

**LEGAL REALISM PERSPECTIVE ON THE INTERNATIONAL COURT OF  
JUSTICE JUDGES IN THE 2023–2024 ISRAELI OCCUPATION OF PALESTINE  
UNDERGRADUATE THESIS**



**UNIVERSITAS  
ISLAM  
INDONESIA**

Written by:

**NASYWA RAMADHANI SALSABILA**

21323118

**DEPARTMENT OF INTERNATIONAL RELATIONS  
FACULTY OF SOCIO-CULTURAL SCIENCES  
UNIVERSITAS ISLAM INDONESIA**

**2025**

**LEGAL REALISM PERSPECTIVE ON THE INTERNATIONAL COURT OF  
JUSTICE JUDGES IN THE 2023–2024 ISRAELI OCCUPATION OF PALESTINE**

**UNDERGRADUATE THESIS**

Proposed to the Department of International Relations

Faculty of Socio-Cultural Sciences

Universitas Islam Indonesia

As a partial fulfillment of the requirements to earn

Bachelor's Degree in International Relations



**UNIVERSITAS  
ISLAM  
INDONESIA**

Written by:

**NASYWA RAMADHANI SALSABILA**

21323118

**DEPARTMENT OF INTERNATIONAL RELATIONS**

**FACULTY OF SOCIO-CULTURAL SCIENCES**

**UNIVERSITAS ISLAM INDONESIA**

**2025**

**AUTHORIZATION PAGE**

**LEGAL REALISM PERSPECTIVE ON THE INTERNATIONAL COURT OF JUSTICE JUDGES IN THE 2023–2024 ISRAELI OCCUPATION OF PALESTINE**

Defended in front of the Board of Examiners  
in the Department of International Relations  
Faculty of Socio-Cultural Sciences  
Universitas Islam Indonesia

As a partial fulfillment of the requirements to earn  
Bachelor's Degree in International Relations



Date

July 1, 2025

Wakil Dekan KKA FPSE	
Nizamuddin Sadiq, S.Pd., M.Hum., Ph.D	
<input type="checkbox"/> Disetujui	<input type="checkbox"/> Tidak Disetujui
Catatan :	

Validated by  
Department of International Relations  
Faculty of Socio-Cultural Sciences  
Universitas Islam Indonesia

Head of Department



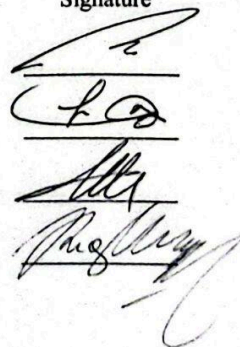
Karina Utami Dewi, S.IP., M.A



Board of Examiners

1. Hasbi Aswar, S.IP., M.A., Ph.D.
2. Khairul Munzilin, S.IP., M.A
3. Mohamad Rezky Utama, S.IP., M.Si.
4. Rizki Dian Nursita, S.I.P., M.H.I

Signature



## STATEMENT OF ACADEMIC INTEGRITY

I hereby declare that this undergraduate thesis is the result of my own independent scientific work, and that all material from the work of others (in books, articles, essays, dissertations, and on the internet) has been stated, and quotations and paraphrases are clearly indicated.

No other materials are used other than those contained. I have read and understood the university's rules and procedures regarding plagiarism.

Making false statements is considered a violation of academic integrity.

20 June 2025,

A 1000 Rupiah Indonesian postage stamp is placed over the signature. The stamp features the Garuda Pancasila emblem and the text '1000', 'METRAH', and 'A07 G3AMX236027 127'.

*Nasywa Ramadhani Salsabila*

## TABLE OF CONTENT

<b>STATEMENT OF ACADEMIC INTEGRITY</b>	iv
<b>TABLE OF CONTENT</b>	v
<b>ABSTRACT</b>	vii
<b>CHAPTER 1 INTRODUCTION</b>	1
<b>1.1 Background</b>	1
<b>1.2 Research Question</b>	6
<b>1.3 Research Objectives</b>	6
<b>1.4 Research Scope</b>	6
<b>1.6 Research Framework</b>	9
<b>1.7 Provisional Argument</b>	11
<b>1.8 Research Method</b>	12
<i>1.8.1 Type of the Research</i>	12
<i>1.8.2 Subject and Object of the Research</i>	12
<i>1.8.3 Method of Data Collection</i>	12
<i>1.8.4 Process of the Research</i>	13
<b>1.9 Thesis Outline</b>	13
<b>CHAPTER 2 UNDERSTANDING THE INTERNATIONAL COURT OF JUSTICE JUDICIAL BEHAVIOR THROUGH THE LENS OF LEGAL REALISM</b>	15
<b>2.1 Overview of Legal Realism and Its Relevance in International Law</b>	15
<b>2.2 Theory and Global Applications of Legal Realism and Judicial Behavior</b>	18
<b>2.3 Applying Legal Realism to the International Court of Justice and Analyzing the     Systemic and Political Context</b>	20
<b>CHAPTER 3 ANALYZING JUDICIAL BEHAVIOR IN THE INTERNATIONAL COURT OF JUSTICE'S SOUTH AFRICA V. ISRAEL CASE</b>	22
<b>3.1 Judicial Decision-Making: Backgrounds, National Interests, and Voting     Behavior of the Fifteen International Court of Justice Judges</b>	22
<b>3.2 Political Context: How the Judges' Countries Shaped Their International Court     of Justice Behavior</b>	28
<b>3.3 Interest Groups: Influence of Advocacy, Legal Institutions, and Media on the     International Court of Justice</b>	33
<b>CHAPTER 4 CONCLUSION</b>	38
<b>4.1 Conclusion</b>	38

<b>4.2 Recommendation</b>	<b>39</b>
<b>BIBLIOGRAPHY</b>	<b>41</b>

## **ABSTRACT**

The research analyzes how legal and political, along with personal aspects shape the decisions of the International Court of Justice judges in the 2023-2024 South Africa v. Israel case. Through a legal realism view, this paper breaks down the work of the fifteen International Court of Justice judges—it looks at how their national ties, political settings, and outside influence groups of interest could sway the Court's temporary orders. From biographical and political, in addition to legal data, this paper argues that outside power relations and interest groups beside political partnerships can affect judicial fairness. It finishes by stating that while the International Court of Justice judges appear separate, their thinking in political cases shows they often agree with their countries' foreign policies, which questions the idea of legal fairness in international law.

**Keywords: Legal Realism, International Court of Justice, Palestine-Israel Conflict, International Law**

# CHAPTER 1

## INTRODUCTION

### 1.1 Background

The Israeli occupation of Palestinian land remains a long and debated international conflict—it has caused human rights abuses and displaced many people. For many decades, the occupation has caused problems in the region. From the middle of the last century, a number of wars, peace attempts that did not work, and foreign actions formed this conflict (Pappé 2004). When violence increases, legal groups and advocacy groups, along with foreign governments, must do something. Many people around the world condemn it and the United Nations has also passed rulings but the occupation stays. This shows how little international law talks can do. No one has fixed the problem for many years—this shows how politics and legal actions connect, especially when strong countries take part (Krisch 2005).

In 2023, the Republic of South Africa initiated a legal process. South Africa sued the State of Israel at the International Court of Justice, claiming Israel committed genocide in Gaza since Israel did not follow the 1948 Genocide Convention. This event was important legally and politically, according to Adler and Bishara 2024. South Africa showed support for Palestinian rights to the world. The International Court of Justice reacted by giving six orders in January 2024:

First, the State of Israel shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide,



in relation to Palestinians in Gaza, take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention, in particular: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and imposing measures intended to prevent births within the group. Second, the State of Israel shall ensure with immediate effect that its military does not commit any acts described in point 1 above. The State of Israel shall take all measures within its power to prevent and punish the direct and public incitement to commit genocide in relation to members of the Palestinian group in the Gaza Strip. Third, the State of Israel shall take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip. Fourth, the State of Israel shall take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II and Article III of the Convention on the Prevention and Punishment of the Crime of Genocide against members of the Palestinian group in the Gaza Strip. Fifth, the State of Israel shall submit a report to the Court on all measures taken to give effect to this Order within one month as from the date of this Order. (“Order of 26 January 2024” 2024)

These orders asked Israel to stop genocidal acts and to punish those who encourage genocide. Israel also had to help with humanitarian aid. The Court told Israel to keep the proof and to turn in a report about following the orders but the Court did not specifically ask for a ceasefire. The public who witnessed the case thought this was a big oversight, especially because of the violence and suffering in Gaza then (Totten and Bartrop 2024).

The International Court of Justice's decision drew notice from many, and the public soon looked at the fifteen permanent judges who wrote it. The judges did not act as nameless legal experts; they possessed varied histories, which their country's legal, cultural, and political settings shaped. Each judge passed through a selection process. This process included legal skill and state politics as well as international talks (Amr 2003). On that account, their decisions, particularly in cases of global concern, need observation from the viewpoint of their histories.

Legal Realism provides a useful way to see this—the theory shows that judges do not base their choices only on legal rules. Their identity and origin, in addition to the political facts around them, affect them (Holmes 2004).

Legal Realism came about in the early 1900s—it responded to a view that judges were like devices that applied legal rules to find "right" answers. Scholars such as Oliver Wendell Holmes Jr. and Karl Llewellyn stated that law is what judges do. It is not only what the legal documents say; they showed that personal pasts and social situations, along with political demands, often form how judges read and use law, according to Tamanaha 2009. In international law, states pick the judges and the judges work on cases sensitive to politics. Legal Realism offers a way to grasp how global politics changes what judges decide (Follesdal 2020).

Fifteen judges sat on the International Court of Justice during the 2023-2024 case; they came from countries with different foreign policy views on Israel in addition to Palestine. For example, judges from the United States, besides Germany, came from nations that support Israel diplomatically and militarily. Judges from South Africa or Lebanon represented states that criticize Israeli policies and ask for more protection of Palestinian rights (Green and Smith 2024). A judge should be fair, but their individual votes, separate opinions, or disagreements often fit the political views of their home states (Voeten and Gattig 2011). Comparing these positions shows how influence appears and Legal Realism helps explain this.

When the International Court of Justice chose not to order a ceasefire, many legal experts questioned it. The court saw a likely event of genocide happening, but it still did not issue the order. On one side, the Court appeared to admit the

situation was grave but it did not use its full power to stop the occupation. This shows that judges weighed legal obligations against diplomatic outcomes (D'Alessandra 2023). Some scholars think judges from Western countries may have resisted a tougher order; they wanted to prevent political turmoil. Meanwhile, judges from the Global South may have asked for a more humane answer—these inner conflicts within the Court show the impact of state politics, as Legal Realism foretold (Krisch 2005).

This thesis proposes to examine a ruling from the International Court of Justice. The examination looks at the decision through the views of the fifteen judges who wrote it by considering how all judges, from different legal cultures and political backgrounds, received influence from outside power or state alignments. A comparison among the judges allows for a wider and more equal understanding of how international law applies in actual cases with risky attitude.

Focusing on the judges, instead of legal standards, shows a finding from Legal Realism—those who are responsible for the law are as important as the law itself. A judge's thought process does not develop in isolation. Past jobs and political conditions, along with even news stories, shape it (Posner and de Figueiredo 2005). This matters especially for cases about Israel in addition to Palestine. Global news, public demonstrations, and government efforts to influence create a tense situation. The judges on the International Court of Justice, who should remain neutral, are people who work in this setting; they may react to these pressures in subtle ways.

This thesis examines judicial opinions, both of the majority and that are separate or dissenting—it finds patterns in how law and politics meet at the

International Court of Justice. For example, dissenting opinions often show deep disagreements within the Court; they also point out the various political or ideological concerns of the judges. Legal Realism asks the public to consider these differences seriously. It also suggests that the general public study how the differences reflect a larger global order (Follesdal 2020).

This case holds particular weight since it combines issues of genocide and humanitarian law along with global power. The International Court of Justice's answer sets a rule for future legal cases—it also shows how countries choose to act or not act when large groups of people suffer. People must know what shape the judges' choices. This also tells us about the present and future condition of international law (Bishop 2011).

The International Court of Justice was created within the international system—it came about to settle disagreements without violence and to support law between countries but it also shows the power structures of the countries, because judges are named by states and selected politically. One needs to grasp how this influences their actions, especially in cases with political tension. This understanding is important for changing and bettering the institution (Meron 2005).

This paper offers a view of the International Court of Justice—it adds to discussions in international law and global justice. The court acts in today's world. This paper asks if a court, which the state built, can rise above politics. The research looks at the 2023-2024 provisional measures and the judges who wrote it. It tries to answer the question as it helps one understand how legal decisions come about.

## **1.2 Research Question**

How have the fifteen International Court of Justice judges involved in the 2023–2024 South Africa v. Israel case influenced the Court’s decisions regarding the Israeli occupation of Palestine from a Legal Realism perspective?

## **1.3 Research Objectives**

The objectives of this research are:

1. To investigate the work and country origins of the fifteen International Court of Justice judges to measure their effect on how they decide cases.
2. To evaluate the political settings in each judge's home country to show how those settings may have formed the voting patterns within the International Court of Justice.
3. To look at how advocacy groups along with international law experts affect discussion and presentation at the International Court of Justice.

## **1.4 Research Scope**

This paper researches the fifteen judges on the International Court of Justice in the 2023-2024 South Africa v. Israel provisional measure case—it uses Legal Realism as a framework. A wide comparison helps to assess how the judges' national ties, legal customs, and political situations, along with work histories, affected their thinking as judges. The research uses three main parts of Legal Realism—how judges decide, the political situation, and how interest

groups sway decisions. The study looks at how each judge's home country and political view formed their understanding of the Genocide Convention and their stand on the temporary orders. The paper covers the period from when the case was brought to the table in December 2023 until the Court's provisional measure decision between January to May 2024. It centers on the decision's form and the judges' votes as well as any separate or opposing views that were public. This way helps create a more practical basis of knowledge.

## **1.5 Literature Review**

Writings on international law, on the International Court of Justice, and on the Palestine-Israel conflict show arguments about how well international legal bodies work and how neutral they are. Imran et al. 2023, for example, wrote about how international law cannot really control what states do, especially when powerful actors act. Their paper, “Analyzing the Applicability and Limitations of International Law in Resolving the Israel-Palestine Territorial Dispute,” points out that international courts often fail to hold strong states responsible. Their work focuses on how legal rules are put into practice, but their results also show that legal actions connect to political situations. This view aligns with Legal Realism ideas. However, their paper does not look at how individual judges decide things inside this political system—while this issue is important for this paper.

In a similar way, Joseph L. Daly 2015, "Is the International Court of Justice Worth the Effort?", writes about the symbolic value of the International Court of Justice. He also criticizes its actual effect on obtaining lasting peace—he states that the Court's success depends on whether countries want to follow its

decisions. This idea agrees with Legal Realism's claim that law cannot work without power. According to Daly 2015, the International Court of Justice is prone to political influence, but he does not discuss how these political situations change how judges think. His writing describes the International Court of Justice as a body within power politics but it does not provide a detailed study of how specific judges understand international law based on their own country's plans.

Theodor Meron 2005 discussed the limitations on international judges in “Judicial Independence and Impartiality in International Criminal Tribunals.” He states that judges work with outside power that affects their fairness. This includes what states expect and the culture of the institution. Meron 2005 centers on international criminal courts, not the International Court of Justice but his findings broadly apply to international rulings. His discoveries back up the claim that International Court of Justice judges, who are not just neutral legal workers, can be swayed by national governments and diplomatic ties along with the political results of their decisions. Meron 2005, however, does not look at the Palestine-Israel situation or use a Legal Realist view, which means there is more to explore on these topics.

Kooijmans 2007, in “The ICJ in the 21st Century: Judicial Restraint, Judicial Activism, or Proactive Judicial Policy,” shows strain inside the International Court of Justice. The Court initially sticks to its judicial limits, but it also takes a more active judicial part. According to Kooijmans 2007, the Court stays careful but some cases show judges becoming more involved. This happens especially when there are gaps in legal rules or when the global standards change. By interpreting or adding to international legal rules, the International Court of

Justice judges act as judicial activists—it does not only settle cases; it also forms the future direction of international law. This action emphasises the idea where judicial choices depend on practical matters, such as political situation and long-term legal results.

Mawar 2019, in “The Perils of Judicial Restraint: How Judicial Activism Can Help Evolve the International Court of Justice”, questions the idea that the International Court of Justice should always show judicial restraint. According to Mawar 2019, too much restraint in a quickly changing international system can cause the Court to lose its purpose. The article supports judges’ intervention, urging them to get involved when needed to explain, widen, or carry out legal rules. This is especially important when politics causes tension or when states do not have equal power. Mawar 2019 states that judges are aware of what happens in the world. Their rulings often show a need to answer these pressures which accept that judges act based on beyond just written laws, but their actions also depend on the political and social setting where they work.

Although those studies are useful, none offer a full use of Legal Realism to the International Court of Justice's temporary decision in the 2023–2024 South Africa v. Israel case; they also do not look at how judges’ national ties, personal beliefs, or contact with advocacy groups affect their legal views. This paper tries to bridge that gap by studying how the International Court of Justice's fifteen judges—each living in different political, institutional, and ideological settings—dealt with one of the most politically charged legal cases. By using Legal Realism as a structure and putting it on judicial behavior and political setting as well as interest groups effects, this study adds a new viewpoint to



writings on international court rulings—it states that judicial decisions at the International Court of Justice, particularly in cases that involve powerful states, are difficult to grasp.

## **1.6 Research Framework**

The author conducts this research by using the Realism theory to support the analysis of the case study. Realism is a main theory in international relations—it states that the international system is disorderly. It also says that countries are the main actors; they try to protect their national interests and move them forward. Countries work in a competitive setting. Power and safety matter most. From this view, international groups, including legal groups, often become tools for powerful countries—these countries use the groups to keep their influence or to shape global results for their benefit. Realism explains why global justice systems do not always stand apart from political thoughts.

### **- Legal Realism Theory by Oliver Wendell Holmes Jr.**

Legal Realism is a legal theory—it disputes the idea that judges use laws mechanically and without bias. Scholars such as Oliver Wendell Holmes Jr. presented this idea. It states that the experiences and beliefs, along with the social settings, of those who interpret law influence it. Legal Realism holds that judges do not work alone; they belong to larger societal structures. Political pressures, cultural contexts, and individual beliefs often shape legal decisions, which happens instead of abstract legal rules shaping them.

- a. Judicial Decision-Making:* In Legal Realism, one sees judicial decisions as results from personal judgment and outside forces (Holmes 2004).

According to Holmes 2004, Judges' decisions often connect to their backgrounds and values, along with the expectations of the groups and places they work for. Their thinking may shift because of the policies their governments set. The beliefs of legal communities they join or their job prospects also sway them. This idea states that judges' readings are personal and social facts, not just legal texts, shape them.

- b. Political Context:* Courts and judges reside in a political setting that changes how they act (Holmes 2004). The political situations in judges' home countries alter their judicial behavior. According to Holmes 2004, this happens because of a country's foreign policy on a case, its political alliance, and its past relations with other countries. Judges usually show their state's main interests in how they reason about the law—this is true especially for cases with important political outcomes. When one knows the political setting, one can explain why people vote a certain way, why some judges disagree, and what tone judicial language has.
- c. Interest Group:* International advocacy networks, media, and legal scholars, along with non-governmental organizations, help form judicial discussion (Holmes 2004). Legal Realism shows that courts do not work by themselves. According to Holmes 2004, actors in a bigger system affect how people present legal arguments—these groups write reports, provide expert comments, as well as run public campaigns; they help judges decide the importance and truth of legal claims.

This thesis uses Legal Realism to study how political power affected the International Court of Justice's judgment in the 2023-2024 South Africa v. Israel case. Through this approach, the research looks at how the fifteen judges' choices showed their political leanings and diplomatic affiliation, along with interest group actions that came with the case. This helps one understand how international law works, especially when the legal activity includes countries with greater global power.

### **1.7 Provisional Argument**

This research states that the International Court of Justice's decision in the 2023-2024 South Africa v. Israel case did not come from legal principles alone. National along with institutional factors around the judges also shaped it. This view aligns with Legal Realism which holds that judges do not decide in isolation. Their backgrounds and beliefs, as well as the political situations of their own countries, shape how they understand law—which became clear in the case. Judges from countries that sided with Israel, such as the United States in addition to Germany, chose careful and limited understandings of the law. Judges from Global South countries, for example Lebanon, besides Brazil, were more open to supporting South Africa's legal points; they also put more weight on humanitarian issues. Besides these national influences, larger global notice surrounded the case. Along with national influences, much global interest from advocacy groups, human rights organizations, and legal scholars, along with international media, surrounded the case. All these groups formed public discussion and legal structure with their reports and statements as well as campaigns. For these reasons, this thesis suggests that one must view the International Court of Justice's decision as

a result of both law and politics. This reflects the difficult facts that Legal Realism tries to find.

## **1.8 Research Method**

### *1.8.1 Type of the Research*

The research employs a descriptive analytical method—it explains how outside factors like political settings and national concerns, along with interest groups, affected the choices of fifteen judges at the International Court of Justice in the 2023-2024 South Africa v. Israel case. The study interprets documents and statements as well as recurring actions to understand the political conduct in judicial decisions which aligns with the Legal Realism viewpoint.

### *1.8.2 Subject and Object of the Research*

The subject is the acts and thoughts of fifteen International Court of Justice judges. Meanwhile, the object is the International Court of Justice's legal decision and how it reflects the influence of national affiliations, political alignments, and interest groups. This study looks at how these elements work with the legal arguments in the case—it uncovers the politics present in international judging, as Legal Realism states.

### *1.8.3 Method of Data Collection*

The research uses library materials and collects data from other sources. This data includes documents from the International Court of Justice, such as the Court's order and opinions that differ or agree with it. The data also includes

articles from academic journals, books about international law and legal theory, and news reports, along with statements from state governments. Reports from human rights groups and advocacy organizations are also part of the data. The study uses these materials to learn how the political stance of judges as well as civil society affected the legal arguments and the result of the case.

#### *1.8.4 Process of the Research*

The research started with finding literature and main sources about the International Court of Justice and legal realism theory, along with the South Africa v. Israel case. After collecting the International Court of Justice documents and other facts, the material was put into three main analytical groups. Legal Realism formed the basis for these groups—judicial decision-making, political context, and interest groups. The data is being analyzed using the Legal Realism theory which showed how political interests from judges' countries and institutional habits, in addition to the wider global situation where the case occurred, affected their legal thought.

### **1.9 Thesis Outline**

This thesis has four chapters. Chapter 1 presents the background of the research, the research question, and the objectives and scope, along with a literature review. This chapter also shows the theoretical framework, which uses Legal Realism, a provisional argument, and the research method. The chapter ends with the structure of the thesis. Chapter 2 looks at the history of the Palestine-Israel conflict and how the International Court of Justice plays in handling this long case. Chapter 3 gives the main analysis—it looks at how

judges' backgrounds, national political settings, and also the work of interest groups shape the International Court of Justice's ruling. This chapter is set up around three main parts of Legal Realism: how judges decide, the political setting, and interest groups. Chapter 4 puts together the main findings. It highlights how political as well as national effects change judicial results at the International Court of Justice. It also offers recommendations to enhance the objectivity and transparency of international legal institutions.

## **CHAPTER 2**

### **UNDERSTANDING THE INTERNATIONAL COURT OF JUSTICE**

#### **JUDICIAL BEHAVIOR THROUGH THE LENS OF LEGAL REALISM**

People often see the International Court of Justice as a neutral group—it applies international law fairly. But in politically charged cases, like the South Africa v. Israel case in 2023-2024, factors beyond law can shape its rulings. Countries nominate and elect the judges of the International Court of Justice. Many of these countries have foreign policy interests tied to the results of cases that come before the Court. Legal Realism provides a critical view of it. According to Legal Realism, judges receive influence from their national histories, their work experiences, and the larger political setting where they work.

This chapter presents Legal Realism as the theory for this research—it shows how the theory applies to the International Court of Justice's structure and actions, and it discusses the three main approaches. Judicial decisions form from a personal and institutional setting, political influences come from a judge's home country, and outside groups along with international players apply influence—these variables clarify how a legal reading can show political ties or careful limits. Through this theory, the chapter builds a base for studying how the fifteen International Court of Justice judges handled the 2023-2024 case. In practice, international law often connects with global politics.

#### **2.1 Overview of Legal Realism and Its Relevance in International Law**

Legal Realism was founded in the early 1900s—it was a critical reply to Legal Formalism, which saw judges as mechanical rule interpreters. Notable

scholars like Oliver Wendell Holmes Jr. questioned this idea. Holmes argued that "the life of the law has not been logic—it has been experience." Legal Realists held that judges do not operate as isolated legal technicians; they are human actors whose decisions are affected by their backgrounds, beliefs, and surroundings. The theory states that judicial outcomes often show practical worries and personal leanings as well as political situations. This happens instead of a mechanical use of legal teaching (Tamanaha 2009). Legal Realism changed both domestic and international legal studies. It pushed scholars and those who practice law to look at the law itself. They also need to consider the people and groups that interpret law.

Within international law, Legal Realism provides a useful way to see how courts, such as the International Court of Justice, work. The International Court of Justice differs from domestic courts—it does not have firm ways to enforce its decisions, and it operates in a global arrangement where power differences and state independence, along with negotiation, greatly affect results (Follesdal 2020). The International Court of Justice's setup, where states propose judges and both the United Nations General Assembly and the Security Council elect them, raises questions about whether the judges are fair and independent (Amr 2003). Legal Realism show that judges often decide cases in line with their home countries' political goals (Voeten and Gattig 2011). Legal Realism is quite important for looking at the International Court of Justice, because law and politics often meet in important issues, like the case between South Africa and Israel from 2023 to 2024.



The International Court of Justice ruled in that case. The ruling showed Legal Realism in practice. The Court saw that genocide in Gaza seemed possible, however it did not order a ceasefire. A ceasefire is one of the most important humanitarian steps (Totten and Bartrop 2024). This decision brought criticism from legal scholars and human rights groups, hence why one needs to study how politics and respect for powerful nations, such as the United States in addition to Germany, influenced the judges' choices (Green and Smith 2024). The judges had different opinions. Judges from the Global North and the Global South especially disagreed—this showed how national politics and foreign policy affected legal thought. That case displays Legal Realism's claim. International law often takes shape from the plans and also beliefs of judges and their states, not from ideas alone.

When someone looks at the International Court of Justice with a Legal Realist view, the person will see the bigger institutional and political forces that affect how judges act. Judges on the International Court of Justice do not work apart from their countries' foreign policies. The judges also do not work apart from the strategic concerns of powerful players in the international system. Their decisions, both the majority views plus the differing opinions, show detailed talks between legal rules and political facts. This understanding matters when people judge how believable as well as how well international courts work in cases that involve mass violence, such as what happened in Gaza. Legal Realism offers a useful and judging way for scholars as well as people who work in the field to weigh what the International Court of Justice decides; they can also weigh how the court reaches its judgments and the reasons for its choices.

## **2.2 Theory and Global Applications of Legal Realism and Judicial**

### **Behavior**

Legal Realism states that judges are not neutral judges. Personal beliefs and institutional ties, along with political situations, affect their rulings. This idea can change how we understand what judges do—this applies especially in legal systems where law and politics are not distinct. Legal Formalism sees law as separate and applied by logic but Legal Realism says judges build the law's meaning; they do this based on their social background, their morals, and the political setting around them (Tamanaha 2009). This is crucial in international law. Judges handle cases about state actions and disputes in addition to breaking international rules—these cases often carry political weight.

At global judicial institutions, like the International Court of Justice, one can see how Legal Realism applies. National governments nominate the judges for the International Court of Justice. The United Nations General Assembly, in addition to the Security Council, elects them through a political process. This way of picking judges puts political representation into the Court's design (Amr 2003). As a result, what judges do at the International Court of Justice often matches the foreign policy needs of their home countries. According to Voeten and Gattig 2011, judges at the International Court of Justice vote more often for what their own states or political allies want—this pattern questions whether judges remain fair and supports Legal Realism's idea that legal thought often follows national interest.

Judicial choices relate not only to what the state wants but also to larger plans. Judges sometimes write separate opinions or dissents; they do this to state

legal rules or to show they disagree with the main opinion, but they do not harm the court's standing—however these dissenting views often hold political meaning. This is especially true when powerful groups are involved in the case. During the 2023-2024 South Africa v. Israel case, the judges had different reasons for their choices. Judge Julia Sebutinde of Uganda wrote a firm dissent. Judge Nawaf Salam of Lebanon wrote a separate opinion. These writings showed more than just legal views, they displayed deeper ties between nations (Adler and Bishara 2024). Legal Realism helps us to see these opinions not just as legal arguments, but as displays of larger beliefs and diplomatic positions.

Legal Realism shows why judges act differently to a law as politics change. When a case deals with international issues or charges of genocide, such as the International Court of Justice's provisional measures, judges may act carefully or assertively. Their actions depend on the political effects of their vote. This holds true for judges from countries that link to Israel or help with diplomacy in the Middle East. For example, judges from the United States, Germany, and Japan usually do not reach legal decisions that would upset crucial allies. But judges from South Africa and Lebanon, as well as Brazil, worry more about the impact on the people (Green and Smith 2024)—these behaviors are central to Legal Realism that argues that it does not accept the idea that law is completely fair but rather that it looks at the real situations that form how judges decide.

### **2.3 Applying Legal Realism to the International Court of Justice and Analyzing the Systemic and Political Context**

Legal Realism offers a way to examine how the system can lean one way or another. The International Court of Justice is a court of law and politics through the Legal Realism lens. This means that the Court does not separate itself from the interests and goals of big states. A system that leans a certain way does not always come from wrong actions but the way the system works can cause judges to decide cases in line with what powerful countries want in their foreign policy (Krisch 2005).

The International Court of Justice's decisions in political cases often show patterns that reflect this situation. Studies by Voeten and Gattig 2011 along with Posner and de Figueiredo 2005, found that the court's judges tend to support their own countries or states that are allies. This appears in cases about armed conflict, state power along with claims of human rights abuses; these issues usually involve national interests. In 2023-2024 South Africa v. Israel case, the judges' votes showed they agreed with their governments' political views. For instance, Judge Joan Donoghue from the United States besides Judge Georg Nolte from Germany showed their countries' careful diplomatic stance, as their countries support Israel. Judges from Lebanon, Brazil along with South Africa, however, showed legal thought which fits with the support their governments gave in the past to Palestinian self-determination, and it also fits with international responsibility (Adler and Bishara 2024).

Legal Realism helps one grasp the planned vagueness and middle ground found in the International Court of Justice's decisions. The Court's release of

provisional measures, without clearly ordering a ceasefire, shows this struggle. The Court admitted that genocide was possible, which is a weighty legal standard under the Genocide Convention. However, it did not demand the most direct humanitarian action, which would be to call for an immediate end to the conflict (Totten and Bartrop 2024). This careful method is a political choice to avoid upsetting powerful United Nations member states as those states have often shielded Israel from international legal checks through ways like United Nations Security Council vetoes. Legal Realism therefore permits scholars to see how a judge's caution may show that an institution wants to last, rather than just solely follow legal rules (D'Alessandra 2023).

Legal Realism shows the importance of dissenting and separate opinions—these opinions offer views into systemic bias. The Court's main judgment often has careful words to get broad agreement but individual judges often use concurring or dissenting statements; they speak about other legal and political worries. In this case, judges from Global South countries wrote about humanitarian suffering, international justice, and decolonial legal views. Meanwhile, Judges from Western countries wrote their reasons in terms of legal care, proof levels, and rule limits (Berg 2024). These patterns show that a judge's ideas come not only from law but they also come from a judge's political place in the international system. Legal Realism asks us to look at these hidden influences—they are central to how international courts, like the International Court of Justice, work.

**CHAPTER 3**

**ANALYZING JUDICIAL BEHAVIOR IN THE INTERNATIONAL COURT  
OF JUSTICE’S SOUTH AFRICA V. ISRAEL CASE**

This chapter uses the Legal Realism framework to look at how the fifteen judges of the International Court of Justice dealt with the 2023-2024 South Africa v. Israel case. Legal Realism states that judicial decisions come not only from legal texts. The backgrounds of the judges, their political surroundings, and their institutional ties also shape those decisions. The International Court of Justice selects its judges through processes that states drive. Judges show the legal cultures and foreign policy concerns of their home countries. Their decisions often show political agreement and diplomatic power. This chapter has a structure that follows the three main points from Legal Realism: judicial decision-making, the political setting, and how interest groups affect matters. An analysis of the judges’ backgrounds, their voting patterns, and their country ties shows the forces that altered the Court's decisions. The external pressures around the case also played a part. The chapter describes how this process took shape from factors that moved past the rules of law—it reflects the truth of politics around the globe.

**3.1 Judicial Decision-Making: Backgrounds, National Interests, and  
Voting Behavior of the Fifteen International Court of Justice Judges**

From the standpoint of Legal Realism, a judge's decision ties to the daily circumstances and national ties of the judge. This idea claims that judges do not operate like legal machines in an abstract void, they are people whose socio-political surroundings, loyalties to institutions, and past work experiences

form them, according to Tamanaha 2009. At the International Court of Justice, political groups such as the United Nations General Assembly and the Security Council choose the judges. In the case of South Africa v. Israel in 2023-2024, the fifteen International Court of Justice judges came from different settings and nations—this showed a mix of ideas and political connections between countries. That mix connected directly to how they acted as judges. Legal Realism helps us to read their votes and dissents, along with separate opinions, not only as legal thought but also as displays of wider political and diplomatic stances.

Judge Joan E. Donoghue from the United States presided over the International Court of Justice during this important case. She held a long history in the United States foreign policy and previously worked as the main deputy legal adviser in the United States Department of State. Judge Donoghue usually supports the United States global plans. Her careful leadership and her focus on legal rules in the Court's decision showed the Biden administration's diplomatic stand which refused charges of genocide but continued military help to Israel (Green and Smith 2024). Judge Donoghue chose not to order a ceasefire, even though she admitted that genocide “might have happened”. This choice shows judicial control that fits the political calculations of the United States and the general legal culture in the West.

Judge Kirill Gevorgian from the Russian Federation served as the Court's vice president. He works for a state that stands against Western power. Russia's foreign policy in the Middle East has shown a lack of clear support for either Israel or its enemies. Judge Gevorgian's careful way of judging and his opinions, which did not use hostile words, showed that Russia increasingly aligns with the

Global South. Russia wants to weaken legal plans that the United States leads, but it does not openly back anti-Israel views (Berg 2024).

Judge Nawaf Salam from Lebanon spoke one of the most critical opinions about Israel. Lebanon has a long history of hostility toward Israel, which includes several wars and ongoing border disagreements. This history shapes Judge Salam's outlook and his legal work. His separate opinion stressed international humanitarian law and the obligations of countries under the Genocide Convention. As a former ambassador to the United Nations and a scholar who is knowledgeable about Middle Eastern legal matters, Judge Salam's opinion showed Lebanon's diplomatic backing for the Palestinian cause—it also highlighted the Legal Realist belief that judges bring national ideas into the courtroom (Adler and Bishara 2024).

Judge Xue Hanqin from China showed how to balance legal duties with caution about politics. China's stated policy backs Palestinian statehood, but it also has good economic and technological relations with Israel. Judge Xue's court position did not use words that could cause issues. She put procedural order first, not getting involved in the deeper issues. Her reasons showed China's idea of not interfering. This also fit the wider political plan to stay neutral while building ties with both sides of the conflict (Follesdal 2020).

Judge Ronny Abraham from France worked as a diplomat and a legal advisor. He spoke about France's moderate view regarding the Palestine-Israel conflict. France showed worry about the humanitarian conditions in Gaza but did not support the claim of genocide. The Judge's legal thoughts helped the Court issue the provisional measures—these measures recognized the urgent need for



humanitarian aid but not ordering a ceasefire. His method, based on legal limits, showed France's common dedication to diplomacy—it also showed France's support for many nations working together. France also wished to keep steady conditions inside international groups (D'Alessandra 2023).

Another judge in this case was Judge Julia Sebutinde from Uganda. She was the only judge to dissent fully from the Court's ruling. Her dissent stated that South Africa “did not meet the standard of plausibility for genocide”. This position surprised many observers because Uganda had always supported Palestinian self-determination, however one can understand Sebutinde's position when they consider Uganda's growing military and intelligence work with Israel—this position also shows the changing alliances in East Africa (Segate 2023). Her dissent showed how Legal Realism views legal reasoning. The foreign policy goals of a judge's home country often guide this reasoning.

Judge Georg Nolte from Germany showed his country's long-term moral and political backing for Israel. This support came from Holocaust's history. Germany regularly denies claims of Israeli genocide, stating that such findings “need proof”. Judge Nolte's legal texts, which described proof rules and fair processes, upheld Germany's policy of absolute support for Israel's safety (Abdelhafez 2024). His agreement with German foreign policy illustrates how Legal Realism clarifies the link between court decisions and state goals.

Judge Hilary Charlesworth from Australia holds a special place as a human rights expert. Her opinion focused on defending the people, but it did not call Israel's actions genocide. Australia's foreign policy has often shifted between siding with Western countries and worrying about international law. Judge

Charlesworth's thought shows this double nature. This reveals how judges take on and show the carefulness of their governments in diplomacy; they still put human rights discussions first (Meron 2005).

Judge Leonardo Nemer Caldeira Brant from Brazil works for an administration that openly criticizes Israel's actions. The administration voted for a ceasefire at the United Nations General Assembly. His judicial stance showed this political atmosphere. He put the humanitarian effects of the conflict first. Under President Lula da Silva, it moved toward Global South solidarity and diplomacy involving many nations. This puts Judge Brant's vote and his separate explanation for more humanitarian steps into perspective (Wahyuni 2024).

Judge Mohamed Bennouna, who is from Morocco, wrote many texts about postcolonial legal theory and the idea of self-determination. Morocco stood by the Palestinian cause for a long time. The country's place in the Islamic world, in addition to Arab areas, shaped Bennouna's focus on international accountability. His separate statement showed worries shared by judges from the Global South—these judges saw Israel's actions as occupation and oppression along with colonial control (Smith 2001).

Judge Patrick Robinson from Jamaica gained knowledge at the International Criminal Tribunal for the former Yugoslavia. He has handled cases about genocide and crimes against humanity. His written opinion stressed how serious the accusations were and the legal duty to stop genocide. Jamaica's foreign policy does not align with any major powers. The country shows leadership among developing nations. This let Judge Robinson adopt a moral humanitarian position without feeling limited by the political influence of major powers (Bishop 2011).

Judge Yuji Iwasawa from Japan has a reputation for using technical and factual language. He does not use strong political words. Japan's foreign policy tries to avoid direct arguments, particularly in the Middle East. This happens because Japan relies on the United States for military protection and on the Middle East for energy. Judge Iwasawa pays attention to legal rules and evidence requirements—this fits with Japan's careful way of handling diplomacy—it also shows a point from Legal Realism, which says that the way judges think often reflects how much risk a country avoids in its diplomacy (Tamanaha 2009).

Judge Péter Kovács from Hungary works for a state under Viktor Orbán which supports nationalism and maintains close connections with Israel. Judge Kovács writes much about state control. He often limits his reading of international rules for human welfare. His legal views reduce the importance of doctrines that support intervention. This fits with Hungary's dislike of liberal internationalism. Hungary backs noninterference, particularly when its allies are involved (Voeten and Gattig 2011).

Israel chose Judge Aharon Barak as an ad hoc judge. South Africa picked Judge Alain Pellet. Judge Barak is a former president of Israel's Supreme Court and he spoke for Israel's military actions. He denied charges of genocide. Many were worried about his fairness because he had backed Israel's security plans before. Meanwhile, Judge Pellet who is a French scholar argued for South Africa—he criticized Israel's actions, saying they broke the Genocide Convention. These different views show a point in Legal Realism—judges in states often pick to serve their state's goals (Rosen 2004).

The Court's decision in this case shows that judges' national ties and their legal ideas connect. A look at judges' life histories, countries' foreign policies, and global settings helps one grasp how law and politics combine in international court cases. The International Court of Justice's choice, specifically its refusal to order a ceasefire, highlights the complicated relations of institutional limits and diplomatic plans along with ideological beliefs that shape global fairness as it occurs.

### **3.2 Political Context: How the Judges' Countries Shaped Their International Court of Justice Behavior**

Legal Realism states that the international courts rule inside a political setting in which judicial decisions reflect this setting. The International Court of Justice has judges who come from different nationalities. Political bodies, such as the United Nations General Assembly in addition to the Security Council, pick these judges. Each judge reflects the law and foreign policy along with the political stance of their home country. In important cases, like the South Africa v. Israel, political settings explain why judges vote as they do; they also explain the differing opinions and the general atmosphere of the Court. The 2023-2024 case happened when political groups became more separate. People across the globe watched Israel's military actions in Gaza closely. The choices the judges made often match the foreign policy goals and diplomatic actions of their home countries.

The United States, where the International Court of Justice President Joan Donoghue is from, has long been a firm ally to Israel. From the 1970s, the United

States has supplied more than \$150 billion in military and money aid to Israel. The nation also always guarded Israel from international legal blame—it uses its veto power at the United Nations Security Council for this purpose (Findley 1993). In the 2023-2024 case, the Biden government denied charges of genocide. It said Israel had a right to defend itself. This showed the two countries' strategic connection and common democratic beliefs (Berg 2024). Judge Donoghue's leadership and the Court's careful words show an accord with the United State's interests. The International Court of Justice chose not to order a ceasefire—even though it did admit that genocide “seemed possible”. One can see this as judicial carefulness. This shows how states with power affect courts; they do not just pressure courts openly. They also align with norms and expect institutions to act in certain ways.

Germany's part in how judges act matters in a similar way. Judge Georg Nolte works for Germany in which the country has a constitution and history that commits to support Israel, mainly due to Holocaust guilt. The German Chancellor, Olaf Scholz, said during the court case that Germany saw no legal reason for charges of genocide. He also promised full support for Israel's right to defend itself (Abdelhafez 2024). Germany told the public it did not agree with South Africa's statements. Nolte talked about legal limits, the need for proof, and what states must do. His words match Germany's careful legal actions. His views show that Germany takes a careful legal approach—they also show Germany's political interest in keeping its alliance with Israel steady.

On the other hand, Lebanon, with Judge Nawaf Salam representing it, shows how political dislike of Israel affects how a judge thinks about the law.

Lebanon does not have formal ties with Israel. The country sees the Palestinian cause as important to its place in the area and to its own government matters. The Lebanese government openly backed South Africa's request and approved the temporary measures the International Court of Justice ordered. Judge Salam served as a United Nations Ambassador and studied law, and he wrote his own opinion on the matter. In it, he found fault with Israel's actions in Gaza. He also stressed the part of the Genocide Convention that deals with human suffering (Adler and Bishara 2024). His legal thoughts fit with Lebanon's long-term backing for a Palestinian state. This shows how judges from opposing countries can use broader readings of international law when the political atmosphere runs high.

Judge Ronny Abraham spoke for France. France sits on the United Nations Security Council and has interests in Middle East diplomacy. The country showed worry about the humanitarian issues in Gaza but did not support claims of genocide. President Emmanuel Macron said that “people must avoid more escalation”. He also asked for Israel's reactions to fit the situation. Judge Abraham showed this unclear stance—he backed temporary actions but did not use words that could “upset” Israel. This care by the judge shows that judges can reflect their government's wish for a neutral and fair legal position—which keeps diplomatic choices open (D’Alessandra 2023).

Brazil's part in the case changed. Under President Luiz Inácio Lula da Silva, Brazil held a critical view of Israel's military actions. The Brazilian government asked for a ceasefire—it found fault with Israel's use of force against civilians, saying it “went too far” (Wahyuni 2024). Judge Leonardo Nemer Caldeira Brant, Brazil's representative, represented this view. He stressed the need

for humanitarian help—he also made his legal reading fit South Africa's request. Judge Brant's stance showed that judges respond to their state's foreign policy and beliefs.

Russia, in addition to China, criticized the West's control of international law. Judge Kirill Gevorgian spoke for Russia. He gave “careful” statements during the case—he did not fully back or reject what South Africa claimed. Russia used the case to convey what it saw as two different rules in Western foreign policy (Krisch 2005). This included how the West chose to interpret the law about helping civilians. Judge Gevorgian's reasons did not use harsh words—this showed how Russia wanted to find fault with the West without upsetting Israel or its allies. Furthermore, Judge Xue Hanqin who represented China, backed the Court's work in dealing with concerns about civilians but kept a careful legal tone. China's foreign ministry asked for a ceasefire and a two-state answer, yet it did not specifically mention the word “genocide”. This matched with Judge Xue's choice for “clear” procedures instead of outright political statements (Follesdal 2020).

The judges from the Global South, such as Judge Alain Pellet from South Africa, Judge Mohamed Bennouna from Morocco, and Judge Patrick Robinson from Jamaica, introduced views that grew from anti-colonialism and human rights along with international accountability—these nations have often backed Palestinian self-determination and opposed what they saw as Western legal hypocrisy. Whom South Africa chose presented a direct legal criticism of Israel's actions. He used ideas about state responsibility and moral duty. Judge Bennouna focused on territorial integrity and decolonization, connecting Israel's control to larger topics of past unfairness (Smith 2001). Judge Robinson highlighted that

international legal rules apply to everyone and that people should stop committing wrongdoings. These stances show how judges from the Global South use international law to question the way Western powers control global legal bodies.

Judge Hilary Charlesworth from Australia showed a moderate way to approach the issue. Australia's official position joined worry for civilian protection with backing for Israel's right to defend itself. Judge Charlesworth's opinion, which came from human rights law, did not take up South Africa's idea of genocide. Her careful approval of the temporary actions mirrored Australia's attempt to “balance” Western partnerships with domestic and global human rights demands (Meron 2005). Similarly, Judge Yuji Iwasawa from Japan followed a strict legal view which showed Japan's wish for procedural fairness and its dislike of becoming involved in divisive global disputes.

With Judge Péter Kovács as its representative, Hungary came to agree more with right-wing and pro-Israel policies when Viktor Orbán became its prime minister. Hungary denied the European Union statements that criticized actions by Israel. The country also supported the idea of not interfering in other nations' business. Judge Kovács' legal argument defended how states control their own affairs. He did not believe in humanitarian interventions, and this thought went along with Hungary's general stance on global politics (Voeten and Gattig 2011).

The International Court of Justice's political design merits a review. The judges know the Court relies on help from member states of the United Nations, especially from powerful countries. The International Court of Justice lacks a way to force compliance—it only has moral standing and international agreements. Its decisions often show a careful balance of legal duty and political endurance. The



choice to issue provisional measures without ordering a ceasefire shows this struggle. A ruling like this points to a worry without “angering” the powers on which the Court depends for its standing and authority (Berg 2024).

In summary, the political settings in the judges’ home countries broadly formed how they read and used international law for this case. Legal Realism offers a way to uncover such connections—it shows that judicial behavior does not just come from legal rules. It results from national interests and strategic ties along with institutional demands. The International Court of Justice's careful but symbolic decision in *South Africa v. Israel* shows this. Even at the top levels of international law, the Court guides itself through different forces of diplomacy and belief systems as well as global power.

### **3.3 Interest Groups: Influence of Advocacy, Legal Institutions, and Media on the International Court of Justice**

Legal Realism proposes that law does not stand as a separate system of impartial ideas. The social and political setting shapes it as legal groups act. This idea shows how judges and states play a role as the legal surroundings matter. Interest groups and public views, along with global news, all can affect judicial choices; they put indirect, but great, pressure on these choices. In the case of *South Africa v. Israel*, many groups outside the states involved had worked to sway the International Court of Justice. They play a role in influencing how judges issue their rulings. Advocacy groups, legal bodies, as well as diplomatic paths, show how power works in international court cases.

Human rights groups helped form legal talk before and during the International Court of Justice hearings. Organizations such as Human Rights Watch, Amnesty International, and Al-Haq, along with the International Federation for Human Rights, put out thorough reports. These papers recorded many civilian deaths and damaged buildings, as well as likely broken rules of the Genocide Convention in Gaza (Human Rights Watch 2024). These organizations often based their reports on research in the area and satellite pictures. This research helped strengthen South Africa's legal points, and it shaped how the general public thinks about the case. These organizations did not formally give these reports to the Court as proof, however, the public often mentions these writings in legal comments and advocacy papers. Academic publications quote them—these academic writings may have told separate or different opinions of some judges (Abdelhafiz 2024).

At the same time, academic groups and international law experts described the conflict with legal words. Many scholars from places like SOAS University of London and New York University, along with the University of Pretoria, signed open letters and public statements—these papers asked the International Court of Justice to follow international humanitarian law and to act firmly against what they called ethnic cleansing and genocide (Adler and Bishara 2024). Popular sites such as *Opinio Juris* and *EJIL: Talk!*, as well as the *European Journal of International Law*, showed the legal talks and criticisms about the Court's decisions. These talks affected how the public saw the case legally, as well as how judges felt watched by knowledgeable groups; these sites often work as casual places where people build and argue about legal issues; they help form what Legal

Realists name “extra-legal” reasons that affect how people use and grasp law (Tamanaha 2009).

News sources also helped spread these stories and shape what the public thinks. Major news companies like The Guardian, Al Jazeera, Haaretz, and The New York Times, along with the BBC, had reported a lot on the hearings at the International Court of Justice; they sometimes streamed the events live and brought in legal specialists to talk about them. This constant reporting made the hearings more visible and pushed the International Court of Justice to appear fair and follow the rules. When civil groups watch the international courts closely, media attention can hold the courts to account (Meierrieks and Gries 2018). Social media sites, for example, X, Instagram, and TikTok, saw a lot of calls for a ceasefire. Many of the posts mentioned the Genocide Convention and the International Court of Justice statute. This caused a political situation where the Court's decisions did not stay completely separate from what the public thinks. Some judges come from democracies, so people there may see legal rulings as political.

Based on news reports, it is said that a ceasefire order might “harm peace talks, complicate the issue, or turn the Court into a political body” (Adler and Bishara 2024). Therefore, the Court's careful choice to not order an immediate end to the conflict, even when it said there was a "plausible risk of genocide," seems to fit into the idea that there is broader power that controls the global political atmosphere.

Connections among judges also affect how they view cases. Many judges on the International Court of Justice belong to legal groups that work across borders,

which include the Institut de Droit International, the African Association of International Law, and the American Society of International Law. Such memberships create what experts refer to as “epistemic communities.” In these groups, shared ideas and rules, along with work cultures, direct how people grasp and use legal rules (Krisch 2005). For example, a judge from Western legal groups may show more caution when they use politically sensitive words such as “genocide.” But a judge with ties to groups in the Global South may instead talk more about past colonial rule and widespread violence. This shows that legal judgment is not only about facts and documents—it is also about what intellectual groups judges meet and how those groups set limits for proper legal talk.

States influence judges through career and workplace norms. Judges who get appointments from powerful states know what their government prefers; they know what happens if they do not follow those preferences. Legal Realism suggests that judges control their decisions even without direct pressure. They decide on their rulings to match the acceptable ideas or to avoid harming their country's foreign policy goals. This pattern appeared in the *South Africa v. Israel* case. Judges from Western countries generally used strict legal views, meanwhile judges from countries in the Global South often read humanitarian law and state responsibility broadly.

The International Court of Justice's decision in the *South Africa v. Israel* case took shape from legal rules and what nations wanted. Groups that spoke for a cause, stories the media told, and talks among countries all played a part. Legal Realism shows how these forces stay inside the legal process; they do not stand apart from it. The court did not order a ceasefire, the ruling used careful words,

some judges agreed, and some disagreed. This shows how outside forces weighed on what judges decided. Legal Realism asks us to view international courts differently. These judges are entities that show and react to the calculated pressures of a disputed world.

## **CHAPTER 4**

### **CONCLUSION**

#### **4.1 Conclusion**

This research explores how the fifteen judges of the International Court of Justice responded to the South Africa v. Israel case in 2023-2024. It uses Legal Realism as a theory framework by analysing the judges' home countries and their foreign policies—it also considers how interest groups and legal institutions affected the judges' decisions. The study found proof that political influence affects how judges decide at the International Court of Justice and how these decisions are not free from international politics.

Chapter 3.1 showed that judges often interpret international law in ways that match their countries' diplomatic positions. Chapter 3.2 revealed that political situations, especially how a judge's country relates to Israel or Palestine, are clearly connected to their arguments or disagreements. Chapter 3.3 pointed out that nongovernmental groups, law experts, and the media, built a system that determined how judges shaped their choices. All of these points prove the main idea of Legal Realism in which law does not work alone, but it sits inside political and social systems.

The International Court of Justice has formal authority in international law but the political conditions around its judges still affect it largely. In the 2023-2024 case between South Africa and Israel, the Court put out provisional measures. The Court said there was likely a chance of genocide in Gaza—it told Israel to stop their actions, to punish those who provoked violence, to allow aid in

for civilians, and to keep proof along with telling the Court about its compliance. The judges however, chose not to order a ceasefire even though the accusations were serious—which aligns with the Legal Realism idea that says that legal rules do not only shape judicial decisions. A judge's nation and political ties, as well as the rules for their role, shape these decisions; this case shows how political and ideological settings influence the decisions judges reach, and it happens even at the highest level of international law.

#### **4.2 Recommendation**

The International Court of Justice dealt with the case between South Africa and Israel and the case shows what international law can do and what it cannot. The Court confirmed its function in taking on humanitarian issues, however, it did not order a ceasefire, even though the accusations were serious—this showed the limits that international courts face. Legal realism helps us grasp that international judges do not decide without aligning with their beliefs. Their decisions show institutional politics and national allegiances, along with the strategic interests of their countries.

To improve the credibility of international adjudication, stakeholders must acknowledge influences instead of ignoring them. Legal scholars and diplomats, along with civil society actors, should continue to press for more transparent appointment processes; they must also press for clearer conflict-of-interest disclosures and for improved legal reasoning, in which that reasoning must withstand scrutiny from all sides of a dispute.

The United Nations should think about changing the way it selects judges for the International Court of Justice—it needs to put more focus on a judge's professional independence and their legal skill. Political representation should matter less. The International Court of Justice ought to accept more formal papers from international nongovernmental organizations and scholars in cases that involve politics. This shows that the Court knows these groups offer views that others do not present. Opinions from the International Court of Justice need to explain their legal reasons well—this is especially true for provisional measures. It helps to stop claims that the Court's decisions are unclear or involve political deals. International legal groups should set up separate panels; they should check on the International Court of Justice's work and its rulings regularly as it will help keep judicial behavior stay within standard rules. The international legal system can get closer to its goal of fairness and justice—if it does this even when global power differences exist. The system must recognize and handle these limits.



## BIBLIOGRAPHY

- Abdelhafez, Abdel Hafez. 2024. "The Palestinian Question in Middle East's New Balance of Power and Regional Transformation." University of Szeged. <https://doktori.bibl.u-szeged.hu/12402/2/Abdel%20Hafez%20Abdelhafez%20Booklet.pdf>.
- Adler, Nils, and Marwan Bishara. 2024. "Palestinians Demand Immediate End to Israeli Occupation at ICJ Hearing." *Al Jazeera*, February 19, 2024. <https://www.aljazeera.com/news/liveblog/2024/2/19/icj-on-israel-occupations-of-palestine-live-hearings-to-begin>.
- Akbar, M. Fabian, and Manuel Beltrán Genovés. 2024. "South Africa Sues International Court Over Israel's Palestinian Genocide under International Law." *Lampung Journal of International Law* 6 (2): 83–94. <https://doi.org/10.25041/lajil.v6i2.3427>.
- Amr, Mohamed Sameh M. 2003. *The Role of the International Court of Justice as the Principal Judicial Organ of the United Nations*. The Hague: Kluwer Law International.
- Ansary, Tamim, and Yuliani Liputo. 2009. *Dari Puncak Bagdad: Sejarah Dunia Versi Islam*. Jakarta: Zaman.
- "Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)." 1999. *International Court of Justice* (blog). 1999. <https://www.icj-cij.org/case/116>.
- Berg, Raffi. 2024. "What Is South Africa's Genocide Case against Israel at the ICJ?" *BBC*, January 30, 2024. <https://www.bbc.com/news/world-middle-east-67922346>.

- Bishop, William W. 1951. "Reservations to the Convention on Genocide." *Cambridge University Press* 45 (3): 579–90.  
<https://doi.org/10.2307/2194560>.
- Burdah, Ibnu, Himayatul Ittihadiyyah, and Dwi Margo Yuwono. 2008. *Konflik Timur Tengah: Aktor, Isu, dan Dimensi Konflik*. 1st ed. Yogyakarta: Tiara Wacana.
- Byers, Michael, and Georg Nolte. 2003. *United States Hegemony and the Foundations of International Law*. Cambridge: Cambridge University Press.
- D'Alessandra, Federica. 2023. "UN Accountability Mandates in International Justice" 21 (03): 551–78. <https://doi.org/10.1093/jicj/mqad038>.
- Daly, Joseph L. 2015. "Is The International Court of Justice Worth the Effort?" *Akron Law Review* 20 (03).  
<http://ideaexchange.uakron.edu/akronlawreview/vol20/iss3/2>.
- Deutsch, Anthony, and Stephanie van den Berg. 2023. "What War Crimes Laws Apply to the Israel-Palestinian Conflict?" *Reuters*, November 17, 2023.  
<https://www.reuters.com/world/middle-east/what-war-crimes-laws-apply-israel-palestinian-conflict-2023-11-16/>.
- Findley, Paul. 1993. *Deliberate Deceptions: Facing the Facts about the US Israeli Relationship*. Brooklyn, New York: Lawrence Hill Books.
- Follesdal, Andreas. 2020. "The Legitimacy of International Courts." *The Journal of Political Philosophy* 28 (4): 476–99. <https://doi.org/10.1111/jopp.12213>.
- Ginting, Elvira Dewi. 2013. "Konflik Israel-Palestina Ditinjau Dari Hukum Internasional." *Jurnal Saintech* 5 (01).

- Green, Penny, and Amelia Smith. 2016. "Evicting Palestine." *State Crime Journal* 5 (1): 81–108. <https://doi.org/10.13169/statecrime.5.1.0081>.
- Hamdi, Osama Anter. 2018. "American Foreign Policy toward the Arab-Israeli Conflict." *Insight Turkey* 20 (2): 251–72.
- Handayani, Benni, and Fatmawati Moekahar. 2021. "Generasi Muda Dan Diskursus Islam (Analisis Resepsi Pengguna Media Sosial Mengenai Narasi Genosida)." *Jurnal Ilmu Komunikasi UHO: Jurnal Penelitian Kajian Ilmu Komunikasi Dan Informasi* 6 (4): 439–56.
- Haris, Umiyati. 2016. "Penyelesaian Konflik Afghanistan-Pakistan: Sebuah Pendekatan Rekonsiliasi." Universitas Hasanuddin. [https://www.academia.edu/9940069/Analisis\\_Konflik\\_Afghanistan-Pakistan](https://www.academia.edu/9940069/Analisis_Konflik_Afghanistan-Pakistan).
- Holmes, Oliver Wendell. 2004. *The Common Law*. 1st ed. New York: Routledge.
- Imran, Imad, Said Ali, Muhammad Hamza Zakir, Syed Hammad Khan, and Sidra Said. 2023. "Analyzing the Applicability and Limitations of International Law in Resolving the Israel-Palestine Territorial Dispute." *International Journal of Contemporary Issues in Social Sciences* 2 (4): 172–80.
- Kooijmans, Pieter. 2007. "The ICJ in the 21st century: Judicial restraint, judicial activism, or proactive judicial policy." *International and Comparative Law Quarterly* 56 (4): 741–753. <https://doi.org/10.1093/iclq/lei223>
- Krisch, Nico. 2005. "International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order." *European Journal of International Law* 16 (3): 369–408. <https://doi.org/10.1093/ejil/chi123>.
- Kunz, Josef L. 1949. "The United Nations Convention on Genocide." *Cambridge University Press* 43 (4): 738–46. <https://doi.org/10.2307/2193262>.

- Meierrieks, Daniel, and Thomas Gries. 2018. “‘Pay for It Heavily’: Does U.S. Support for Israel Lead to Anti-American Terrorism?” *Defence and Peace Economics* 31 (2): 160–76.  
<https://doi.org/10.1080/10242694.2018.1560558>.
- Meron, Theodor. 2005. “Judicial Independence and Impartiality in International Criminal Tribunals.” *Cambridge University Press* 99 (02): 359–69.  
<https://doi.org/10.2307/1562502>.
- O’Dell, Hope. 2024. “Israel Has Occupied Palestinian Territories since 1967; UN Court Considers Whether That’s Legal.” *How Long Has Israel Occupied the Palestinian Territories? Is It Legal?* (blog). February 20, 2024.  
<https://globalaffairs.org/bluemarble/israel-has-occupied-palestinian-territories-1967-un-court-considers-whether-thats-legal>.
- “Order of 26 January 2024.” 2024. International Court of Justice.  
<https://www.icj-cij.org/node/203447>.
- Pickering, Heath. 2014. “Why Do States Mostly Obey International Law?” February 4, 2014.  
<https://www.e-ir.info/2014/02/04/why-do-states-mostly-obey-international-law/>.
- Prasetyo, Mujiono Hafidh. 2020. “Kejahatan Genosida Dalam Perspektif Hukum Pidana Internasional.” *Gema Keadilan* 7 (3): 115–38.  
<https://doi.org/10.14710/gk.2020.9075>.
- Prihtianto, Eko. n.d. “Peranan Mer-C Indonesia Dalam Penangan Konflik Gaza Di Palestina Selama 2008-2009.” Scribd. Accessed March 10, 2024.  
<https://www.scribd.com/doc/51090344/Peranan-Merci-Proposal>.

- Rahman, Fadly. 2016. *Rijsttafel: Budaya Kuliner di Indonesia masa Kolonial 1870 - 1942*. Jakarta: Gramedia Pustaka Utama.
- Rosen, Howard. 2004. *Free Trade Agreements as Foreign Policy Tools: The US-Israel and US-Jordan FTAs*. Washington, DC: Institute for International Economics.
- Scheinin, Martin, and Mathias Vermeulen. 2010. "Unilateral Exceptions to International Law: Systematic Legal Analysis and Critique of Doctrines That Seek to Deny or Reduce the Applicability of Human Rights Norms in the Fight against Terrorism," August. <https://doi.org/10.2139/ssrn.1699152>.
- Segate, Riccardo Vecellio. 2023. "Channeled Beneath International Law: Mapping Infrastructure and Regulatory Capture as Israeli–American Hegemonic Reinforcers in Palestine." *Communication Law and Policy* 28 (4): 332–66. <https://doi.org/10.1080/10811680.2024.2334081>.
- Shafiqul, Islam Md, Mir Kanon Jannat, Jin-Woo Kim, Soo-Wook Lee, and Sung-Hyun Yang. 2022. "HHI-AttentionNet: An Enhanced Human-Human Interaction Recognition Method Based on a Lightweight Deep Learning Model with Attention Network from CSI." *Sensors* 22 (16): 6018. <https://doi.org/10.3390/s22166018>.
- Sihbudi, M. Riza, M. Hamdan Basyar, and Happy Bone Zulkarnain. 1993. *Konflik Diplomasi di Timur Tengah*. 1st ed. Bandung: Eresco.
- Smith, Charles D. 2001. *Palestine and the Arab-Israeli Conflict: A History with Documents*. 4th ed. New York: Bedford.
- Sriyono, A. Agus, and Darmansjah Djumala. 2004. *Hubungan Internasional:*

*Percikan Pemikiran Diplomat Indonesia*. Jakarta: Gramedia Pustaka Utama.

Steenberghe, Raphaël van. 2024. "The Armed Conflict in Gaza, and Its Complexity under International Law: Jus Ad Bellum, Jus in Bello, and International Justice." *Leiden Journal of International Law* 37 (4): 983–1017. <https://doi.org/10.1017/s0922156524000220>.

Summer. 2001. "Israel Studies." *Indiana University Press* 6 (2). <https://www.jstor.org/stable/i30245570>.

"The Danger of Regional War in the Middle East." 2024. *Crisis Group* (blog). February 27, 2024. <https://www.crisisgroup.org/middle-east-north-africa/east-mediterranean-mena/israelpalestine/danger-regional-war-middle-east>.

"United Nations Office on Genocide Prevention and the Responsibility to Protect." n.d. In *United Nations*. United Nations. Accessed May 20, 2024. <https://www.un.org/en/genocideprevention/genocide.shtml>.

Wahyuni, Willa. 2024. "Kedudukan Dan Fungsi International Court of Justice Dalam Penyelesaian Kejahatan Genosida." *Hukumonline.Com* (blog). January 5, 2024. <https://www.hukumonline.com/berita/a/kedudukan-dan-fungsi-international-court-of-justice-dalam-penyelesaian-kejahatan-genosida-lt6597f26636b10/>.

Waxman, Dov. 2007. "Beyond Realpolitik: The Israel Lobby and US Support for Israel." *Israel Studies Review* 22 (2): 97–114. <https://doi.org/10.3167/isf.2007.220205>.

Yishai, Yael. 1985. "Israeli Annexation of East Jerusalem and the Golan Heights: Factors and Processes." *Middle Eastern Studies* 21 (1): 45–60.

<https://doi.org/10.1080/00263208508700613>.

Zulfikar, Achmad, Romi Maulidi, and Waskito Wibowo. 2019. "Israel and United States Claim on Al-Quds: World History and International Law Perspective." *Dauliyah: Journal of Islam and International Affairs* 4 (1).

<https://doi.org/10.21111/dauliyah.v4i1.2929>.