Greek massacre victims were therefore introduced into the record precisely as emotional stimuli or sympathy cues[118], designed to shift the interpretive centre of gravity. But the Court's institutional commitment to objectivity, neutrality and other professional norms that require legal actors to perform dispassion operated as a structural

[113] Randle C. DeFalco, *Invisible Atrocities* (CUP 2022), discussed in Barbora Holá, 'Review' (2023) 16(3) *Genocide Studies and Prevention* 119 https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=1936&context=gsp accessed 2 April, 2026
[114] Rancière (n 27)
[115] Carrillo Santarelli (n 97) 78-79
[116] Ibid 79
[117] Pavoni (n 107) 103-104; See also Onida (n 109) 332-334
[118] Törnqvist (n 100) 264

filter.[119] The majority thereby engaged in collective emotion work in the service of the institutional ideal of impartial adjudication.

A reader can easily notice the symbolic presence of the victims of the Nazi war crimes in the ICJ's text. Their suffering is acknowledged, their circumstances and cases are described, and the gravity of what they experienced is formally recognised. However later on they are systematically excluded from the legal determination as the doctrinal apparatus of state immunity ensures that their recognition does not generate accountability. In this context, one can say that a sense of symbolic inclusion with systemic exclusion maps directly onto the judgment's structure.[120] The judgment thus performs a specific emotional function by satisfying partially the moral demand that the law acknowledge serious wrongdoing, while simultaneously ensuring that this acknowledgment produces no legal consequence. The Court manages it emotions and displays just enough empathy to sustain the Court's moral authority. And this is something that is revealed through a conjoined analysis of aesthetics and emotions.

While aesthetics explains the 'how' element as to how the judgment's legal form accomplishes the displacement of victims from the analytical core, emotions explain the 'why' and the 'what' elements by answering why the victims' displacement matters beyond its formal features, and what is at stake in the selective production of empathy as an institutional practice. Together, they show that the Court's aesthetic choices are not stylistic accidents but emotional decisions.

Moreover, Justice Trinidade's dissent demonstrates that the facts of the case were available for an empathetic engagement and that the legal material was sufficiently open-textured to admit an interpretation sensitive to the victims' situation but the majority's emotional restraint was a positive choice, not an inevitable product of the law's requirements. Conclusively, legal indeterminacy does not dictate outcomes but the determination of outcomes requires choices that are not themselves legal.[121] And so, the Court's management of sympathy cues and its displacement of suffering into the procedural periphery were among some of the choices that produced the judgment's outcome.

3.4 AESTHETICS, EMOTIONS AND LEGITIMACY: THE SECOND ANALYTICAL LAYER OF TENSION

[119] Ibid 264
[120] Ring (n 102) 2-3
[121] Koskenniemi, *From Apology to Utopia* (n 18) 59

In consonance with Chapter 2.2, which focused on the first analytical layer of tension in the judgment between authority and legitimacy produced by the ICJ's formalist aesthetic, this chapter now identifies the second analytical layer of tension between authority and legitimacy produced by the conjoined operation of aesthetics and emotions, specifically by the selective production of empathy as a structural feature of international adjudication.

To begin with, the ICJ's authority depends, in part, on its capacity to be perceived as a legitimate arbiter of serious international disputes. That perception of legitimacy requires the court to be seen to take suffering seriously and to acknowledge the moral weight of what is brought before it. Now, while the court does this by carefully taking note of the gravity of the underlying acts, but legitimacy also requires, on a deeper account, that the court's acknowledgment also translate into some form of accountability. In this sense, legitimacy requires that the law's recognition of suffering actually respond to it. However, when the court systematically disconnects acknowledgment from accountability, it risks producing a particularly corrosive form of illegitimacy of hollow recognition. And this is precisely the tension that this section aims to analyse.

When legal outcomes are experienced as emotionally unjust or when they contradict with a reader's intuitive moral judgements that arises from an empathetic engagement with the facts of any case, the effectiveness of international law gets undermined.[122] Outcomes perceived as unjust, then, generate resistance, reduce voluntary compliance with the rule of law, and further erode the social capital on which international legal institutions depend. The emotional dimension of legitimacy is therefore not separate from its rational dimensions but is constitutive of it. Because a law that is technically valid but emotionally illegitimate is a law whose effectiveness is structurally impaired.

The refusal of Germany to participate in proceedings before the Italian courts following *Sentenza 238/2014* represents a confrontational breakdown which could precisely be the consequence of emotional illegitimacy.[123] Moreover, the opaque and dismissive conduct of both governments, followed by their failure to pursue legal peace in the interest of the victims, are the material consequences of a legal determination that acknowledged suffering without responding to it. The emotional costs of the judgment's formalism were therefore borne by the victims while its institutional costs were distributed across the international legal order.

[122] Carrillo Santarelli (n 97) 94-95
[123] Pavoni (n 107) 96-100

These tensions in general, and within the judgement, lead the way for an alternate conception of legitimacy in which the emotional responsiveness of legal reasoning is the primary criterion of validity rather than formal correctness.[124] On this account, a judgment that correctly identifies and applies the customary international law of state immunity while leaving a class of victims of crimes against humanity without any effective remedy is not merely unfortunate but illegitimate. The selective production of empathy must be understood, in light of this analysis, not as an aberration but as a structural (habitual or intentional) feature of the ICJ's operation. The systematic narrowing of victimhood recognition functions as a technique of legitimacy production, sustaining the institution's credibility while limiting its accountability.[125] The ICJ performs an analogous operation by acknowledging German wrongdoing in moral terms while declining to permit the Italian courts to provide a remedy. And the judgement's aesthetic of doctrinal purity makes this operation appear legitimate rather than cynical.

Therefore, the ICJ's aesthetic commitment to doctrinal purity, and the emotional management strategies through which that commitment is sustained, together produce a form of authority that is simultaneously robust and fragile. Robust because the legal form of the judgment establishes it as a credible and authoritative statement of international law. And fragile because the emotional illegitimacy produced by the disconnect between recognition and accountability generate resistance, non-compliance, and an erosion of the institution's moral capital. This tension between robustness and fragility is irreconcilable within the terms set by the judgment itself. The Court cannot, having adopted the aesthetic of doctrinal purity, simultaneously adopt the aesthetic of empathetic engagement. Not because the two are logically incompatible, but because the distribution of the sensible that the formalist aesthetic produces renders the victims' suffering peripheral by structural necessity. To take the victims seriously, just as in Justice Cançado Trindade's dissent, would require a different aesthetic form, one that admits the particular, the temporal, and the embodied into the analytical core. The majority declined to produce that form and in doing so, it resolved the tension between authority and legitimacy in favour of authority. The costs of this resolution become gradually visible in the international legal order in the form of reduced effectiveness, eroded legitimacy, and the progressive distancing of international law from the human suffering it nominally exists to address.

[124] Onida (n 109) 332
[125] Ring (n 102) 2

CHAPTER 4: AN AESTHETIC, EMOTIONAL AND TEMPORAL ANALYSIS OF THE JUDGEMENT

Time is not merely the setting or the context within which international law operates, but it is one of those constitutive dimensions through which international law produces meaning, distributes authority, and manages its relationship with historical violence. This chapter brings the temporal dimension into the analysis already established across Chapters Two and Three and inquires as to how does the judgment's temporal positioning of past atrocity in relation to present adjudication transform the meaning of what the Court does, and what are the implications for this third analytical layer of tension between authority and legitimacy?

4.1 THEORISING TIME IN INTERNATIONAL LAW

International law has long presented itself as an atemporal and timeless discipline that applies across time without being produced by or embedded within any particular temporal moment. However, international law is not merely acted upon by time but is itself a shaper of time that tends to connect and divide times, sequences events and bifurcates human beings within temporal narratives of progress, modernity, and development.[126] A critical investigation of international law, therefore, cannot avoid engaging with its temporal dimensions because the conceptualisation of time as linear and measurable is not a neutral background assumption but a specific political and epistemological commitment encoded into the structures of legal doctrines, including the law of state responsibility and its doctrines of causation and reparation.[127]

Now, it is often postulated that legal doctrines stabilise time. Following on the lines of this position, a doctrine, particularly one as entrenched as state immunity, performs a temporal function by fixing a set of relationships as authoritative and insulating them from disruption by subsequent developments. For instance, the doctrine of causation in the law of state responsibility requires that injuries be not too remote, not too indirect, and not too temporally

[126] Fleur Johns, 'The Temporal Rivalries of Human Rights' (2016) 23 *Indiana Journal of Global Legal Studies* 39, 43 <https://www.repository.law.indiana.edu/ijgls/vol23/iss1/3/> accessed 2 May, 2026

[127] Eliana Cusato, 'Against Temporal Abstractions: The Battle for Colonial and Climate Reparations in International Law' (2025) 21 *International Journal of Law in Context* 281, 283-284 <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/80133CC88C6992C40E5C234D8D1C5636/S1744552325100074a.pdf/against-temporal-abstractions-the-battle-for-colonial-and-climate-reparations-in-international-law.pdf> accessed 2 May, 2026

distant to ground a claim for redress.[128] Such a requirement encodes a linear and forward-moving conception of time in which the past is legible only insofar as it has a sufficiently direct causal link to a specific present injury. The further back the harm recedes in time, the less legally recoverable it becomes. Legal doctrines, in such a context, are reduced to instruments for managing the claims of the past upon the present. In addition, the doctrines of temporal remoteness, along with the requirement that harms not be too distant in time to ground legal claims, are themselves expressions of a progressive temporal ideology that systematically privileges the present over the past and the structural over the particular.[129]

International law's engagement with mass atrocity, then, is always temporally inflected.[130] It occurs at a particular moment in a society's transition from one political order to another, and the legal responses it produces are shaped by the temporal pressures of that transition.[131] The tension between retrospective justice and prospective stability is an inevitable characteristic of transitional legal settings.[132] And therefore, the choice to prioritise forward-looking stability over backward-looking accountability is not dictated by the law's own internal requirements but is a political and temporal choice made by constantly deploying doctrines of immunity, intertemporal law, and procedural limitation.

The doctrine of State Immunity has, over the years, evolved from being a classical principle of absolute state independence into a more nuanced but still acting as a strongly protective shield against accountability. Scholarly discussions on the subject consider the need to stabilise international relations as a primary driver for this evolution rather than to respond to the particular claims of victims.[133] So when a reader views the doctrine specifically in the context of *Germany v. Italy*, its application seems to be technically correct, landing perfectly on all grounds. But there is always this simultaneous experience of the doctrine's application falling short of the actual realisation and fulfilment of justice. This gap between doctrinal validity and moral adequacy, in itself, becomes a temporal artefact produced by the way in which the doctrine insulates the present from the demands of the past.

International law's dominant temporal paradigms such as linearity, crisis-orientation, short-termism, timelessness etc., are not neutral features of the discipline but are specific political

[128] Ibid 288-290
[129] Walter Benjamin (n 17) 253-264
[130] Ruti G. Teitel (n 8) 6-11
[131] Ibid
[132] Ibid
[133] Cristina Elena Popa Tache, 'State Immunity, Between Past and Future' (2023) 1(18) *Access to Justice in Eastern Europe* 97, 109 <https://ajee-journal.com/upload/attaches/att_1676384405.pdf> accessed 2 May, 2026

and epistemological commitments that systematically skew the discipline toward certain interests and away from others.[134] The timelessness paradigm, particularly here, presents the immunity doctrine as a settled, if not eternal, principle of international order. This gives the Court a justification to insulate the doctrine from the evolutionary pressures that Justice Cançado Trindade identifies in the dissent. Taking another example of the crisis-orientation paradigm, the reactive and backward-looking structure of international legal development means that the discipline tends to respond more to observed crises rather than to deep structural injustices that do not present as crises.[135] In the context of these temporal paradigms and international law's temporal frame, the judgement's inability to remedy the victims of the Second World War atrocities is not an emergency but a settled history. This temporal classification is a choice, one with profound consequences for international law's legitimacy.

4.2 TEMPORAL DIMENSIONS OF THE JURISDICTIONAL IMMUNITIES JUDGEMENT

When viewed particularly from a temporal angle and otherwise as well, the Jurisdictional Immunities judgment, in essence, revolves around the relationship between historical violence and an enduring legal doctrine. The Italian Military Internees and the victims of the Distomo and Civitella massacres suffered atrocities during the Second World War, which goes back sixty years in the past at the time of the ICJ's 2012 ruling. The primary temporal tension in the case is therefore not merely about when the violations occurred, but about what international law does with that temporal distance.

The ICJ resolved this tension decisively in favour of temporal insulation. The judgment's engagement with the temporal dimension proceeds on two registers. The first being doctrinal, is the principle of intertemporal law, which provides that states are bound by the legal obligations in force at the time their acts were committed. This register offers to the Court a formal basis for limiting the retroactive application of evolving human rights norms to wartime conduct.[136] The Court, however, did not need to invoke intertemporal law explicitly because the more efficient doctrinal move was simply to insist that state immunity is a procedural rule

[134] Sivan Shlomo Agon and Michal Saliternik, 'Just About Time: International Law's Temporalities and Our Moment in History' (2024) 118 *American Journal of International Law* 751, 754-758
[135] Ibid 758-769
[136] The principle of Intertemporal law is reflected in Article 13 of the ILC Articles on the Responsibility of States for Internationally Wrongful Acts (2001), providing that an act of a state does not constitute a breach of an international obligation unless the state is bound by the obligation at the time the act occurs; See also Eliana Cusato (n 127) 292

that operates independently of the substantive legality of the underlying acts. The temporal insulation was thus achieved not by engaging directly with the question of how old the violations are, but by constructing a doctrinal architecture in which the age of the violations is irrelevant. The second register is narrative, based on the judgment's treatment of the case's factual background. The Court's decision of positioning the wartime atrocities as historical context rather than as live injustices demanding present response is one instance of this narrative building which points to an approach where the past only possess documentary value and doesn't inhabit the present.[137]

This temporal positioning is also visible in the judgment's vocabulary where the Court speaks consistently in the past tense when discussing the underlying conduct of the German armed forces, for instance using phrases 'killed', 'deported', 'subjected to forced labour'. It reserves the present tense for performing the doctrinal analysis by stating for instance 'Italy has failed to respect', 'Germany is entitled to' etc. The temporal grammar of the text enacts its substantive argument that the past is where the suffering happened but the present is where the law operates. The Court's gaze is, therefore, fixed firmly on the future of interstate relations, while its back is turned to the wreckage of the past.[138]

In contrast to the majority judgement, Justice Cançado Trindade's dissenting opinion articulates a starkly different temporal orientation. Where the majority judgment positions the wartime atrocities as historical background, Justice Trindade writes of them as present realities, for instance by stating that the victims are deprived of any other means of redress,[139] or that their claims and suffering is unresolved.[140] In this sense, the dissent's temporal frame reflects a sense of co-existence, wherein the past and the present inhabit the same moral and legal space rather than following a linear succession.

Justice Trinidade argues that inter-temporal considerations cannot be selectively deployed to serve one party's interests in litigation, accepting the passage of time and the evolution of law in relation to certain facts while freezing others in the conditions of an earlier era.[141] He further establishes that the law of State immunity has very evidently evolved, and that developments in international human rights law, contemporary international criminal law, and international

[137] Eliana Cusato (n 127) 290
[138] Walter Benjamin (n 17)
[139] Dissenting Opinion of Judge Cançado Trindade (n 56) para 78
[140] Ibid para 238
[141] Ibid para 301; Justice Trindade articulates this principle also at paras 16 and 17 of the dissent, where he insists *that "one cannot take account of inter-temporal law only in a way that serves one's interests in litigation".*

humanitarian law cannot be said to have had no influence on the evolving law of State immunity.[142] Therefore, from his perspective, the judgment's refusal to absorb these evolutionary pressures into its doctrinal analysis is not a neutral application of settled law but a temporal choice to crystallise the doctrine in a form that immunises past atrocities from present accountability.

The dissent's most insightful temporal argument concerns the prohibition of forced labour and its relationship to jus cogens. Justice Trindade establishes that the prohibition of forced labour as a form of slavery was not merely a norm emerging from post-war codification but was already deeply-engraved in the universal juridical conscience for a long time before the Second World War.[143] The ILC's 1950 Principles recognised deportation to slave labour as both a war crime and a crime against humanity, while the ICRC's 2005 study on customary international humanitarian law confirmed the prohibition of forced labour as *"a norm of customary international law applicable in both international and non-international armed conflicts"*.[144] On this account, the majority's act of treating the violations as belonging to a completed past governed by the law of the 1940s misrepresents the state of the law at the time, for it refuses to engage with the continuing legal consequences that flow from violations of peremptory norms. The violations did not recede into historical distance for their legal consequences persisted, with the denial of remedy compounding them.

Finally, Justice Trinidade insists in his dissenting opinion that *"no State can, nor was ever allowed, to invoke sovereignty to enslave and/or to exterminate human beings, and then to avoid the legal consequences by standing behind the shield of State immunity"*.[145] Now, it is crucial to observe the grammatical tense usage in this statement. The claim is not merely that immunity should not apply prospectively to future atrocities, but that immunity was never conceived for such iniquity.[146]

Therefore, the dissent reads the present legal order back into the past, revealing what the majority treats as a settled historical doctrine was never, from the perspective of the fundamental values of the jus gentium, a legitimate shield for atrocity. This is precisely the

[142] Ibid para 10; See also para 14, where the dissent draws on the ICJ's own Advisory Opinion on Namibia (1971) for the proposition that *"an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation".*
[143] Ibid paras 114-117
[144] Ibid para 116
[145] Ibid para 179
[146] Ibid para 179

approach to intertemporality that identifies as emancipatory.[147] And, at the level of the concluding recapitulation, he crystallises the point by stating that one cannot hide behind static dogmas so as to escape the legal consequences of the perpetration of atrocities in the past, thereby bringing to acknowledgement the fact that the evolution of law is to be taken into account.[148]

4.3 HOW TEMPORAL SHIFTS TRANSFORM EMOTIONAL RESPONSES TO LAW'S ENDURING AESTHETICS

This section attempts to analyse the interaction between the operation of aesthetics, emotions and time in international law by inquiring as to how the aesthetic form of *Germany v. Italy* judgment, along with its emotional suppressions and its temporal positioning, work together to produce a particular legal meaning and whether a shift in any one of these dimensions alter in any sense the judgement's performance of authority, its function of legitimacy and what it attempts to communicate.

When the victims' suffering is located in a historical past rather than a continuing present, thereby temporally distant, the emotional claims it generates are simultaneously admitted and defused. The acknowledgment of past atrocities then produces a diffuse moral affect in the form of a generalised recognition that 'terrible things' happened. But this generalised recognition is far less destabilising than the specific, embodied and temporally present claim of a living person who has not yet been compensated. In this context, temporal distancing transforms specific emotional claims into historical affect, thereby converting the particular into the general, and the urgent into the retrospective.

In terms of the distinction between art as representation and art as experience,[149] the *Germany v. Italy* judgment treats the victims' suffering as representation, in the form of a documented

---

[147] Rémi Fuhrmann and Melissa Schweizer, 'Ending the Past: International Law, Intertemporality, and Reparations for Past Wrongs' (2025) 26 *German Law Journal* 1539, 1541-1542, discussing the second limb of the intertemporal doctrine as formulated in Island of Palmas (*Netherlands v United States*) (1928) 2 RIAA 829, 845 <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/9EE445F2FADF49A0C0A22164FB00855C/S2071832225000276a.pdf/div-class-title-ending-the-past-international-law-intertemporality-and-reparations-for-past-wrongs-div.pdf> accessed 3 May, 2026

[148] Dissenting Opinion of Judge Cançado Trindade (n 56) paras 301 and 305

[149] Marina Aksenova, 'Introduction to the Symposium on Art, Aesthetics, and International Courts' (2020) 114 *AJIL Unbound* 103, 104 <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/164F7523029C0344597307387CF28EBA/S2398772320000227a.pdf/div-class-title-introduction-to-the-symposium-on-art-aesthetics-and-international-courts-div.pdf> accessed 9 March, 2026

historical fact, acknowledged in the record rather than as an experience with ongoing affective and moral reality that impinges on the present determination. Aesthetic experience, in contrast to a mere representation, has the capacity to generate intimacy with the present moment by allowing individuals to transcend habitual patterns of thinking.[150] The majority judgment, however, systematically forecloses this intimacy.

The interaction between temporal distancing and emotional suppression is not accidental, but structurally necessary to the judgment's authoritative claims. This is because if the victims' suffering were temporally co-existent and if the judgment was required to deal with the enduring reality of the uncompensated atrocity, then the emotional pressure on its doctrinal analysis would be far greater. The question 'what is owed to these people, now?' is vastly more arduous to manage through procedural insulation than the question 'what happened to these people, then?'

Talking on the conjunctive operation of all the three dimensions in the judgement, it must be observed that the aesthetic form of the judgment makes the victims' experiences peripheral, while the emotional management strategies of the Court convert their suffering into background, and the temporal positioning of past atrocity as historical context completes this operation by ensuring that the demands of that suffering arrive at the present adjudication already defused by their temporal distance.[151] Each dimension reinforces the other. The aesthetic features of the judgement enables the emotional management, the emotional management is stabilised by the temporal distancing, and the temporal distancing is made legible and authoritative by the aesthetic form.

A temporal shift, however, has the ability to reverse this interaction by insisting on the coexistence of past and present and thus, reactivating the emotional claims of the victims. In this context, Justice Trindade observes that "*what jeopardizes or destabilizes the international legal order are the international crimes and not the individual suits for reparation in the search for justice… and what troubles the international legal order is the cover-up of such international crimes accompanied by the impunity of the perpetrators, and not the victims' search for justice"*.[152] This reorientation of the temporal perspective is why the dissent is aesthetically, emotionally, and temporally distinct from the majority judgement. It adopts a different temporal frame, which produces a different emotional register, which demands a

[150] Ibid 104
[151] Eliana Cusato (n 127) 291
[152] Dissenting Opinion of Judge Cançado Trindade (n 56) para 129

different aesthetic form. The three dimensions, therefore, are not separable aspects of legal texts but are mutually constitutive elements of a single discursive architecture.

A comparison with the two similar Italian[153] and Brazilian[154] domestic case laws on the access to justice for atrocities and the role of state immunity illustrates that in both of these domestic judgements, the judiciaries found ways to insist that the claims of victims of historical atrocity remained live and present, resisting the temporal foreclosure that the ICJ majority had performed.[155] The temporal architecture of the Jurisdictional Immunities judgment was, therefore, not the inevitable expression of international law's settled wisdom but was a contested choice.

4.4 AESTHETICS, EMOTIONS, TIME AND LEGITIMACY: THE THIRD ANALYTICAL LAYER OF TENSION

The final analytical layer, encompassing aesthetics, emotions, time and their relationship with legitimacy in international law, explores how the temporal architecture of the judgment deepens and entrenches the first two layers of tension, making the authority-legitimacy gap not merely a feature of this particular judgment but a structural condition of international law's engagement with mass atrocity.

The judgment's authority rests on an aesthetic-temporal-emotional architecture that simultaneously enables and constrains legitimacy. It enables legitimacy by producing the conditions of institutional credibility such as formal coherence, doctrinal consistency, the appearance of impartial adjudication etc. On the other hand, it constrains legitimacy by systematically excluding from the decisional core the very dimensions that would be necessary to sustain the deeper legitimacy of a legal order that is experienced as just rather than merely valid. The three dimensions are, therefore, not separate analytical tools applied sequentially to the same object but mutually constitutive in the judgment itself. The *Germany v. Italy* judgment is precisely a site where multiple temporalities collide within a single legal text.[156] The

[153] Italian Constitutional Court, Decision no. 238 of 2014
[154] Supremo Tribunal Federal, Recurso Extraordinario Com Agravo 954.858 Rio de Janeiro Plenario (*Changri-La case*), 23 August 2021
[155] Marco Longobardo and Federica Violi, 'Access to Justice for Atrocities in the Comparison of Land-Mark Cases on State Immunity in Brazil and Italy' (2025) 29(4) *International Journal of Human Rights* 713, 715-718 and 721-726 <https://www.tandfonline.com/doi/epdf/10.1080/13642987.2024.2415702?needAccess=true> accessed 5 May, 2026
[156] Eliana Cusato (n 127) 294-295, citing Edelstein, Geroulanos and Wheatley, 'Chronocenosis: An Introduction to Power and Time' in Edelstein, Geroulanos and Wheatley (eds), *Power and Time: Temporalities in Conflict and the Making of History* (University of Chicago Press 2020) 4

temporality of state immunity collides with the temporality of human rights and with the temporality of the victims themselves. The majority judgment resolves this collision by suppressing the second and third temporalities and asserting the dominance of the first. This suppression is accomplished through the aesthetic form of the text, the emotional management of the proceedings, and the temporal positioning of past atrocity as a resolved context.

Every image of the past that is not recognised by the present as one of its own concerns threatens to disappear irretrievably.[157] In this context, the Court acknowledged the claims of the Italian Military Internees for it could inevitably not deny their historical reality. But by positioning them as past rather than present and by deploying aesthetic, emotional, and temporal strategies that prevented their claims from reaching the decisional core, the Court risked allowing an image of unremedied atrocity from the past to disappear from the legal frame.

International law's engagement with historical violence is always mediated by the institutional requirements of the present such as the need to maintain the functioning of interstate relations, to sustain the authority of international courts, or to produce determinations that states will accept and implement. These institutional requirements create a systematic pressure toward the forward-looking dimension of transitional justice[158] and away from the backward-looking dimension. The *Germany v. Italy* judgment is an expression of this tendency.

Therefore, the irreconcilability of this tension between authority and legitimacy produced through the ICJ's aesthetic, emotional and temporal architecture lies in the fact that the very aesthetic or legal form that grounds the ICJ's authority as an international court is also the aesthetic that prevents it from responding to the legitimacy claims of those whose suffering it acknowledges but cannot remedy. This is not a contingent failure but a structural feature of international law as currently constituted.

One now wonders as to what this tension means for the legitimacy in/of international law. What this tension ultimately reveals is that the legitimacy of international law is not a single, unified property that an institution either possesses or lacks. It is a fragmented condition, internally divided between the legitimacy of form and the legitimacy of substance, depending on whether those most directly affected by the system's determinations experience it as responsive to their claims. The *Jurisdictional Immunities* judgment is legitimate in the first sense and structurally

[157] Walter Benjamin (n 17) 255
[158] Ruti G. Teitel (n 8) 69-75

compromised in the second. What this analysis therefore posits is that this is not an accident of the particular case, nor a correctable deficiency in the Court's reasoning, but an expression of the way in which international law's aesthetic, emotional, and temporal architecture is calibrated. The authority of international law, on this account, is partly constituted by the very exclusions that undermine its deeper legitimacy. This does not mean that international law's legitimacy is simply exhausted beyond recovery. But what it does mean is that any serious account of legitimacy in international law must confront the structural aesthetic, emotional, and temporal conditions that control the reins of the authority-legitimacy gap.

CHAPTER 5: REIMAGINING INTERNATIONAL LAW THROUGH AESTHETIC ENGAGEMENT

5.1 AESTHETICS AS A METHOD OF CRITIQUE

This section argues that international law's claim to objectivity is an aesthetic performance that can be exposed by way of an aesthetic critique. The preceding chapters have demonstrated, through successive analytical layers, that the *Germany v. Italy* judgment's authority depends on a formal architecture that presents contingent choices as legal necessities. Aesthetic critique reveals that law's commitment to particular aesthetic values is crucially implicated in a variety of legal competencies including the formation of key legal concepts and general intellectual activity.[159]

The limits of doctrinal reading, demonstrated in the preceding chapters, are not accidental. They are structural because doctrinal reading accepts the text's own self-presentation as the neutral application of legal principle, and therefore cannot see the formal operations through which that self-presentation is produced. In contrast, aesthetic critique inquires what human realities are suppressed, which voices are rendered legally inaudible, and which moral urgencies are converted into doctrinal stability by the aesthetic machinery of legal form. In *Germany v. Italy*, the answer is quite specific because the suffering of the victims of Nazi atrocities is the precise moral urgency that the judgment's aesthetic converts into settled doctrine.[160]

The argument for aesthetic critique as a sustained method in international legal scholarship rests on this specificity. It is not a claim that all legal outcomes are ideologically determined, or that legal form is nothing but politics in disguise. It is the more precise claim that the formal choices embedded in legal texts, such as compositional structure, voice, language, temporal framing, etc. are consequential choices with political and moral stakes, and that a scholarship capable of reading those choices is better equipped to diagnose the gap between legal authority and legal legitimacy than one that treats form as transparent.[161]

---

[159] Shaw (n 93) 84

[160] Eagleton (n 20) 3; See also Nikolai Chernogor, Alexander Emelyanov and Maksim Zaloilo, 'In Search of a New Methodology of Social Regulation and of Knowledge of Law: About Convergent Technologies and Aesthetics of Law' (2022) 3(23) *Wisdom* 234, 238-239 <https://wisdomperiodical.com/index.php/wisdom/article/view/631/492> accessed 16 May, 2026

[161] Rancière (n 27) 13

5.2 FROM REPRESENTATION TO METAPHYSICAL FUNCTION

The conventional understanding of aesthetics in law treats it as a field of representation, symbolism, art, imagery etc. concerned more with how law looks, the symbols it deploys, or the images through which it presents itself to the world. However, aesthetics in law operate at a level deeper than solely representation, and perform a metaphysical function. The metaphysical function of legal form is the way in which the formal properties of legal texts determine not merely the appearance of authority but authority itself, and not merely the look of legitimacy but the actual conditions of its possibility.

International legal scholarship consists of several formal demonstrations of the representational dimension of aesthetics, such as altering a judgement's perceived authority without any change to its substantive content simply by modifying the judgement's typography.[162] However, the analysis in the case of *Germany v. Italy* illustrates that the aesthetic form of the judgment does not merely shape reception but determines what is legally perceptible within the text. For instance, the procedural characterisation of immunity introduced at paragraph 58 of the judgement does not just look inevitable but altogether makes the conclusion at paragraph 93 structurally inevitable within the text's own logic.

Aesthetics as a legal method further enables the identification of general laws and principles of the genesis of law along with the regularities of social regulation that formal legal analysis alone cannot reveal.[163] Law's relationship to its own formal properties is a relationship of power, and attending to that relationship through aesthetics is a condition of understanding law's legitimacy.[164] Rethinking aesthetics as a deciphering practice further leads to identifying the rules that govern legal coherence and thereon revealing them as historically produced rather than logically necessary. The deliberate construction of international law's depoliticised formalist aesthetic[165] shows that these rules have a history, and therefore can have a different future. The rules that currently govern the coherence of international legal argument are thus aesthetic choices consolidated over more than a century of professional practice. Aesthetic critique identifies them as choices, and that very identification is the first condition of their contestation.

---

[162] Jeutner, *The Aesthetic Authority of Law* (n 39)

[163] Chernogor, Emelyanov and Zaloilo (n 160) 236-237. The authors here argue that aesthetics allows us to reveal the essence of law *"as an integral phenomenon in which measure and harmony, catharsis and calocagacy, grace and imitation, taste and ideal can be distinguished".*

[164] Ibid 240. Here the authors conclude that the law's 'aesthetic crisis' as a crisis of perception and legitimacy.

[165] Koskenniemi, *The Gentle Civilizer of Nations* (n 32) 7

5.3 TOWARDS A REIMAGINATION OF INTERNATIONAL LAW

The reimagination of international law through aesthetic engagement is not a call to abandon legal rigour but to recognise that legal rigour has an aesthetic dimension and that the way international law presents itself is constitutive of what legal rigour means in practice. This aesthetic reimagination is visible in the dissenting opinion of Judge Cançado Trindade, for he demonstrates that a different aesthetic is available within international law's own tools and resources, a method generated from within the practice of judicial reasoning itself.

The practice of aesthetic reimagination would involve reading legal texts not only for their doctrinal content but for their affective architecture and taking seriously the political stakes of the formal choices that legal texts present as neutral. This reimaginative shift from outcome-oriented legal analysis toward a cultivation of the observer's gaze also encompasses a practice of aesthetic perception that reconnects international justice to the shared foundation of human perception and aesthetic experience.[166] In this sense, an awareness of aesthetics engages us audience as agents of law, even its conscious co-creators, and not as law's passive consumers.

Conventional legal scholarship often positions the reader as a consumer of legal texts who receives, interprets, and applies pre-existing legal meanings. Aesthetic engagement transforms this relationship by positioning the reader as an actively involved entity in the production of legal meaning. Law's aesthetic features frame one's own sense of agency in relation to a legal text by shaping the way one sees the extra-legal world, the law and oneself.[167] To read a judgment aesthetically, then, is not to passively receive its authority but to interrogate the conditions under which that authority is produced by becoming an observer rather than a subject.[168]

Legal aesthetics does not merely reflect law's intellectual commitments but it actively constitutes them.[169] The analysis of *Germany v. Italy* in this thesis strongly suggests that the reimagination of international law is, at its core, a reimagination of the aesthetic by which international law organises its own self-understanding. This is what it means to say that aesthetic engagement can become a method not just of critique but of knowledge-creation as well by deconstructing law's existing aesthetic commitments, and creating the intellectual

[166] Aksenova, *Art, Aesthetics and International Justice* (n 21) 2-5
[167] Jeutner, *[l]ex machina* (n 33) 110
[168] Ibid 3-4
[169] Shaw (n 93) 83-84

space within which new commitments can be constructed.[170] On these lines of reasoning, a scholar who would attempt to read the *Germany v. Italy* judgment aesthetically by attending to its compositional choices, management of voice and emotion, and its temporal distancing of historical violence, altogether becomes a co-creator of the legal meaning of the judgment. This engagement of the reader with a legal text would steer the contemporary international legal scholarship to consider international justice as a more adaptive, creative and participatory system of global (legal) ordering.[171] And participation, in this context, would mean precisely the refusal of passive reception.

Conclusively, therefore, international law that is capable of acknowledging its own aesthetic by not merely performing objectivity but actually reflecting on the conditions of that performance, and in that reflection, creating the possibility of producing legal authority that does not come at the cost of the legitimacy of those it claims to serve.

[170] Rancière (n 27) 24-25. For the reimaginative dimension of aesthetic critique, see also Eagleton (n 20) 9, where the author argues *"the aesthetic produces a whole programme of social, ethical and political life through apparently neutral categories of form and coherence."*
[171] Odermatt (n 55)

CHAPTER 6: CONCLUSION

This thesis attempted to answer the question as to how do the aesthetic, emotional, and temporal dimensions of international law shape its legitimacy, authority, and meaning, as illustrated by the ICJ's judgment in Jurisdictional Immunities of the State (*Germany v. Italy*)? The answer that has, therefore, been developed across the three analytical layers is that international law's claim to authority depends on an aesthetic-emotional-temporal architecture that is simultaneously enabling and self-undermining. The same aesthetic choices that produce the authority of the immunity doctrine are also the choices that suppress the emotional claims of the victims, render their suffering legally invisible, and convert historical atrocity into settled legal precedent. Law's aesthetic commitment to doctrinal purity sustains authority but simultaneously undermines legitimacy by suppressing emotion, and meaning is produced through temporal distancing from violence.

The thesis reached this conclusion by proceeding through three analytical layers, each building on the last. The first analytical layer applied the aesthetic lens to the *Germany v. Italy* judgment in isolation and demonstrated that the judgment's formalist aesthetic and its legal form, comprising for instance its compositional structure, voice, constructions, typography etc., is a complex web of formal choices that produce the authority of the immunity doctrine by making its conclusion appear inevitable. The judgment's authority rests on this aesthetic architecture as much as on its doctrinal reasoning, with the existence of Judge Cançado Trindade's dissent proving that the majority's formalism is a choice rather than an inevitability.

The second analytical layer introduced the emotional dimension. Drawing on emotions as social and relational forces[172] and that emotions are not alien to cognition but constitutive of it,[173] the chapter demonstrated that the *Germany v. Italy* judgment produces empathy selectively by acknowledging the victims' suffering in the factual record while systematically suppressing it at the level of legal reasoning and adjudication. In this sense, the gap between what the Court sees and what it does is not a doctrinal failure but an aesthetic operation. The formal structure of the judgment aestheticizes the emotions and suffering into abstraction, rendering them legally manageable by positioning them as contextual background rather than an operative legal reality. The tension that arose here was that law's aesthetic commitment to doctrinal purity

[172] Ahmed (n 5) 1-19
[173] Nussbaum (n 4) 19-88

does not merely strain legitimacy in the abstract, but it does so by suppressing the specific emotional claims of specific human beings who suffered specific historical wrongs.

The third analytical layer brought temporality into conjunction with aesthetics and emotion. Drawing on the past as carrying a demand on the present[174] and how transitional justice manages temporal tensions between historical violence and present legal order,[175] the chapter demonstrated that the judgment's temporal distancing of the wartime atrocities of the past from the present claims of the victims is itself an aesthetic operation. The judgment does not merely acknowledge the temporal gap between 1943-1945 and 2012 but manages it through the very formal choices discussed in Chapters 1 and 2 that make the victims' claims appear historical and their demands for accountability more anachronistic relative to the stability of the customary legal order. Temporal distancing from violence is, therefore here, also one of the mechanisms through which the judgment produces legal meaning.

The judgment in *Germany v. Italy* is a paradigm case for this analysis not despite but precisely because of its doctrinal excellence. The Court reasons well by its own internal standards for its analysis of state practice is systematic, its procedural characterisation of immunity is consistent with precedent, and its formal structure is impeccable. The case, however, is paradigmatic because it shows most clearly the costs of doctrinal excellence. If the same formal/ aesthetic operations were visible in a badly reasoned judgment, they would have been easier to criticise and to correct. It is precisely because they are embedded in a judgment of formal excellence that they reveal the structural character of the problem. The problem, therefore, in the case is not that the Court reasoned badly but the very standards by which it reasoned are themselves aesthetic commitments with moral and political consequences that its own formal aesthetic prevents it from acknowledging.

In terms of the contribution to international legal scholarship, this thesis elaborates on aesthetic analysis as a rigorous method of legal critique capable of revealing dimensions of legal adjudication and judicial decision-making that doctrinal, sociological, and normative analyses may not reach. International legal scholars have argued for an aesthetic epistemology of international law that goes beyond the study of law's visual representations to attend to the perceptual conditions under which legal knowledge is produced.[176] This thesis operationalises that epistemology through a sustained close reading of a single paradigm judgment,

[174] Walter Benjamin (n 17)
[175] Ruti G Teitel (n 8) 69-75
[176] Machado (n 22) 510-511

demonstrating that aesthetic analysis can be precise, textually grounded, and jurisprudentially consequential rather than merely impressionistic.

Furthermore, the thesis demonstrates that the aesthetic, emotional, and temporal dimensions of international law are not separate dimensions of (international) to be addressed by distinct scholarly traditions, but are dimensions of a single integrated architecture through which legal authority is produced and legitimacy is simultaneously constrained or liberated. The three dimensions interact in *Germany v. Italy* as a mutually constitutive system and thereby, treating these dimensions in conjunction reveals a more troubling account of the judgment's operation than any single dimension could provide.[177]

Lastly, the thesis attempts to contribute to the growing body of scholarship that seeks to reimagine international law beyond its dominant formalist aesthetic. Aesthetic critique provides a vocabulary for analysing those consequences of adjudicatory processes that go beyond the familiar doctrinal debates about the jus cogens exception to state immunity. It asks not only whether the consequences of the law's application should have been different, but also why they are the way they are and what structural changes in the aesthetic of international adjudication would be necessary to ensure that the voices, emotions, and temporalities suppressed by the dominant formalism can be heard.

The argument of this thesis is not that the ICJ should abandon its formalist aesthetic and legal form, for formalism is not the enemy of justice but a professional practice of distancing that creates the institutional space within which legal argument can be conducted at all.[178] More importantly, a text's form has the ability to be a means of protecting the integrity of the legal process for it works as a device to control the legal profession by preventing lawyers from taking over the legal system to arbitrarily and illegitimately develop the law.[179] On the contrary, however, the ICJ should give some weight to recognising that its aesthetic choices (or suppressions) are not neutral features of legal method but consequential choices that have the effect of tampering with legitimacy in international law. On this line of reasoning, an international law that could reflect on its own aesthetic[180] would be better positioned to understand when its authority and its legitimacy point in different directions. Therefore, the ultimate objective lies not in demolishing legal form altogether but positively understanding it

[177] Rancière (n 27) 24-25; See also Eagleton (n 20) 9
[178] Koskenniemi, *From Apology to Utopia* (n 18) 59-69
[179] Jeutner, *[l]ex machina* (n 33) 151, citing Nils Jansen, *The Making of Legal Authority: Non-Legislative Codifications in Historical and Comparative Perspective* (Oxford University Press 2010) 125-126
[180] Aksenova, *Art, Aesthetics and International Justice* (n 21) 2-5

so as to distinguish the choices that protect the rule of law from the choices that protect status quo.

Conclusively, drawing reference to Walter Bejamin's *Image of the Angel of History* quoted at the very beginning, the *Germany v. Italy* judgment is propelled by that same storm that we call progress. Its aesthetic converts the wreckage into settled law, its temporal distancing transforms the angel's horror into doctrinal stability, and its emotional suppressions silence the cry that the past makes on the present. And aesthetic critique, therefore, is the practice of pausing in that storm long enough to look at what the angel sees and to acknowledge, as the judgment does, that there can be no doubt about the gravity of the atrocities, and to refuse to move on from that acknowledgement until its full weight has been borne.

BIBLIOGRAPHY

I. ACADEMIC LITERATURE

A. BOOKS

Ahmed S, *The Cultural Politics of Emotion* (2nd edn, Edinburgh University Press 2014)

Aksenova M, *Art, Aesthetics and International Justice* (Routledge 2025)

Baumgarten A, *Aesthetica* (Hildesheim: Georg Olms Verlag, 1986 [1750])

Benjamin W, 'Theses on the Philosophy of History' in Hannah Arendt (ed), *Illuminations* (Harry Zohn tr, Schocken Books 1969)

Boler M, *Feeling Power: Emotions and Education* (1st edn, Routledge 1999)

Dahlberg L (ed), *Visualizing Law and Authority: Essays on Legal Aesthetics* (De Gruyter 2013)

DeFalco RC, *Invisible Atrocities* (Cambridge University Press 2022)

Eagleton T, *The Ideology of the Aesthetic* (Blackwell 1990)

Edelstein D, Geroulanos S and Wheatley N (eds), *Power and Time: Temporalities in Conflict and the Making of History* (University of Chicago Press 2020)

Jansen N, *The Making of Legal Authority: Non-Legislative Codifications in Historical and Comparative Perspective* (Oxford University Press 2010)

Jeutner V, *The Aesthetic Authority of Law: Experiments with Legal Form* (Lund University Press 2025)

Jeutner V, *[l]ex machina: Unlikely Encounters of International Law and Technology* (2nd and revised edn, Lund University Press 2025)

Kant I, *Critique of the Power of Judgement* (Paul Guyer and Eric Matthews trs, Cambridge University Press 2000)

Koskenniemi M, *From Apology to Utopia: The Structure of International Legal Argument* (reissue with new epilogue, Cambridge University Press 2005)

Koskenniemi M, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge University Press 2001)

Miéville C, *Between Equal Rights: A Marxist Theory of International Law* (BRILL 2005)

Nussbaum MC, *Upheavals of Thought: The Intelligence of Emotions* (Cambridge University Press 2001)

Orford A, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge University Press 2003)

Rancière J, *The Politics of Aesthetics: The Distribution of the Sensible* (Gabriel Rockhill tr, Continuum 2004)

Teitel RG, *Transitional Justice* (Oxford University Press 2000)

Volpe G and others (eds), *Remedies against Immunity?* (Springer 2021)

Zeidler K and Kamień J (eds), *Aesthetics of Law: From Methodology to Manifestations* (1st edn, Springer Cham 2024)

B. EDITED BOOK CHAPTERS

Gasbarri L, 'Courtspeak: A Method to Read the Argumentative Structure Employed by the International Court of Justice in its Judgments and Advisory Opinions' in Andrea Bianchi and others (eds), *Interpretation in International Law* (Oxford University Press 2015) 91

Onida V, 'Moving Beyond Judicial Conflict in the Name of the Pre-Eminence of Fundamental Human Rights' in Volpe G and others (eds), *Remedies against Immunity?* (Springer 2021) 331

Pavoni R, 'A Plea for Legal Peace' in Volpe G and others (eds), *Remedies against Immunity?* (Springer 2021) 93

C. JOURNAL ARTICLES

Agon SS and Saliternik M, 'Just About Time: International Law's Temporalities and Our Moment in History' (2024) 118 *American Journal of International Law* 751

Aksenova M, 'Introduction to the Symposium on Art, Aesthetics, and International Courts' (2020) 114 *AJIL Unbound* 103

Bandes SA and Blumenthal JA, 'Emotion and the Law' (2012) 8 *Annual Review of Law and Social Science* 161

Buis EJ, 'Aristotle in The Hague: Artistic Pleading and Emotional Theatricality in International Criminal Proceedings' (2020) 114 *AJIL Unbound* 133

Carrillo Santarelli N, 'The "Artistic" Influence of Emotions and Empathy in the Content, Interpretation and Effectiveness of International Law' (2017) XVII *Anuario Mexicano de Derecho Internacional* 65

Chernogor N, Emelyanov A and Zaloilo M, 'In Search of a New Methodology of Social Regulation and of Knowledge of Law: About Convergent Technologies and Aesthetics of Law' (2022) 3(23) *Wisdom* 234

Cusato E, 'Against Temporal Abstractions: The Battle for Colonial and Climate Reparations in International Law' (2025) 21 *International Journal of Law in Context* 281

Espósito C, 'Of Plumbers and Social Architects: Elements and Problems of the Judgment of the ICJ in Jurisdictional Immunities of States' (2013) 4 *Journal of International Dispute Settlement* 3

Fuhrmann R and Schweizer M, 'Ending the Past: International Law, Intertemporality, and Reparations for Past Wrongs' (2025) 26 *German Law Journal* 1539

Holá B, 'Review of Randle C. DeFalco, Invisible Atrocities' (2023) 16(3) *Genocide Studies and Prevention* 119

Johannesson L, ‘The Symbolic Life of Courts: How Judicial Language, Actions, and Objects Legitimize Credibility Assessments of Asylum Appeals’ (2023) 24 *Journal of International Migration and Integration* S791

Johns F, ‘The Temporal Rivalries of Human Rights’ (2016) 23 *Indiana Journal of Global Legal Studies* 39

Koskenniemi M, ‘The Politics of International Law’ (1990) 1 *European Journal of International Law* 4

Longobardo M and Violi F, ‘Access to Justice for Atrocities in the Comparison of Land-Mark Cases on State Immunity in Brazil and Italy’ (2025) 29(4) *International Journal of Human Rights* 713

Machado S, ‘Towards an Aesthetic Epistemology of International Law’ (2022) 91(3) *Nordic Journal of International Law* 509

Matthews D and Wall IR, ‘Legal Aesthesis: Affect, Space and Encounter’ (2023) 19(2) *Law, Culture and the Humanities* 186

McGregor L, ‘State Immunity and Human Rights: Is There a Future after Germany v Italy?’ (2013) 11 *Journal of International Criminal Justice* 125

Meierhenrich J, ‘A Jurisprudence of Atrocity’ (2023) 14(2) *Jurisprudence* 262

Miano I, ‘Doing Things with Style: A Study of the Aesthetic Features of the International Court of Justice's Judgments and Advisory Opinions’ (2026) 17 *Journal of International Dispute Settlement* 1

Orford A, ‘In Praise of Description’ (2012) 25 *Leiden Journal of International Law* 609

Pavlov VO, ‘Lexico-Discursive Markers of Authority in International Legal Academic Writing’ (2025) 30 *Scientific Journal of Mykhailo Dragomanov State University of Ukraine* 63

Popa Tache CE, ‘State Immunity, Between Past and Future’ (2023) 1(18) *Access to Justice in Eastern Europe* 97

Ring KL, ‘The Court Ought to be in Control of That: Producing Victimhood at the International Criminal Court’ (2025) *International Review of Victimology* 1

Shaw JJA, ‘Aesthetics of Law and Literary License: An Anatomy of the Legal Imagination’ (2017) 38 *Liverpool Law Review* 83

Törnqvist N, ‘Drizzling Sympathy: Ideal Victims and Flows of Sympathy in Swedish Courts’ (2022) 28(3) *International Review of Victimology* 263

Verstraelen S, ‘The Temporal Limitation of Judicial Decisions: The Need for Flexibility Versus the Quest for Uniformity’ (2013) 14(9) *German Law Journal* 1687

II. LEGAL INSTRUMENTS

ILC Articles on the Responsibility of States for Internationally Wrongful Acts (2001) UN Doc A/56/10, Annex, Art 13

III. CASE LAW

A. INTERNATIONAL COURTS AND TRIBUNALS

Island of Palmas (*Netherlands v United States of America*) (Award) (1928) 2 RIAA 829

Jurisdictional Immunities of the State (*Germany v Italy: Greece Intervening*) (Judgment) [2012] ICJ Rep 99

Jurisdictional Immunities of the State (*Germany v Italy: Greece Intervening*), Dissenting Opinion of Judge Cançado Trindade [2012] ICJ Rep 179

B. NATIONAL COURTS

Italian Constitutional Court, Decision No 238 of 2014

Supremo Tribunal Federal (Brazil), Recurso Extraordinário Com Agravo 954.858 Rio de Janeiro Plenário (Changri-La case) (23 August 2021)

IV. OTHER MATERIALS AND RESOURCES (ONLINE)

Aksenova M, 'Beyond the Binary: Law and Aesthetics' (IE Insights, 23 June 2025) https://www.ie.edu/insights/articles/beyond-the-binary-law-and-aesthetics/ accessed 23 June 2025

Odermatt J, 'The Power of Perception - Aesthetic Theory and International Justice' (Opinio Juris, 10 July 2025) https://opiniojuris.org/2025/07/10/symposium-on-symposium-on-art-aesthetics-and-international-justice-the-power-of-perception-aesthetic-theory-and-international-justice/ accessed 7 April 2026