Strategic Impunity: Why Universal Jurisdiction Fails to Prosecute Sitting Officials

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"Don't ever let someone tell you that you can't do something. Not even me. You got a dream, you gotta protect it. When people can't do something themselves, they're gonna tell you that you can't do it. You want something, go get it. Period."
— *The Pursuit of Happiness*

Abstract

This thesis investigates the structural failure of universal jurisdiction to hold sitting state officials accountable for international crimes, focusing on the interplay between legal immunity, geopolitical influence, institutional limitations, and victim marginalization. While universal jurisdiction is grounded in *jus cogens* norms and obligations *erga omnes*, its implementation remains obstructed by the doctrine of immunity *ratione personae*, which shields high-ranking officials from foreign prosecution. Drawing on a multi-theoretical framework - integrating legal realism, constructivist norm theory, institutionalism, forum theory, and participatory justice - the study develops the concept of *strategic impunity*. This model conceptualizes impunity not as a legal anomaly but as a patterned outcome of structurally embedded legal, political, and discursive mechanisms. This model departs from existing accountability literature by framing impunity not as failure, but as systemic design shaped by multi-level strategic calculations. Through a comparative analysis of two outcome-convergent case studies: the International Court of Justice's Yerodia ruling (2000) and Belgium's failed prosecution of Ariel Sharon (2003), the thesis employs process tracing and critical discourse analysis to empirically test this model. Findings reveal that legal doctrines are interpreted to shield political elites, geopolitical actors intervene to preserve strategic alliances, institutional inertia curtails enforcement, forum manipulation redirects accountability efforts, and victims are systematically excluded from legal narratives. The study concludes that universal jurisdiction fails not despite the legal system, but because of it, reflecting a judicial architecture designed to preserve sovereign power under the guise of legal coherence. Unlike studies that focus on doctrinal inconsistencies or prosecutorial discretion, this thesis exposes how the architecture of international justice itself structurally resists accountability of sitting officials. Unless institutional reforms address the political insulation of legal bodies, procedural exclusion of victims, and doctrinal entrenchment of immunity, universal jurisdiction will remain aspirational rather than actionable. This thesis contributes to international legal scholarship by offering a robust explanatory framework for the recurrent failure of accountability mechanisms and calls for a reimagining of global justice beyond state-centred legal formalism.

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List of Abbreviations

CDA	Critical Discourse Analysis
CIL	Customary International Law
DRC	Democratic Republic of Congo
EU	European Union
HRW	Human Rights Watch
ICC	International Criminal Court
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDF	Israel Defence Forces
IHL	International Humanitarian Law
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organisation
UNSC	United Nations Security Council
US	United States

I. Introduction

On March 4, 2009, the International Criminal Court (hereinafter ICC) issued an arrest warrant for Sudan's then-President Omar al-Bashir for orchestrating mass atrocities in Darfur. The charges, encompassing genocide, war crimes, and crimes against humanity, reflected the severity of violence that had claimed thousands of lives and displaced millions (Barnes, 2010, pp. 10-11). Yet, despite this landmark indictment, al-Bashir remained at large for over a decade, protected not by innocence but by political status, diplomatic immunity, and the tacit complicity of states unwilling to enforce international law (Barnes, 2010, pp. 11-12). Even as he travelled through member states of the Rome Statute, many governments failed to comply with their legal duty to arrest him, revealing not only a crisis in enforcement but a deeper structural limitation of international legal mechanisms (Barnes, 2010, p. 12). The al-Bashir case starkly illustrates how impunity persists despite legal authority and overwhelming evidence, calling into question the efficacy of contemporary international criminal justice (Barnes, 2010, p. 13).

This contradiction lies at the heart of the present study. While the architecture of international criminal law has expanded to include an array of treaties, doctrines, and institutions designed to prevent and fight impunity, these mechanisms often collapse when applied against the very actors most responsible for atrocity crimes namely, *sitting officials*. The core legal framework that seeks to ensure accountability, universal jurisdiction, allows states to prosecute perpetrators of genocide, war crimes, and crimes against humanity regardless of where these acts occurred or the nationality of the perpetrators (Bassiouni, 2001, p. 83; Benavides, 2001, p. 19; Hovell, 2018, p. 429).

This doctrine rests on the premise that certain crimes offend the conscience of humanity and demand collective legal responsibility (Mary, 2001, p. 16). Universal jurisdiction is further legitimized by foundational principles of international law, including *jus cogens* norms, peremptory legal obligations from which no derogation is permitted, and obligations *erga omnes*, duties that states owe to the international community as a whole (Bustamante, 2025, p. 4). Together, these norms underpin a global legal order committed to the prosecution of individuals whose crimes threaten not only human dignity but also international stability (Barcelona Traction, 1970).

However, this promise of justice remains systematically obstructed by entrenched legal and political structures. Most notably, the doctrine of immunity *ratione personae* continues to

shield sitting heads of state and senior officials from criminal accountability. This immunity is justified on the grounds of safeguarding state sovereignty and maintaining diplomatic stability, allowing officeholders to perform their duties without fear of foreign prosecution (Benavides, 2001, pp. 20-22). Yet this justification ought to collapse when applied to individuals credibly accused of atrocity crimes, given that such crimes violate norms from which no state may derogate. In such contexts, immunity serves less as a shield for legal order than as a tool for impunity, contradicting the very principles that underpin universal jurisdiction (Hestermeyer, 2009, p. 13; Zappala, 2001, p. 599; Cassese, 2002, p. 855; Douglas, 2012, p. 287).

This tension is not merely doctrinal; it has profound consequences for victims of international crimes. In fact, victims - particularly those from marginalized or diaspora communities - are often legally and symbolically excluded from proceedings carried out in their name. Legal systems tend to treat victims as peripheral actors rather than central stakeholders, thereby compounding their trauma and weakening the perceived legitimacy of justice efforts (Letschert & Van Dijk, 2011, pp. 3-5). The denial of procedural standing, combined with geographic, linguistic, and financial barriers, often renders victims invisible within the very systems that purport to deliver justice on their behalf. This disconnect reflects a structural marginalisation embedded within international legal design that goes beyond a mere failure of access (Letschert & Van Dijk, 2011, p. 6).

The situation is further exacerbated by the strategic manipulation of legal forums by both prosecutorial and defensive actors. In fact, victims and their advocates often engage in forum shopping, seeking jurisdictions where legal frameworks are more favourable to prosecution. Conversely, accused officials exploit (diplomatic) immunity, safe travel zones, and jurisdictional inconsistencies to avoid legal risk: a phenomenon known as *reverse* forum shopping. This dual use of forum selection reveals the fragmented and asymmetrical enforcement landscape of international criminal law, where legal outcomes are as much a function of strategy and power as of legal merit (Letschert & Van Dijk, 2011, pp. 8-9).

The normative and doctrinal basis of universal jurisdiction remains strong. States have long been understood to bear a collective obligation to prosecute or extradite individuals accused of serious international crimes, even in the absence of a treaty-based duty (Condorelli, 1997, p. 270; Paust, 1998, pp. 640-641; Bianchi, 1999, pp. 253-254). Following World War II, the *communis opinio* of the international community aligned around the idea that mass atrocity crimes namely, genocide, crimes against humanity and war crimes as later codified in Articles

6,7,8 of the Rome Statute (1998, pp. 3-9), attack the moral foundations of global order and demand a uniform legal response (Bianchi, 1999, p. 254). However, despite these robust legal foundations, the prosecution of *sitting* officials remains exceedingly rare, raising urgent questions about the operability of universal jurisdiction in a world still structured by state sovereignty and political hierarchy. This disjuncture between law's authority and its implementation constitutes the empirical puzzle at the centre of this thesis.

The latter addresses this paradox by posing the following research question: *Why does universal jurisdiction fail to hold sitting officials accountable at both the international and national levels?* In answering this question, the study departs from literature that treats failed prosecutions as isolated or circumstantial. Instead, it develops a theoretical model of "strategic impunity" which conceptualises impunity not as legal failure but as a patterned result of legal, political, institutional, and discursive interactions. This model draws on five theoretical strands: legal realism, constructivist norm theory, institutionalism, forum theory, and participatory justice. Each contributes to a multidimensional explanation of how accountability is systematically deferred in practice, even as it is affirmed in principle.

Legal realism reveals how formal doctrines such as immunity can serve as alibis for political discretion, especially when applied through highly abstract and procedural legal reasoning (Green, 2004, pp. 1976-1977; Tamanaha, 2008, p. 5). Constructivist theory underscores how immunity functions not only as a legal rule but as a socially embedded norm internalized by legal institutions through repeated rhetorical affirmation (Brunnée & Toope, 2012, p. 124). Institutionalism, meanwhile, draws attention to the organisational and administrative constraints that limit enforcement, from investigatory capacity to bureaucratic caution (Langer, 2011, pp. 92-94). Forum theory captures the strategic selection and avoidance of legal venues by both plaintiffs and defendants (Bookman, 2016, p. 609), while participatory justice foregrounds the normative and practical consequences of excluding victims from these processes (Letschert Van Dijk, 2011, pp. 10-11). Together, these approaches are synthesised into the theory of strategic impunity: a framework that explains why international and national courts routinely fail to hold sitting officials accountable, not despite their design, but because of it.

To empirically test this theoretical model, the thesis adopts a qualitative interpretivist methodology combining comparative case study analysis, process tracing, and critical discourse analysis (hereinafter CDA). Through the comparative logic of Mill's Method of

Difference, two structurally distinct yet outcome-convergent cases are selected: the International Court of Justice's (hereinafter ICJ) ruling in the Yerodia case (2000) and the attempted prosecution of Ariel Sharon in Belgium (2003). Despite being situated in different legal systems - one international, one national - both cases resulted in the failure to prosecute high-ranking officials while in office, offering a fertile ground for analysing how legal doctrines, political pressure, institutional design, and discursive strategies interact to obstruct accountability.

The *Yerodia* case exemplifies how immunity is reaffirmed at the international level through conservative legal interpretation and institutional caution. The ICJ's decision to uphold the personal immunity of a sitting foreign minister, despite allegations of inciting genocide, reveals the persistent prioritisation of diplomatic order over legal justice (Cassese, 2002, p. 855). The *Sharon* case, on the other hand, illustrates how domestic legal ambition can be neutralised through geopolitical coercion and legal rollback. In fact, despite credible evidence and a progressive legal statute, Belgium's universal jurisdiction law was amended under U.S and Israeli pressure, terminating the prosecution (Ross, 1989, p. 204). In both cases, the voices of victims were procedurally excluded with their narratives erased by formal legal reasoning and strategic jurisdictional manoeuvring.

Through these cases, the thesis provides empirical support for the theory of strategic impunity. The analysis demonstrates that immunity is not merely a legal barrier, but a node through which broader structural forces converge. Legal doctrines are interpreted in ways that shield elites; political actors intervene to preserve strategic alliances; institutional inertia stifles legal innovation; forum manipulation directs accountability efforts into legal dead-ends; and victims are symbolically erased from the legal narrative.

Ultimately, the thesis advances a critical perspective on international justice, arguing that the failure to prosecute sitting officials is not merely a breakdown of legal systems but a product of their design. While legal doctrines, political structures, institutional practices, and discursive norms continue to align in defence of sovereign power, the promise of universal jurisdiction will remain suspended between aspiration and dysfunction.

In both academic and societal terms, this thesis contributes to a more comprehensive understanding of the structural failures of international (criminal) law. Academically, it develops an integrated theoretical model that explains how impunity is not simply a consequence of legal loopholes or isolated political resistance, but a patterned outcome of

mutually reinforcing legal, institutional, and geopolitical mechanisms (Bianchi, 1999, p. 253). This approach reframes existing debates on universal jurisdiction by moving beyond doctrinal analysis and examining how accountability failures are structurally reproduced when it comes to the prosecution of sitting officials (Cassese, 2002, p. 855; Douglas, 2012, p. 287). Additionally, the thesis expands victimological approaches in international law by exploring how victims, particularly from marginalized or diaspora communities, are procedurally and symbolically excluded from legal processes, thereby weakening both the moral legitimacy and participatory foundations of global justice (Letschert Van Dijk, 2011, pp. 6-7). It further engages with ongoing debates within the International Law Commission which has increasingly recognised the need to limit immunity in cases involving violations of *jus cogens* norms signalling an emergent shift toward normative consistency (Bianchi, 1999, p. 237).

Societally, the study addresses the widening gap between public demands for accountability and the enduring immunity of political elites. In a world where geopolitical considerations frequently hinder prosecution efforts, the persistent shielding of *hostis humani generis* undermines the credibility of the international legal order (Bianchi, 1999, p. 274). Unless institutional reforms enhance procedural fairness, strengthen victim access, and confront sovereign privilege directly, the principle of *aut dedere aut judicare* will will stay confined to theoretical ambition (Bianchi, 1999, p. 275; Letschert Van Dijk, 2011, pp. 10-12).

This thesis is structured into six chapters. Following this introduction, Chapter II reviews the literature on universal jurisdiction, immunity, and accountability, identifying key legal, political, and procedural obstacles as well as the marginalisation of victims. Chapter III introduces the theoretical framework, developing the concept of strategic impunity by integrating legal, political, and normative approaches. Chapter IV outlines the research design, explaining the case selection and methodology, including comparative analysis, process tracing, and CDA, as well as the application of Mill's Method of Difference. Chapter V presents the empirical analysis of the Yerodia and Sharon cases, tracing how each of the five mechanisms of strategic impunity materialised in these distinct legal contexts. Chapter VI, the conclusion, reflects on the significance of the findings for international legal theory and practice, acknowledges the study's limitations, and outlines directions for future research and reform.

II. Literature review

This chapter evaluates key scholarly debates on the operation and limitations of universal jurisdiction, especially regarding prosecutions of sitting officials. It identifies legal, political, institutional, and normative barriers in the literature, including immunity *ratione personae*, geopolitical pressures, structural constraints in courts, and victim marginalisation. It also notes variations in how immunity is applied and the strategic use of forum shopping. This thesis seeks to address the following gap in the literature: the lack of integrated analysis across legal levels and mechanisms, which it resolves through a multi-theoretical framework applied in the case study chapters.

II. I Legal Foundations and Doctrinal Tensions

Universal jurisdiction stems from the obligation to prosecute mass atrocity crimes recognised as *jus cogens* norms within the international legal arena (Bassiouni, 2001, p. 83). Given the gravity of these crimes, they impose obligations beyond bilateral treaties, demanding action from *all* states to ensure perpetrators cannot find safe haven. Universal jurisdiction thus serves to combat impunity by obliging all states to prosecute or extradite offenders, ensuring justice for crimes that shock the conscience of humanity (Hovell, 2018, p. 429; Douglas, 2012, p. 287).

This principle aligns with obligations *erga omnes*, where certain duties - especially protecting human rights - are owed to the international community, rather than to any individual state or victim (Barcelona Traction, 1970). Article 53 of the 1969 Vienna Convention on the Law of Treaties reinforces this legal hierarchy by stipulating that treaties conflicting with *jus cogens* norms are void (p. 18). This affirms the superior status of such norms and underscores the legal imperative for states to prosecute or extradite perpetrators, regardless of political interests or bilateral obligations.

Despite its legal foundation, universal jurisdiction is constrained, particularly in relation to sitting officials. Literature cites intersecting legal and political barriers including immunity, geopolitical influence, judicial hesitation, and weak enforcement mechanisms (Koskenniemi, 2017, p. 11). The most significant legal hurdle is immunity *ratione personae*, which protects high-ranking officials from prosecution during their tenure (Wardle, 2011, p. 183; United Nations, 1969, Art. 3(1)). Judicial bodies, both domestic and international, often uphold this immunity under customary international law, even in cases involving private acts, thereby reinforcing its widespread application.

Besides, it has been argued that immunity may lawfully prevail where jurisdiction is discretionary rather than mandatory (d'Argent, 2015, pp. 11-13). This perspective draws on the *Lotus principle*, which holds that in the absence of prohibitive rules, states are permitted to act under international law (d'Argent, 2015, p. 12). Consequently, unless there exists a treaty-based duty - such as under *aut dedere aut judicare* clauses found in the Convention Against Torture - states retain discretion not to prosecute. In such cases, immunity may, at times, be maintained as a reflection of legal permissiveness rather than impunity.

This discretion is often normatively justified as a necessary balance between sovereignty and accountability. In this view, maintaining immunity under such conditions does not contradict justice, but is seen as a stabilising mechanism within the legal order (d'Argent, 2015, pp. 14-15). Article 2(1) of the UN Charter, affirming the sovereign equality of states, implies that unilateral assertions of jurisdiction must be carefully constrained. Hence, unless an enforceable obligation exists *erga omnes inter partes*, a refusal to prosecute may still align with the broader interests of the international legal order.

Nonetheless, these legal justifications often reinforce impunity, particularly when this principle is invoked in contexts involving credible allegations of atrocity crimes (Hestermeyer, 2009; Zappalà, 2001; Yee, 2011). In such instances, immunity undeniably obstructs justice and even though permitted under international law in defined circumstances, can undermine the very accountability mechanisms that universal jurisdiction was intended to uphold.

II. II Political and Strategic Constraints

The literature also addresses variations in immunity interpretation and enforcement. While the ICJ often affirms broad protections grounded in sovereign equality, national courts have diverged significantly. Some uphold immunity stringently, while others pursue more activist interpretations, particularly when supported by domestic implementing legislation or universal jurisdiction statutes (Akande & Shah, p. 820). This fragmentation in practice has enabled both prosecutors and accused officials to engage in strategic forum shopping and reverse forum shopping to select or avoid jurisdictions based on likely outcomes.

Debates further centre on the conceptual tension between immunity and the binding nature of *jus cogens* norms. Immunity doctrines appear increasingly at odds with accountability norms, especially considering jurisprudence that limits functional immunity (Wardle, 2011, p. 195). In the name of accountability, it has been argued that serious crimes should override immunity, particularly as *jus cogens* norms are hierarchically superior within international law

(Bianchi, 1999, pp. 261, 265). Yet, despite growing support for the idea that *jus cogens* norms should override immunity, the institutionalised legal distinction between incumbent and former officials continues to obstruct prosecution. Sitting officials benefit from absolute personal immunity (*ratione personae*), while former officials often retain functional immunity (*ratione materiae*) for actions classified as official state conduct, even when those actions involve allegations of serious international crimes.

Beyond legal doctrines, broader tensions between justice and sovereignty persist. States often prioritise diplomatic relations and domestic stability over legal ideals (Koskenniemi, 2017, pp. 11-13), a tendency that is reinforced by legal frameworks which construct a false dichotomy between personal and institutional liability. This enables (sitting) officials to hide behind the shield of state responsibility (Day, 2004, p. 503), thereby obstructing individual accountability for international crimes.

Geopolitical factors further undermine consistent enforcement. Since, powerful states may resist proceedings against their officials for strategic or diplomatic reasons. In turn, this dynamic leads to the selective application of universal jurisdiction, creating a system where weaker states are held accountable more frequently than powerful ones (Koskenniemi, 2017, pp. 19-20; Day, 2004, p. 508). Such asymmetry corrodes the legitimacy of international law, raising doubts about its impartiality.

II. III Institutional and Procedural Limitations

Procedural challenges also hinder implementation. Many states lack specific domestic legislation to support universal jurisdiction, and even where it exists, courts may lack the expertise or will to prosecute complex international crimes (Kamminga, 2001, p. 955). Resources, political will, and legal clarity are often insufficient. Hence, courts also hesitate to apply international norms not clearly codified in domestic law, further limiting the practical reach of universal jurisdiction.

Moreover, national legal frameworks significantly shape how universal jurisdiction is operationalised (Akande & Shah, p. 847). Some states embed universal jurisdiction provisions in their domestic criminal codes, while others rely on international treaty obligations. The presence or absence of such provisions can influence prosecutorial willingness, judicial competence, and even public awareness.

It has also been observed that where universal jurisdiction is invoked without a clear statutory basis, it often leads to legal uncertainty and political backlash (Akande & Shah, p.

848). This is especially evident when prosecutions are perceived as politically motivated or diplomatically insensitive. Hence, the sustainability of universal jurisdiction cases often depends not only on legal legitimacy but also on the prosecuting state's political climate and institutional strength.

As a result, this fragmentation creates a judicial patchwork. For instance, Spain and Belgium have historically taken expansive approaches to universal jurisdiction, leading to notable prosecutions of foreign officials. However, these efforts have often faced backlash or reform in response to political pressures.

Conversely, other states adopt a more cautious stance, narrowly construing jurisdictional reach. This diversity in legal practice underscores the need for a harmonised understanding of universal jurisdiction or, at the very least, clearer international standards. Without such coherence, disparities in enforcement risk undermining the credibility and effectiveness of the principle itself.

II. IV Victim Participation and Normative Gaps

The literature increasingly recognises a gap regarding the role of victims. Universal jurisdiction frameworks often marginalise victims procedurally and symbolically (Mujyambere, 2020, p. 178). Although victims may initiate cases or provide evidence, they seldom influence proceedings. Particularly, diaspora communities play a growing role by mobilising from abroad, often using the legal and political tools available in host countries to seek justice for crimes committed in their countries of origin (Koinova & Karabegovic, 2016, p. 3). In doing so, they frequently act as catalysts for transnational mobilisation, elevating local grievances into global legal and political agendas. Yet despite this potential, victims' agency often remains constrained, as legal systems are rarely designed to grant them procedural standing, particularly in cases involving diplomatic immunities or active state resistance.

This exclusion raises critical concerns about the legitimacy and effectiveness of international justice. If those most affected by atrocity crimes are systematically excluded, the system risks replicating the hierarchies it seeks to dismantle. Thus, while increasingly invoked in theory, victim-centred justice remains weakly institutionalised in practice.

Beyond formal outcomes, however, it has been emphasised that legal recognition carries important symbolic power (Mujyambere, 2020, p. 179). Even in cases where universal jurisdiction does not lead to successful prosecution, the mere act of legal acknowledgment can validate victims' suffering and place international pressure on the accused states. Such

recognition may trigger domestic reform, support transnational justice, and contribute to the historical record, preserving evidence and testimonies that might otherwise be lost or suppressed. In this way, universal jurisdiction can serve functions beyond punitive justice, including truth-telling, memorialisation, and institutional reform.

To sum up, the failure to prosecute sitting officials under universal jurisdiction is not due to one single factor but results from a complex interplay of legal, political, and procedural obstacles both at the national and international levels. Legal doctrines such as immunity *rationae personae* shield sitting officials from accountability, while geopolitical considerations and judicial reluctance further restrict enforcement. The literature increasingly recognizes that these barriers operate differently across international and national jurisdictions, making comparative study essential.

III. Theoretical Approach

III. I Theoretical framework

This chapter scrutinises the theoretical explanations for the persistence of sovereign immunity in the context of universal jurisdiction. It builds the conceptual framework necessary to explain why efforts to prosecute sitting officials repeatedly fail across both international and national courts. Drawing on legal realism, constructivism, institutionalism, and complementary frameworks such as forum shopping theory and victim-centred justice, the section develops a theoretically eclectic model that anticipates how legal doctrines, power asymmetries, institutional design, and normative exclusions interact to sustain impunity. These theories generate the diagnostic expectations that guide subsequent empirical analysis and form the basis of the study's central explanatory model: strategic impunity.

The doctrine of immunity serves as a primary barrier to prosecuting sitting officials under universal jurisdiction at two levels: the ICJ and national courts. Scholars offer competing explanations for the function and persistence of immunity, debating whether it is a necessary legal doctrine, a tool of state power, or a product of institutional constraints.

III. I. I Legal Realism and State power

Legal realism offers a foundational framework for understanding why doctrines such as immunity persist despite appearing to contradict emerging accountability norms. It contends that judges rarely reach conclusions solely by applying clear, determinate legal norms. Instead, legal rules are often underdetermined, vague, overlapping, or conflicting, and require interpretation that leaves room for judicial latitude (Mitchell, 2017, p. 430). This discretionary space allows courts to justify a range of outcomes while preserving an appearance of legality (Green, 2004, pp. 1976-1977). In politically charged cases, such as those involving the prosecution of sitting high-ranking officials, courts are especially likely to rely on this ambiguity to avoid legal decisions that could generate diplomatic consequences (Tamanaha, 2008, p. 28).

Immunity *ratione personae*, which shields sitting officials from foreign prosecution while in office, is a particularly useful doctrinal mechanism in this context. It functions not because of any internal normative coherence or legal inevitability but because it allows courts to present inaction as legal necessity, while in fact insulating political elites from legal exposure

(Mitchell, 2017, p. 435), a dynamic that also reflects deeper concerns about preserving international order and state sovereignty (Tamanaha, 2008, p. 27).

Immunity, then, is selectively mobilised when its invocation supports stability or reputation management (Mitchell, 2017, p. 434). In this way, it becomes a doctrinal alibi, meaning a seemingly neutral rationale that allows judges to avoid controversy without openly admitting political calculation (Tamanaha, 2008, p. 26).

Legal realism, therefore, enables a clear set of expectations about how courts behave in universal jurisdiction cases. When prosecution threatens powerful state actors or international alliances, courts are more likely to default to legal formalism and uphold immunity (Green, 2004, p. 1936; Mitchell, 2017, p. 434).

This theoretical lens also clarifies the operation of strategic impunity, the core mechanism investigated in this thesis. Immunity is not a static constraint but a dynamic tool courts use to manage risk, deflect political pressure, and preserve institutional authority. In cases that would otherwise challenge entrenched geopolitical hierarchies, legal realism predicts that judicial actors will lean on ambiguous doctrines to justify abstention, thereby reinforcing impunity through the structured orchestration of legal restraint (Tamanaha, 2008, p. 29; Green, 2004, p. 1977).

While legal realism explains the persistence of immunity as a function of political calculation and institutional self-preservation, this is not the only plausible interpretation. A contrasting yet complementary perspective emerges from constructivist theory, which shifts the focus from instrumental strategy to normative internalisation and social legitimacy.

III. I. II Constructivism and Norm Internalisation

Constructivism understands legal norms such as immunity as embedded within broader intersubjective understandings about state behaviour and institutional authority, sustained not primarily through legal formalism, but through their symbolic and normative function in international legal discourse (Finnemore & Sikkink, 1998, p. 899; Brunnée & Toope, 2012, p. 124). Sovereign immunity, though often presented as a neutral legal principle, is more accurately understood as a norm that has gained legitimacy over time through repeated use and consistent support by legal and political institutions (Brunnée & Toope, 2012, pp. 125-126).

Importantly, constructivist theory does not posit that courts uphold immunity because they are coerced or strategically aligned with power. Rather, courts may conform to prevailing norms of sovereign immunity because these norms are embedded in the "scripts" of

international legal discourse, which define what is perceived as legally appropriate conduct (Langer, 2011, p. 92). The internalisation of these norms produces behavioural regularity rooted in the logic of appropriateness (Brunnée & Toope, 2012, p. 133). In this sense, immunity persists not just due to its political utility, but because it has been discursively framed as necessary for institutional coherence and legitimacy.

A key implication of this approach is the recognition that international legal institutions are not simply passive transmitters of pre-existing legal norms. Instead, they actively participate in constructing and stabilising those norms through practices such as judicial decision-making, legal interpretation, and rhetorical framing (Brunnée & Toope, 2012, p. 132). Thus, these institutions function as interpretive communities that distinguish persuasive legal argument from normatively deviant claims, thereby reproducing dominant understandings over time (Johnstone, 2011, p. 33). Immunity, in this context, is not simply a legal status but a performative affirmation of sovereign dignity, deeply entrenched in the identity-forming practices of international law.

However, norm adherence is not automatic or uncontested; legal norms remain subject to ongoing negotiation, reinterpretation, and resistance (Finnemore & Sikkink, 1998, p. 906), though such challenges often confront institutional inertia, as entrenched norms and professional habits frequently limit space for innovation (Brunnée & Toope, 2012, p. 124).

This understanding allows constructivism to generate an analytical expectation: when confronted with cases involving sitting officials, legal institutions are likely to reinforce existing immunity norms, not out of strategic deference to state power, but because such norms are perceived as integral to the legal system's legitimacy and coherence. Selective norm enforcement, therefore, becomes not only a function of power politics, but a byproduct of how deeply embedded norms are differentially interpreted across contexts, depending on actors' institutional position and socialization (Langer, 2011, p. 96; Finnemore & Sikkink, 1998, p. 907).

Thus, constructivism offers a complementary but distinct explanation from legal realism; rather than viewing immunity solely as a tool of state power, it reveals how legal institutions reproduce and legitimize sovereignty through patterned discursive practices and normative habituation. This framework highlights a central mechanism of what this thesis conceptualizes as strategic impunity: the internalisation of legal doctrines as socially appropriate responses to perceived threats to international order. Accordingly, legal decisions

that shield sitting powerful officials from accountability may not be consciously designed to do so but result from courts' reliance on institutionalised norms that constrain imaginative or transgressive legal reasoning.

III. I. III Institutional Constraints and Enforcement Limits

Beyond political and normative explanations, institutionalist theories provide a crucial lens for understanding the persistence of immunity in international law by highlighting the structural and procedural limitations that hinder the application of universal jurisdiction. Unlike realist or constructivist approaches, which emphasise political interests or normative internalization, institutionalism foregrounds how legal outcomes are shaped by organizational design, administrative constraints, and implementation challenges (Hovell & Malagodi, 2024, p. 1496; Langer, 2011, pp. 92-93). These institutional dynamics apply across judicial levels: both to national courts, where prosecutorial capacity, legislative coherence, and political insulation vary widely, and to international courts like the ICJ, which are structurally constrained by mandates that privilege state consent and diplomatic equilibrium over individual accountability.

Such constraints manifest in several ways. Procedural incoherence, such as unclear jurisdictional rules, inconsistencies between domestic and international legal obligations, or overly complex evidentiary standards, can lead to paralysis in politically sensitive prosecutions (Hovell, 2024, p. 1852). Courts may also be institutionally disincentivised to innovate due to bureaucratic inertia, absence of precedent, and the risk of legal invalidation by superior tribunals (Langer, 2011, p. 92). This legal fragility renders institutions structurally ill-equipped to enforce accountability when doing so risks institutional overreach or political backlash.

Furthermore, national courts often operate in environments where legislative backing for universal jurisdiction is ambiguous or contested. In such contexts, prosecutorial discretion tends to default toward risk aversion, especially when cases implicate powerful foreign officials (Voeten, 2014, p. 305). Limited investigative capacity and lack of access to cross-border evidence or witness protection schemes compound this hesitancy (Khetarpal & Sharma, 2024, p. 401). As a result, institutional undercapacity operates as a silent barrier, not by overt legal prohibition, but through procedural suffocation.

Importantly, institutionalist accounts do not treat immunity as legally necessary or ideologically fixed but rather as a pragmatic outcome of systemic design flaws and operational constraints (Applefield et al., 2000, p. 39). When enforcement frameworks are weak or overly

decentralised, courts retreat into procedural formalism, which indirectly reinforces immunity doctrines. For example, even well-intentioned laws enabling universal jurisdiction can remain dormant or be selectively applied due to these organizational inefficiencies (Brunnée & Toope, 2012, p. 135).

Additionally, institutional constraints are often amplified by the lack of international harmonization. Hence, the absence of a centralised enforcement mechanism or supranational oversight means that responsibility for implementation falls on national systems with varying capacities, priorities, and degrees of judicial independence (Voeten, 2014, p. 304; Langer, 2011, p. 94). In the end, this decentralised legal architecture creates loopholes that allow sitting officials to evade prosecution by exploiting inconsistencies across jurisdictions.

In institutionalist terms, the persistence of immunity is not the result of doctrinal legitimacy or political collusion per se, but of the structural inefficiencies and vulnerabilities that undermine enforcement. When legal frameworks are weakly implemented or procedurally ambiguous, immunity operates not as a deliberate choice, but as a *de facto* consequence of judicial inaction. This perspective predicts that in contexts where courts face high levels of administrative complexity, limited resources, or exposure to external political pressure, accountability efforts will stall regardless of formal legal provisions (Bodner, 1986, p. 874).

Institutionalism thus contributes a distinct causal mechanism to the thesis's broader explanatory model: it reveals how enforcement failure emerges from the systemic misalignment between legal norms and institutional capacity. It does not deny the importance of political power or norm diffusion, but shows how even under favourable legal conditions, structural fragility can produce accountability gaps. These expectations align with the theory of strategic impunity, in which institutional weakness, alongside legal formalism, geopolitical pressure, and discursive silencing, serves as a key mechanism through which impunity is maintained.

III. I. IV Forum Shopping and Jurisdictional Strategy

Forum shopping has emerged as a central theoretical lens for understanding the fragmented and asymmetrical enforcement of universal jurisdiction. At its core, it refers to the deliberate selection of a legal venue based on its perceived advantages in law, procedure, or political alignment. This practice, while often criticised as opportunistic, reflects the underlying heterogeneity of international legal systems, where disparities in enforcement capacity, legal

standards, and political vulnerability produce incentives for actors to engage in strategic venue selection (Bookman, 2016, p. 612; Juenger, 1989, p. 554).

Forum shopping is not merely a tactical manoeuvre but a structurally conditioned response to the lack of a centralised adjudicatory authority in international law. Since no global court possesses universal and compulsory jurisdiction over international crimes, both state and non-state actors must navigate a patchwork of jurisdictions, treaties, and procedural doctrines to either seek or evade justice (Pauwelyn & Salles, 2009, pp. 79-80). This disjointed architecture creates uneven opportunities: some jurisdictions are more accessible or permissive due to political independence, expansive laws, or prior precedent, while others are constrained by procedural formalism, diplomatic entanglements, or institutional reluctance (Bookman, 2016, p. 613; Juenger, 1989, p. 558).

The varied interpretation of immunity *ratione personae* across national courts further drives forum selection strategies: victims' advocates pursue cases in jurisdictions with narrow immunity, while powerful officials engage in reverse forum shopping to avoid states with more assertive or independent legal systems (Pauwelyn & Salles, 2009, pp. 85-86; Juenger, 1989, p. 562).

This dynamic reveals a broader structural condition: enforcement of international norms is contingent not only on the legal merits of a case but also on the strategic mobilisation of litigants within a competitive, horizontal legal landscape. Forum shopping thus becomes both a symptom and a mechanism of selective accountability: it reflects the asymmetry of international justice systems and simultaneously reproduces it by channelling litigation toward structurally favourable venues (Bookman, 2016, p. 609; Pauwelyn & Salles, 2009, p. 87).

Such divergences are particularly visible in contexts where legal systems differ significantly in their procedural access, political independence, or enforcement will. Actors will rationally seek to exploit or avoid particular forums. The result is not only inconsistency in accountability but also systemic vulnerability to strategic manipulation (Juenger, 1989, p. 563; Bookman, 2016, p. 614).

Ultimately, this theoretical approach aligns with the broader model of strategic impunity. Forum shopping functions as a mediating mechanism: it translates power disparities, institutional fragility, and legal variability into concrete outcomes that favour those best equipped to navigate this fragmented legal terrain. As such, it constitutes a critical element of

the structural environment that enables impunity for sitting officials, even in the presence of robust legal norms.

III. I. V Victims and Participatory Justice

While forum selection often reflects strategic behaviour by powerful actors, the structural asymmetries it exploits have direct consequences for those least empowered within the legal system: the victims. In traditional applications of universal jurisdiction, the role of victims is often relegated to the periphery, with legal processes prioritising state sovereignty, institutional procedure, or the symbolic enforcement of international norms (Mujyambere, 2020, p. 178). However, theoretical paradigms emerging from transitional and restorative justice challenge this exclusion by conceptualising victims not merely as passive recipients of justice but as active stakeholders in the legal process (Fischer, 2011, p. 411). A victim-centred approach reorients universal jurisdiction by highlighting the structural marginalisation of survivors, especially in cases involving sitting officials

From a transitional justice perspective, the concept is not limited to criminal accountability but encompasses broader goals such as truth recovery, reconciliation, and the restoration of dignity to survivors (Fischer, 2011, p. 408). Victims are seen as agents of societal transformation, whose experiences and narratives are central to shaping collective memory and institutional reform. A justice mechanism that excludes victim voices risks perpetuating cycles of alienation and silence. In post-conflict societies, victim participation fosters institutional trust and supports the rebuilding of social legitimacy (Fischer, 2011, p. 412), a concern especially pertinent in universal jurisdiction, where prosecutions often overlook the lived realities of affected communities.

Restorative justice theory further deepens this participatory logic by emphasizing the relational and emotional harm caused by atrocity crimes. It reframes justice as a collaborative process involving victims, offenders, and communities in repairing harm and restoring social cohesion (McCold & Wachtel, 2003, p. 3). Within this framework, justice is not imposed to or for the victim, but pursued *with* them, acknowledging their emotional needs and right to be heard. Victim empowerment, through narrative participation, choice in resolution, and direct dialogue, is therefore essential for transforming experiences of disempowerment into opportunities for personal and communal restoration (McCold & Wachtel, 2003, p. 2). When courts neglect this relational dimension, they reduce justice to a bureaucratic formality, undermining its legitimacy in the eyes of both victims and broader society.

Despite these theoretical advances, universal jurisdiction has yet to fully integrate responsive justice models. Many proceedings remain state-centric, with limited procedural rights for victims beyond their role as witnesses (REF). International courts and national systems invoking universal jurisdiction often lack frameworks for victim participation, reparative dialogue, or psychosocial support which are elements central to both transitional and restorative justice. Furthermore, when powerful states influence the scope and direction of prosecutions, victims from marginalised communities may find their voices subordinated to geopolitical interests, further eroding the integrity of justice mechanisms (Fischer, 2011, p. 413).

This study adopts a critical approach to universal jurisdiction, foregrounding insights from transitional and restorative justice. Rather than treating victims as passive recipients of state-delivered justice, it positions them as agents whose inclusion is vital for legitimacy and accountability. It asks whether existing mechanisms genuinely serve justice or merely uphold dominant power structures, particularly in cases involving sitting high-ranking officials.

By integrating these diverse theoretical strands, this thesis develops the concept of strategic impunity as its central explanatory model. This concept captures how doctrinal ambiguity, institutional fragility, normative discourse, and procedural exclusion work together to protect sitting officials from accountability, despite the presence of formal legal mandates. Rather than treating each theory in isolation, strategic impunity synthesizes their insights into a multi-dimensional explanation of legal inaction. Legal realism explains how formal rules are mobilised to protect state interests; constructivism reveals how immunity is normalised and reproduced; institutionalism shows how enforcement failure is built into procedural design; forum theory shows how actors strategically select or avoid jurisdictions to influence legal outcomes; and victim-centred theory highlights how justice is undermined when those most harmed are structurally excluded. Taken together, these dynamics produce an accountability system that is legally coherent but functionally inert.

This framework is not simply a collection of insights but a generative model that accounts for the complex failures of universal jurisdiction when invoked to hold sitting officials accountable. It allows the thesis to trace how impunity is produced, maintained, and justified across legal, institutional, and political arenas, and how it can be strategically resisted. In doing so, it offers a more integrated and explanatory account than existing models that isolate single causes. It exposes not only why accountability fails, but how immunity is actively sustained

through the interaction of law, politics, and institutional design, thereby transforming universal jurisdiction from a formal legal principle into a contested arena of strategic power and exclusion.

III. II Variables

In this study, the variables are conceptualized as independent, mediating, and dependent to systematically examine the structural, political, and strategic factors contributing to the failure of universal jurisdiction in prosecuting sitting officials at two distinct levels: the ICJ and national courts. The dependent variable is the failure of universal jurisdiction to hold officials accountable, while the independent variables include state sovereignty, geopolitical influence, institutional limitations, and immunity *ratione personae*, which interact to sustain judicial inaction at both levels, albeit through different mechanisms. While these core variables anchor the analysis the procedural marginalisation of victims is also considered, particularly in its intersection with forum shopping and access to justice.

This study introduces forum shopping, the strategic selection or avoidance of jurisdictions, as a mediating factor that channels structural constraints into practical legal and political decisions. This process involves a range of actors, including victims' advocates, prosecutors, NGOs, and accused officials, who evaluate legal forums according to their procedural openness, immunity provisions, and political insulation (Murphy & Kellow, 2013, p. 139).

For accountability-seeking actors, options include institutions such as the ICC, national courts with universal jurisdiction statutes, or hybrid tribunals. These offer legal opportunities like broader jurisdiction or explicit rejection of immunity (e.g., ICC Article 27), but also carry constraints such as political backlash, limited enforcement capacity, or jurisdictional contestation. Accused officials, by contrast, often engage in reverse forum shopping: deliberately steering legal action toward venues like the ICJ, which do not explicitly override immunity protections and tend to uphold sovereign consent (Ferdinandusse, 2025). As such, forum selection channels these pressures into jurisdictional advantage, facilitating or obstructing accountability (Murphy & Kellow, 2013, p. 146).

Building on this, the study hypothesises that immunity is not merely a legal necessity, but a strategic tool shaped by political forces, state sovereignty, and institutional constraints, which collectively obstruct prosecution.

At the ICJ level, sovereignty and geopolitical power dominate, with immunity reaffirmed to preserve diplomatic stability. At the national court level, institutional fragility and political interference more prominently constrain prosecution, even when legal frameworks exist. In both arenas, forum shopping mediates these dynamics: activist actors seek independent jurisdictions, while powerful officials steer cases toward deferential venues. These patterns translate structural constraints into jurisdictional outcomes.

While these barriers are theorised to severely limit the application of universal jurisdiction, proponents of accountability have sought legal and institutional remedies to counteract these obstacles (Akande & Shah, 2010; Langer & Eason, 2019; Letschert & Van Dijk, 2011). At the international level, legal theorists propose narrowing the scope of immunity *ratione personae* by distinguishing between personal and official acts, especially in cases involving atrocity crimes, though such arguments often encounter doctrinal resistance. Efforts to challenge expansive readings of immunity may face opposition in judicial bodies that prioritize institutional coherence and inter-state relations.

Similarly, national jurisdictions that attempt to legislate around immunity face the theoretical risk of political backlash or legislative reversals, particularly when prosecutions implicate sensitive diplomatic or geopolitical interests. Forum shopping further mediates these dynamics by influencing whether legal reforms translate into actual prosecutions. In environments where legal innovation triggers geopolitical sensitivity, states may strategically weaken enforcement mechanisms or retreat from ambitious statutes.

The interaction between these variables creates a self-reinforcing cycle where legal doctrines, political interests, and institutional weaknesses feed into one another at both the ICJ and national court levels. At the ICJ, legal formalism, sovereignty, and geopolitical influence are theorized to collectively preserve immunity, ensuring that states retain discretion over prosecutions. At the national court level, sovereignty-based claims, political pressures, and institutional deficiencies are expected to prevent the effective application of universal jurisdiction, ensuring that prosecutions remain rare and selectively enforced. Forum shopping acts as a dynamic mediator within this cycle, directing the effects of state power and institutional fragility into selective legal mobilization. It magnifies disparities by concentrating accountability efforts in politically safe jurisdictions while allowing impunity in more protected or constrained ones.

Together these dynamics reveal that the failure of universal jurisdiction is not solely a result of isolated legal obstacles but rather a product of the structural interdependence between sovereignty, geopolitics, and institutional limitations. By mediating between these factors and the mechanisms through which they operate forum shopping helps explain why universal jurisdiction remains inconsistently applied and politically fraught.

In the end, by analysing these interactions across the ICJ and national courts, this study develops expectations that universal jurisdiction is systematically constrained by multi-level resistance to accountability. This causal pathway is illustrated in Figure 1: beginning with four structural factors (state sovereignty, geopolitical influence, institutional fragility, and immunity ratione personae) which constrain the prosecutorial space. These pressures, mediated through forum shopping, activate three interrelated processes: legal barriers, political pressure, and institutional inertia that collectively result in the failure to prosecute sitting officials. While reform efforts have sought to circumvent these obstacles through national legislation or legal innovation, their impact remains limited in the face of persistent resistance embedded in the global legal order.

The theoretical model outlined here will guide the subsequent case study analysis, offering a framework to test the thesis's central claim: that universal jurisdiction fails not incidentally, but through structural and strategic constraints. In doing so, the study demonstrates how legal realism, constructivism, institutional limitations, forum shopping, and the marginalization of victims interact as mechanisms of strategic impunity, translating structural and normative imbalances into concrete judicial outcomes.

Figure 1

Causal Pathway of Strategic Impunity in Universal Jurisdiction
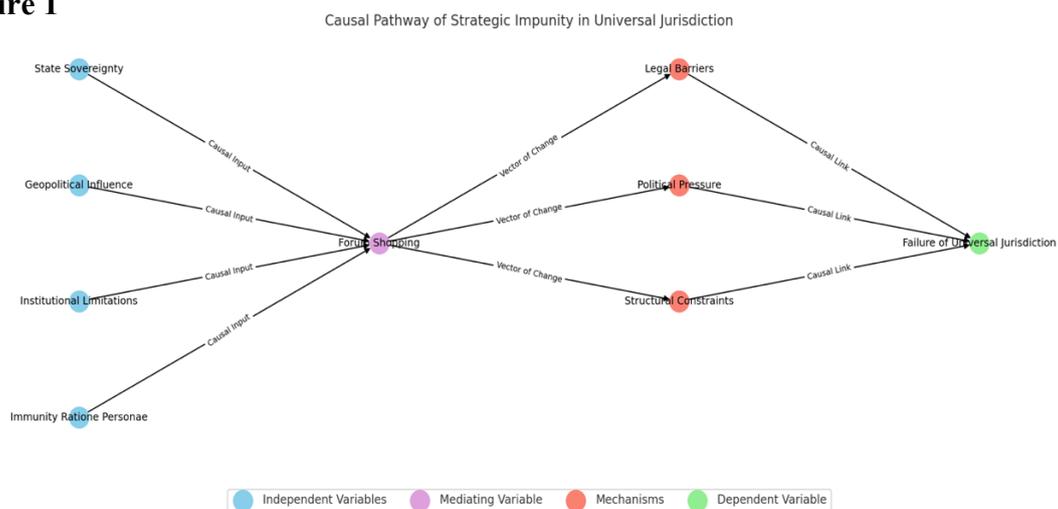
IV. Research Design

This chapter outlines the methodological framework guiding the study's investigation into why universal jurisdiction fails against sitting political elites. It employs a qualitative interpretivist approach, combining comparative case study analysis, process tracing, and CDA to examine how legal doctrines, particularly immunity *ratione personae*, are strategically deployed in politically charged contexts. Using Mill's Method of Difference, the chapter justifies the selection of two structurally distinct but outcome-convergent cases: *Yerodia* and *Sharon*.

Despite their institutional and contextual differences, both cases culminated in the failure to prosecute, reinforcing the claim that structural and strategic, rather than purely legal, factors underlie the limits of universal jurisdiction. Through this comparison, the study develops the theory of strategic impunity, showing how legal norms are mobilised to shield powerful actors from international accountability. The chapter details how data was collected, how causal and discursive mechanisms were traced, and how this approach enables theory-building beyond descriptive comparison.

By integrating process tracing and CDA, the methodology captures both structural and rhetorical dimensions of how accountability mechanisms were neutralised. While process tracing reconstructs legal and political sequences, CDA reveals how these outcomes are framed and legitimised in institutional discourse. Together, these methods provide a multilayered account of failure, sensitive to political agency and ideological framing.

This integration supports the abstraction of generalisable mechanisms from specific cases, elevating the study from case comparison to theory generation. In doing so, it moves beyond a descriptive or doctrinal analysis, enabling a critical interrogation of how law and politics jointly sustain impunity, and how language itself becomes a vehicle for shielding political leaders from legal scrutiny.

Overall, the interpretivist approach seeks to understand how individuals and institutions assign meaning to social phenomena, such as legal immunity and political dynamics in the context of universal jurisdiction. Unlike positivist methods aimed at causal laws, interpretivism explores how actors make sense of their decisions and actions within specific contexts.

This methodology is well-suited to exploring how legal doctrines, such as immunity *ratione personae*, are leveraged within power-laden contexts. Aligned with the theoretical framework, it clarifies how legal rules are shaped and constrained by political interests,

normative discourse, and institutional limitations. By examining how meaning is constructed in these settings, this method helps trace its influence on legal outcomes and decision-making (Schwandt, 1994, pp. 222-227).

Data collection relied on a comparative case study, with Mill's Method of Difference serving as a tool to select cases that share outcome convergence despite contextual variation. The core analysis then employed process tracing and CDA to identify how accountability is undermined through institutional pathways and discursive mechanisms.

This interpretivist strategy offers a flexible but rigorous lens for analysing the interplay between legal structures and informal power dynamics. By combining procedural and rhetorical analysis, the study exposes how accountability is systematically neutralised through decisions and discourses privileging sovereignty, stability, and legal orthodoxy. In doing so, it provides the analytical depth necessary to address the study's core empirical puzzle: why and how universal jurisdiction fails - both nationally and internationally - when applied to sitting officials, despite its formal legal promises.

IV. I Data Collection: Application of Mill's Method & Comparative Case Study Analysis

IV. I. I Universe of Cases: Defining the Scope

The universe of cases in this research was defined by instances where universal jurisdiction was invoked against sitting political officials but ultimately failed, highlighting a critical blind spot in international accountability. Despite its expansion over recent decades, universal jurisdiction has yet to lead to the successful prosecution of any official while still in office for crimes committed in that capacity. Legal doctrines, particularly immunity *ratione personae*, along with political pressures and institutional constraints, have consistently obstructed such efforts (Bardelle & Mora, 2025, p. 3; Langer & Eason, 2019, p. 782).

The research focuses specifically on instances where legal immunity and political manoeuvring shielded powerful actors from prosecution, enabling a systematic analysis of how power, procedure, and discourse interact to undermine accountability. Rather than celebrating rare or symbolic victories, the study foregrounded cases of failure, where attempts at enforcement were blocked by formal protections, diplomatic pressure, or selective application. This allowed a more critical examination of the structural and strategic conditions under which universal jurisdiction breaks down.

While cases like the prosecution of Hissène Habré demonstrate the potential of universal jurisdiction in post-tenure contexts, they also underscore its limitations against sitting officials. High-profile efforts, such as those involving Augusto Pinochet and Franco-era perpetrators, were ultimately derailed by immunity claims and political obstruction (Bardelle & Mora, 2025, p. 6).

By defining the universe of cases around failed attempts to prosecute sitting officials, the study situates itself within broader debates on impunity and international justice. It identifies patterns across legal protections, political strategy, institutional constraints, discursive framing, and victim marginalisation; a constellation of factors that collectively sustain a system of strategic impunity, where accountability is shaped less by legal principle than by the interaction of power, institutional design, and political discourse.

IV. I. II Case Selection Process

To ensure methodological transparency, the case selection process was systematically structured using a rigorous, criteria-based approach derived from the universe of cases. A comparative matrix (Table 1)[1] was developed to operationalise this process and systematically assess alignment with the main structural conditions hypothesised to obstruct accountability - specifically, the convergence of immunity doctrines, political pressure, and institutional weakness. This matrix mapped the various cases documented in the literature and categorised them according to four selection criteria: (1) failure of universal jurisdiction: each case represented an unsuccessful or significantly obstructed prosecution attempt; (2) immunity doctrines as a barrier: the accused benefitted from legal protections, particularly immunity *ratione personae*; (3) political and geopolitical constraints: diplomatic considerations, strategic alliances, or political pressures impeded accountability efforts; (4) the accused was a sitting official at the time: a factor directly impacting the application of immunity doctrines.

While the literature often treats such case failures as context-dependent, this study used Mill's Method of Difference not only to select cases but also to develop a generalisable explanation for why universal jurisdiction fails in different legal and political contexts. The method operates on the principle that if two cases yield the same outcome despite differing in most respects, the shared characteristic must be the causal factor (Hollander & Peart, 1999, p. 375). In the selected cases, despite significant variations in legal systems, political contexts,

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[1] see Appendix

and geopolitical landscapes, the outcome was the same: obstruction of universal jurisdiction due to legal and political barriers.

This convergence suggested that it is the intersection of personal immunity, geopolitical asymmetry, and institutional vulnerability, not legal architecture alone, that structurally enabled impunity. Accordingly, the comparative logic provided empirical grounding for the theory of *strategic impunity*: a process in which legal doctrines are not simply invoked but activated within political contexts to shield sitting high-ranking officials from prosecution. This theory moves beyond existing descriptive accounts by highlighting how doctrinal rules and geopolitical pressures operate in tandem to constrain accountability, even under otherwise promising legal regimes.

By applying these criteria, the *Yerodia* and *Sharon* cases were selected not simply to illustrate failed attempts, but as theory-testing instruments. Their value lies in enabling a structured assessment of how legal and political obstacles - particularly immunity doctrines, forum selection, and institutional asymmetries - interact to undermine accountability. Despite differing institutional contexts, both cases share the outcome of failed prosecution, thereby providing empirical traction for evaluating the causal claims of this study. They illustrate not outcomes in isolation, but the mechanisms through which strategic impunity is produced.

The comparative table provided a clear, systematic assessment of each case's alignment with the selection criteria, allowing for an objective decision to focus on these two. This alignment between theoretical model and empirical data enhanced the internal coherence of the research design and demonstrates the utility of Mill's Method not only for case selection but also for causal inference.

This methodological approach ensured findings that were both contextually rich and analytically robust, strengthening the study's contribution to debates on universal jurisdiction. The cases thus served as mechanisms for inference, validating the broader framework through empirical grounding. This theory-building use of Mill's method isolated and abstracted causal mechanisms that may apply across other contexts of universal jurisdiction, contributing a novel framework to international legal scholarship.

IV. I. III Data Sources

A rigorous examination of universal jurisdiction necessitates a robust evidentiary foundation. The data employed for this research was drawn from a combination of primary and secondary sources. Primary data included of legal documents, specifically court rulings that demonstrated

the application of immunity doctrines in the context of universal jurisdiction. The *Yerodia* case ruling was retrieved from the ICJ database, and the Belgian national court rulings related to the *Sharon* case were obtained from the IHL database. Together, these sources provided the legal foundation for the analysis of how legal doctrines were applied.

Secondary data comprised diplomatic interventions, legal arguments, and academic research. These were retrieved from databases such as Google Scholar and included diplomatic statements and interventions by states, legal opinions provided by experts in the field, and the broader discourse on universal jurisdiction and immunity doctrines. This material clarified the role of political considerations in shaping the outcomes of both cases.

IV. I. IV Comparative Case Study Design: A Most Different Systems Design

Building on the foundation of Mill's Method of Difference, this research adopts a most different systems design to compare the *Yerodia* and *Sharon* cases. This approach was deemed appropriate for exploring how two structurally distinct fora, an international court and a national legal system, nonetheless produced the same outcome: blocked accountability due to immunity doctrines, political interference, and institutional constraints. The design strengthened explanatory power by isolating the mechanisms driving the failure of universal jurisdiction across divergent contexts.

To support this comparative logic, a second table (Table 2)[2] was developed to systematically illustrate key similarities and differences between the two cases. Rather than offering a basic descriptive comparison, this table was structured around the thesis' main analytical dimensions: legal immunity, political dynamics, and institutional limitations. It highlights how these factors, individually and interactively, operated to obstruct prosecution. This structure enabled a more precise evaluation of which conditions were necessary, sufficient, or mutually reinforcing in shaping outcomes.

Ultimately, by integrating Mill's method with a theory-informed comparative matrix, the study deepened its empirical analysis while contributing to broader debates in international (criminal) law. The comparative structure not only advanced understanding of how and why universal jurisdiction remains obstructed but also revealed how legal norms are conditioned by state strategy, institutional weakness, and the resilience of sovereign immunity.

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[2] see Appendix

IV. II Data Analysis: Process Tracing & Discursive Analysis

To analyse the collected data, this research employed process tracing and CDA, complementary qualitative methods, to uncover the causal pathways and rhetorical tactics underpinning the obstruction of universal jurisdiction. These methods supported a layered investigation into the *Yerodia* and *Sharon* cases, tracing how immunity doctrines were operationalized through legal decisions, geopolitical influence, institutional constraints, strategic forum selection, and discursive silencing of victims.

Process tracing involves the systematic analysis of diagnostic evidence that allows researchers to make descriptive and causal inferences about complex political phenomena (Collier, 2011, p. 823). It goes beyond correlation to uncover the mechanisms linking cause and effect. In this study, process tracing is used to examine the sequences of legal and political developments, such as judicial rulings, state interventions, diplomatic exchanges, that culminated in the effective deployment of immunity doctrines. The method focuses on what the author terms "causal-process observations" which are distinct from variables in quantitative analysis and instead reflect meaningful pieces of evidence situated within a broader causal narrative (Collier, 2011, pp. 823-824). These observations, drawn from primary legal texts, governmental records, and scholarly literature, were used to reconstruct how institutional and strategic decisions materialised in the obstruction of judicial proceedings against sitting officials.

Crucially, the use of Mill's Method of Difference informed this process-tracing analysis by identifying shared mechanisms across divergent contexts. These mechanisms, particularly the strategic invocation of personal immunity within geopolitical power asymmetries, form the empirical foundation of the new theoretical model of strategic impunity developed in this study. While existing theories emphasise either legal formalism or *ad hoc* political interference, this model conceptualizes impunity as a structured process in which actors mobilise legal doctrines to stabilize sovereignty and prevent judicial scrutiny.

In this context, careful description becomes indispensable, as the accurate reconstruction of events and interactions at each step in a process constitutes a foundational element of process tracing; without a clear account of what occurred, causal inference remains speculative (Collier, 2011, p. 824). Accordingly, the analysis proceeds by reconstructing key legal and political steps, such as invoking immunity, issuing arrest warrants, or responding

through third-party diplomacy, with the aim of mapping their temporal and functional interconnections (Langer & Eason, 2019, p. 789).

Furthermore, the study applied the typology of empirical tests articulated by Van Evera and adopted by Collier: straw-in-the-wind, hoop, smoking-gun, and doubly decisive tests. These were used to assess the strength of specific pieces of evidence in confirming or disconfirming hypotheses about the role of legal norms, state interests, and institutional constraints (Collier, 2011, p. 825). Through this structured testing, the aim was to isolate repeatable mechanisms that transcend individual cases, thereby offering an explanation of impunity that is theoretically extendable to future instances of failed universal jurisdiction.

Where appropriate "auxiliary outcomes" - events or discursive shifts not part of the main causal chain that yet supported a given hypothesis - were also considered (Collier, 2011, p. 827). For instance, shifts in international reactions or the emergence of new narratives around sovereignty may not directly cause the failure of prosecution efforts but can reinforce the plausibility of a broader causal story. By applying process tracing in this structured way, the research avoided chronological narration and constructed an analytically robust explanation of how immunity protections were reinforced.

Test Type	What It Does	Weakness/Strength
Straw-in-the-wind	Suggests plausibility but is neither necessary nor sufficient	Weak
Hoop Test	Necessary condition — must be passed for hypothesis to survive	Medium
Smoking Gun	Strong confirming evidence — not necessary, but very supportive	Strong
Doubly Decisive	Both confirms one hypothesis and eliminates alternatives	Very Strong

To complement the structural insights of process tracing, the research also employs CDA, which is premised on the understanding that language is not merely a reflection of social reality but constitutive of it - particularly in the context of power relations and institutional authority (Wodak & Meyer, 2001, p. 2). In line with this, CDA was used to examine how legal and

political discourse framed the deployment of immunity doctrines as both legitimate and necessary, neutralising counter-discourses of accountability and human rights.

A central principle of CDA is that discourse is embedded in and shaped by historical and institutional contexts. It allows to trace how rhetorical strategies evolve in relation to specific sociopolitical developments (Wodak & Meyer, 2001, pp. 64-65). This was especially relevant in analysing the *Yerodia* and *Sharon* cases, where actors strategically invoked doctrines such as sovereign equality or functional necessity to resist external legal scrutiny. These rhetorical moves were evaluated for their intertextual links to earlier discourses on immunity and political stability.

The analysis also identified key argumentative topoi, recurrent patterns of reasoning and justification, that legitimised immunity. These included appeals to responsibility ("states must be protected to ensure peace"), legality ("immunity is enshrined in customary international law" (hereinafter CIL)), threat ("universal jurisdiction endangers diplomacy"), and omission (marginalising victim narratives). These were treated not as isolated devices but as components of a broader discursive strategy that reinforced state-centric narratives and normalised impunity. Their recurrence across judicial and political texts revealed a discursive pattern that sustained legal obstruction (Wodak & Meyer, 2001, p. 74).

The discourse analysis involved a close, contextual reading of key texts, including legal judgments, parliamentary records, diplomatic statements, and academic research. These texts were selected based on relevance to the case studies and closely examined for dominant themes, lexical choices, argumentative structures, and intertextual references. Particular attention was paid to shifts in discursive framing at moments of legal or diplomatic crisis.

Paired with the structural sequences revealed by process tracing, these rhetorical patterns revealed how legal language sustained the strategic deferral of accountability. This led to the formulation of the study's central explanatory framework: *strategic impunity*. Here, impunity is not treated as a breakdown of order, but as an intentional and patterned process wherein legal doctrines, particularly immunity *ratione personae*, are deployed alongside geopolitical influence and institutional conservatism to block accountability. It is "strategic" in the sense that law is used tactically to defer or nullify prosecution, often cloaked in procedural or sovereignty-based justifications.

Strategic impunity operates through five interlocking mechanisms observed across both case studies. First, legal formalism prioritises procedural thresholds (e.g., admissibility,

jurisdiction) over substantive justice, enabling courts to justify inaction. Second, geopolitical interference occurs when powerful states shield themselves or allies from prosecution, often through diplomatic pressure. Third, institutional inertia reflects the structural and administrative limitations of courts that stifle enforcement. Fourth, strategic forum selection and reverse forum shopping allow actors to steer proceedings toward legally or politically advantageous venues, avoiding jurisdictions likely to pursue accountability. Finally, victim marginalization excludes those most affected from legal and discursive processes, reinforcing impunity by suppressing moral urgency and participatory justice. Together, these dimensions produce a structurally embedded system that shields political elites from accountability under the guise of legal necessity.

This model offers a new lens to international legal scholarship by showing not only *why* universal jurisdiction fails in prosecuting sitting officials, but *how* such failure is actively constructed through mutually reinforcing legal and political processes. It extends critiques of legal instrumentalism by highlighting the structural sustenance, not mere tolerance, of impunity across diverse judicial settings.

While grounded in the *Yerodia* and *Sharon* cases, the model may apply to other cases involving sitting officials who evade prosecution via coordinated legal and political strategies. Although its reach may be more limited in contexts without formal immunity or great-power influence, such settings are increasingly rare due to the entrenched hierarchies shaping legal outcomes. Its broader application is explored in the study's conclusion.

IV. III Integrity & Methodological Rigor

Ensuring the trustworthiness of this research required adherence to rigorous qualitative standards, namely credibility, transferability, dependability, and confirmability (Stahl & King, 2007, pp. 26-27). Credibility was strengthened through triangulation, incorporating legal rulings, political statements, and secondary literature to establish a comprehensive understanding of each case. Transferability was supported by providing detailed contextual descriptions, enabling parallels with similar instances of universal jurisdiction failure. Dependability was ensured by systematically documenting each step of data collection and analysis to promote transparency and replicability. Confirmability was upheld through reflexivity, which acknowledged potential researcher biases while maintaining a commitment to empirical accuracy.

Reflexivity was especially important in this study, given the politicised nature of the cases. The research critically reflected on how the author's interpretive lens may influence analyses, especially when interrogating the co-production of legal outcomes by state interests and discursive strategies. This was essential to interpreting the structural constraints and legitimating narratives that shaped outcomes in *Yerodia* and *Sharon*.

Feasibility was also a key concern. The study relied on publicly accessible legal documents, archival records, and scholarly literature. In the case of the *Sharon* proceedings, primary rulings from the Belgian Court of Appeal and Court of Cassation were only available in French and not accessible through the official Belgian court database. These versions were therefore sourced from the IHL Database and translated using DeepL. While care was taken to preserve key legal and rhetorical terms, the use of machine translation introduced a minor interpretive margin, particularly in discourse analysis, where linguistic nuance is crucial. Overall, the selected cases provided sufficient data for a focused yet in-depth analysis, balancing analytical substance with methodological precision. These safeguards ensured rigor and transparency while contributing to academic discourse on international justice and accountability.

Despite its strengths, this approach presents methodological limitations. For instance, relying on publicly available legal and diplomatic sources meant that certain internal state deliberations or classified political negotiations remained inaccessible, potentially limiting insight into the full extent of political pressure behind legal decisions. Additionally, while the interpretivist approach excels in capturing complexity, it does not establish causality in a positivist sense. Instead, it offers a context-sensitive account of how legal norms are shaped and constrained by political realities. The study strived to mitigate these limitations through multiple-source validation and sustained methodological reflexivity.

V. Empirical Analysis

V. I Strategic Impunity in Practice: Legal, Political, and Discursive Barriers to Universal Jurisdiction

This chapter conducts a comparative empirical analysis of two pivotal cases, *Yerodia* and *Sharon*, as structured tests of the theoretical model of *strategic impunity* developed in this thesis. Rather than treating them as standalone narratives, the analysis uses each case to trace how legal doctrines, political pressures, institutional constraints, and discursive strategies converge to obstruct the application of universal jurisdiction to sitting officials.

The goal is to demonstrate that these outcomes are not exceptional, but symptomatic of durable structural dynamics that systematically insulate political elites from international accountability. Each case is examined through five interconnected dimensions that operationalise the theory: (1) the legal construction and reinforcement of immunity; (2) the influence of geopolitical dynamics and diplomatic backlash; (3) institutional constraints and the mechanics of judicial inertia; (4) the strategic use of forum shopping and its counter-manoeuvres; and (5) the marginalisation of victims within legal and discursive frameworks. Through this layered approach, the chapter reconstructs the causal and rhetorical mechanisms that neutralise accountability, even when legal frameworks appear formally intact.

V. II The Yerodia Case

The ICJ ruling in the *Yerodia* case marks a pivotal moment in the contest between emerging norms of international criminal accountability and entrenched principles of sovereign immunity. The dispute arose when Belgium issued an arrest warrant under its universal jurisdiction law for Abdoulaye Yerodia Ndombasi, then the sitting Foreign Minister of the Democratic Republic of Congo (hereinafter DRC). This raised a fundamental legal question: can high-ranking state officials be held criminally accountable in foreign courts for international crimes committed *while in office*? The ICJ answered with a resounding "no" reaffirming immunity *ratione personae* and reinforcing state sovereignty over accountability.

What followed was not simply a legal clarification, but a doctrinal consolidation. Tracing the causal chain from Belgium's arrest warrant to the ICJ's ruling reveals how the Court reinterpreted sovereign immunity, not as a protective exception, but as a procedural norm that shields political elites and normalises impunity. Rather than engaging with evolving

international criminal standards, the Court chose to reinforce diplomatic stability over the pursuit of substantive justice.

V. II. I Legal Immunity and the Ascendancy of Sovereignty

A turning point within this case emerged with the ICJ's affirmation of absolute immunity *ratione personae* for sitting Foreign Ministers. This ruling, framed as neutral and grounded in legal formalism, transformed immunity from a procedural safeguard into a mechanism that elevated procedure over substantive justice, thereby neutralising accountability while maintaining institutional legitimacy.

On 14th February 2002, the ICJ held that Yerodia, as Foreign Minister of the DRC, enjoyed *full immunity* while in office, *regardless of the gravity of the alleged crimes*, including incitement to racial hatred potentially amounting to crimes against humanity (ICJ, 2000, paras. 54-58). The Court grounded its decision in CIL, citing consistent state practice affirming such immunity. It declared: "It is firmly established that … certain holders of high-ranking office … such as the … Minister for Foreign Affairs, enjoy immunity *ratione personae* from foreign criminal jurisdiction and inviolability" (ICJ, 2000, para. 51).

This move reveals how legal interpretation solidifies power hierarchies by transforming contested norms into rigid legal orthodoxy. It also demonstrates the first mechanism of strategic impunity: the use of legal formalism to elevate procedural immunity over substantive accountability, thereby institutionalising sovereignty as a shield for state elites. The Vienna Convention on Diplomatic Relations (1961), particularly Article 41(2), further reinforced this by emphasising the functional necessity of diplomatic immunity to shield Foreign Ministers from foreign legal entanglements (p. 13).

Equally significant was the ICJ's dismissal of jurisprudence from the ICTY, ICTR, and ICC, on the grounds that their jurisdiction is "directed at international courts and does not affect immunities under international law before national courts" (ICJ, 2000, para. 58). This selective use of precedent sustained conservative legal reasoning by insulating national proceedings from the normative influence of progressive tribunals. In doing so, the Court both reaffirmed the primacy of state sovereignty and rejected the applicability of international accountability mechanisms - making the ruling a "doubly decisive moment" in the consolidation of impunity for sitting officials.

Legal realism helps reveal the underlying political rationale at play. The Court upheld immunity not because it was compelled by legal necessity, but because it chose to preserve

diplomatic order and state prerogatives (Mitchell, 2017, pp. 422-430). In fact, by anchoring its ruling in conservative customary norms and avoiding broader human rights interpretations, the Court deliberately reinforced the international status quo. This illustrates how institutional conservatism operates not as legal inertia but as a deliberate political stance cloaked in juridical neutrality.

At the same time, constructivist analysis helps reveal how the ICJ's judgment reflected embedded social norms of diplomacy. Immunity in this case was not treated as a contested legal doctrine but rather as an uncontested institutional fact. This deference to normative stability over moral innovation reflects an enduring commitment to sovereignty as the central organizing principle of international law (Finnemore & Sikkink, 1998, p. 895; Voeten, 2014, p. 305).

Although the Court distinguished between procedural and substantive immunity, it offered little meaningful path toward accountability. While prosecution is theoretically possible once an official leaves office, functional immunity continues to shield official acts without clear limits (ICJ, 2002, para. 60), effectively deferring justice indefinitely.

The ICJ also remained silent on key jurisprudence, including the *Furundžija* case at the ICTY and the *Akayesu* decision from the ICTR, both of which established that official capacity *cannot* shield individuals from prosecution for serious international crimes such as torture and genocide (Akande & Shah, 2010, pp. 830-832). These cases signalled a broader normative shift in international criminal law away from status-based immunities and toward individual accountability. The Court's silence reinforced dominant legal hierarchies by selectively amplifying certain doctrines while muting those that challenge the enduring power structures.

From a discourse-analytic perspective, the ICJ's language further entrenched procedural formalism by invoking the topos of legality and threat, framing diplomatic immunity as essential for global stability (Wodak & Meyer, 2001, p. 74). Jurisdiction, as a result, hinged not on the nature of the alleged crime but on the rank of the accused (Day, 2004, p. 498; Spinedi, 2002, p. 898). Once again, sovereignty prevails over justice.

The Court added to this ambiguity with a paradoxical clarification: "The immunities enjoyed under international law by an incumbent or former Minister for Foreign Affairs do not represent a bar to criminal prosecution in certain circumstances" while also emphasising that these immunities "do not cease to apply by reason of the gravity of the alleged crimes" (ICJ, 2000, para. 60). This formulation preserves the appearance of accountability while functionally

denying it. As a result, a fundamental dilemma emerges: if sitting officials are shielded by personal immunity and former officials by functional immunity, when is prosecution ever feasible without state consent? The ruling leaves this question unanswered (Spinedi, 2002, p. 899).

The ICJ further reinforced this logic by rejecting Belgium's arrest warrant, citing the absence of territorial or personal nexus and the accused's lack of presence (ICJ, 2002, paras. 70-71). It found that Belgium had overstepped its jurisdiction: "The Court concludes that the issue and international circulation by the Belgian authorities of the arrest warrant of 11 April 2000 against the Minister for Foreign Affairs of the Congo constituted a violation of a legal obligation of the Kingdom of Belgium" (ICJ, 2000, para. 78). This outcome discouraged judicial innovation, codifying a narrow view of international law that insulates immunity from progressive reinterpretation (Day, 2004, p. 508).

This phase in the causal chain reveals the ICJ's role in transforming immunity from a procedural safeguard into a structural barrier to accountability. It demonstrates that legal doctrine itself can function as a strategic tool for power retention. Through legal formalism and selective reliance on conservative precedent, the Court prioritised sovereign stability over justice, consolidating sovereignty as the dominant legal principle. In doing so, it operationalised the first mechanism of strategic impunity and empirically substantiated this thesis's core claim: that international legal institutions, under the guise of neutrality, can actively shield state elites and reproduce the geopolitical hierarchies they purport to constrain.

V. II. II Political Dynamics: Realism and the Geopolitics of Jurisdiction

Having shown how legal formalism and selective precedent shaped the ICJ's reasoning in *Yerodia*, the analysis now turns to the geopolitical dynamics that surrounded and followed the ruling. This next phase in the causal chain exemplifies how the Court's judgment was more than a legal conclusion; it was an institutional response framed by historical legacies, asymmetries of power, and strategic diplomatic positioning. Rather than acting as a neutral arbiter, the ICJ responded to a configuration of international pressures that constrained and reshaped legal interpretation. Geopolitical pressure functioned not just as background context but as an active force that helped reconfigure legal doctrine in ways that shielded state elites. In doing so, it reinforces the thesis's central claim that international law is not only constrained by politics but often structured to serve it, systematically subordinating accountability to strategic interests.

This dynamic was clearly visible in the political context surrounding Belgium's assertion of universal jurisdiction. As a former colonial power, Belgium's decision to issue an arrest warrant against a sitting African minister, under a doctrine frequently criticised for its selective application, immediately drew geopolitical scrutiny. The DRC framed the move as a violation of diplomatic norms and an affront to postcolonial sovereignty. This was not mere rhetoric; it triggered the ICJ proceedings and prompted a renegotiation of legal boundaries (Zuppi, 2003, p. 310).

Similar critiques have often arisen when Western states target Global South officials, with universal jurisdiction framed as a neocolonial tool (Krisch, 2005, p. 370). In this case, such critique found institutional expression. The ICJ sidestepped the substance of the crimes alleged, asserting that "the nature of the acts alleged against Mr. Yerodia… has no bearing on the applicability of the rules of international law governing the immunity from criminal jurisdiction" (ICJ, 2002, para. 61). This reframing allowed the Court to cast the dispute as a technical jurisdictional issue, sidelining atrocity allegations and maintaining an appearance of procedural neutrality.

This discursive manoeuvre enabled the Court to avoid engaging with the uneven enforcement of international law, particularly how powerful states shield their officials while weaker ones remain exposed. In presenting the ruling as a neutral legal judgment, the ICJ reaffirmed global power hierarchies. This moment illustrates the second mechanism of strategic impunity: geopolitical insulation, where legal institutions defer to sovereignty claims under pressure from dominant states or in response to postcolonial critique. The Court's state-centric reasoning underscores how adjudicative bodies operate within, and are shaped by, global asymmetries.

The geopolitical stakes became even more evident in its aftermath. Under diplomatic pressure from states including the U.S and Israel, Belgium reversed its stance. Facing threats such as the potential loss of its NATO host status (Falk, 2004, p. 104), the Belgian government amended and eventually repealed key aspects of its universal jurisdiction law (MacKinnon, 2003, p. 45). This episode revealed how legal innovation, particularly when directed at powerful actors, is constrained by geopolitical retaliation. Rather than setting a precedent for accountability, Belgium's initiative was curtailed by the costs of challenging dominant interests.

This sequence serves as a critical link in the causal chain and can be understood as a classic hoop test within process-tracing logic (Collier, 2011, p. 825). The backlash was not peripheral but central, exposing how direct international pressure obstructs legal reform. Diplomatic threats, then, function not simply as political noise but as enforcement constraints that reshape legal possibility. The *Yerodia* case thus shows that international law often operates as an extension of geopolitical strategy. The ICJ's ruling did just reflect this logic; it institutionalized it. By affirming immunity and rejecting Belgium's expansive approach, the Court provided legal cover for a broader retreat from accountability. It transformed a politically sensitive dispute into a formal precedent discouraging future efforts to extend criminal jurisdiction over sitting officials.

From a discourse-analytic standpoint, the Court's silence on Belgium's motivations and on the substance of the crimes alleged reinforced this conservative outcome. Its legal vocabulary, centred on neutrality and sovereign dignity, displaced the case's moral urgency and rearticulated it as a question of procedural abstraction. In this sense, the *Yerodia* judgement was not only a legal decision but an act of institutional diplomacy. By defending doctrinal coherence, the Court foreclosed the possibility of legal progression. As realist theories predict, in systems privileging state consensus, legal norms tend to preserve existing order over enabling transformative justice (Mitchell, 2017, p. 429).

This section thus reveals that geopolitical pressure, both direct and discursive, functions as a structural force reshaping legal interpretation in favour of sovereignty. What is tested here is the political elasticity of international legal principles: how far they bend when exposed to asymmetrical power. This confirms the broader claim that universal jurisdiction erodes not in legal abstraction, but under sustained political pressure.

V. II. III Institutional Constraints and the Mechanics of Judicial Inertia

The pressure is compounded by institutional limitations, which represent the next decisive phase in the causal sequence entrenching impunity. Although Belgium had the legal authority to issue the arrest warrant under its universal jurisdiction statute, it lacked any meaningful capacity to enforce it against a *sitting* high-ranking foreign official. This enforcement gap reflects a core structural constraint within international law: states cannot extend coercive authority into foreign jurisdictions without consent. In universal jurisdiction contexts, legal actions remain largely symbolic unless the accused is physically present in the prosecuting state's territory (Hovell & Malagodi, 2024, p. 1497). This disconnect illustrates a deeper issue:

legal frameworks may permit accountability in theory, but institutional design disables execution. The law may authorize action, but the system architecture ensures inaction.

The ICJ judgment intensified this vulnerability by reinforcing a legal environment in which diplomatic protest could override national judicial action (Day, 2004, p. 509). Reaffirming that: "the nature of the acts alleged against Mr. Yerodia… has no bearing on the applicability of the rules of international law governing the immunity from criminal jurisdiction" (ICJ, 2000, para. 61), the Court confirmed that political status, *not the severity of the offense*, dictates legal outcome. This framing encouraged states to deflect legal challenges not by contesting claims, but through diplomatic resistance. What this reveals is that institutional caution is not simply reactive, but cultivated through precedent, as legal decisions instil habits of deference that pre-empt accountability.

This becomes more visible when viewed through the institutional role of the ICJ. As a court designed to resolve disputes between states, not enforce individual criminal accountability, the ICJ made clear that its task: "is not to rule on the legality of the acts … but only on the lawfulness of the arrest warrant in light of international law on immunities" (ICJ, 2000, para. 48). By privileging sovereign consent and procedural consistency, the Court chose to prioritise diplomatic equilibrium over substantive justice (Day, 2004, p. 510). This outcome was not incidental. It reflects a systemic logic: when legal coherence conflicts with justice, coherence wins.

This institutional preference is reinforced by fragility at both international and national levels. Domestic courts often lack investigative resources, transnational mechanisms, and political support for pursuing politically sensitive prosecutions (Hovell & Malagodi, 2024, p. 1497). These constraints are sharpened in cases involving sitting officials, where prosecutors must rely on external sources such as NGOs, navigate public opinion, and avoid diplomatic fallout. Within this context, the third mechanism of strategic impunity emerges: enforcement depends on procedural clarity, international cooperation, and political will which are elements that are often absent in practice. This weakness stems not from obstruction, but from systemic incapacity. Courts remain fundamentally unequipped to enforce international criminal law where it threatens entrenched power.

This limitation is compounded by prosecutorial hesitation, even in advanced democracies. The risk of provoking retaliation, disrupting trade, or damaging alliances often deters prosecutors involving sitting officials from powerful states (Hovell & Malagodi, 2024,

pp. 1494-1495). High-profile investigations are viewed less as law enforcement than as political confrontation (Day, 2004, p. 498), which makes prosecutors vulnerable to direct or indirect pressure from their own governments to drop cases that could endanger diplomatic relations (Hovell & Malagodi, 2024, p. 1495).

These dynamics intensify when Global North courts target Global South officials. The perceived selectivity of such actions often triggers accusations of neocolonialism or double standards (Hovell & Malagodi, 2024, pp. 1492-1493). This perception can delegitimise the process and reduce institutional willingness to proceed turning universal jurisdiction into less of a legal tool and more of a geopolitical hazard. Judges must weigh justice against fallout, and accountability is rarely pursued.

This architecture does not just delay justice; it actively shapes how legal actors behave. Even when legal bases for prosecution exist, decisions are driven more by strategic hesitation than legal uncertainty. In such cases, when suspects are shielded by foreign states or remain inaccessible, enforcement becomes improbable (Amnesty International, 2007, p. 4; Hovell & Malagodi, 2024, p. 1496).

The ICJ's ruling intensified this uncertainty by upholding immunity while leaving its limits undefined. It asserted that immunity *ratione personae*: "does not cease … by reason of the gravity of the alleged crimes" (ICJ, 2000, para. 60) and added that former officials may be shielded by *ratione materiae* for official acts (para. 61). Yet it provided no criteria for lifting these protections, leaving judges to anticipate potential diplomatic backlash and navigate ambiguous legal boundaries (Spinedi, 2002, p. 899). This vagueness is not accidental; it is a feature of institutional design that defines the conditions under which impunity becomes the norm, fostering an inertia that embeds a structural bias toward restraint.

In sum, it is demonstrated that institutional fragility is not a passive backdrop, but a core mechanism of strategic impunity. By revealing how legal authority collapses into political caution, the analysis confirms that universal jurisdiction fails not only because of legal ambiguity or geopolitical pressure, but because its enforcement mechanisms are built to hesitate. Accordingly, accountability is not obstructed by anomaly, but by architecture.

V. II. IV Forum Shopping and the Strategic Navigation of Immunity

This systemic design becomes even more visible when examining how legal actors strategically navigate the fragmented structure of international law. Within this environment, forum shopping has emerged as a key tactic in the pursuit or evasion of accountability. This

phenomenon is rooted in the absence of centralised legal authority and the divergence of legal norms across jurisdictions, enabling actors to seek out venues most favourable to their strategic interests (Brilmayer & Seidell, 2019, p. 2036). Accordingly, states, civil society groups, and litigants exploit these inconsistencies to either advance justice or avoid it. The *Yerodia* case exemplifies this dynamic, as both Belgium and the DRC strategically selected legal forums to advance competing visions of accountability and sovereignty.

Viewed through process tracing, this moment unfolds through a decisive sequence: Belgium initiated proceedings under its universal jurisdiction statute, prompting the DRC to escalate the matter to the ICJ. While the DRC could have responded through criminal forums such as the ICC which explicitly rejects immunity under Article 27 of its Statute, stating that "official capacity … shall *in no case* exempt a person from criminal responsibility" (Rome Statute, 1998, p. 19); it turned to the ICJ, a forum affirming state consent and preserving immunity protections. This shift was not merely procedural. It replaced a framework of individual accountability with one anchored in sovereign immunity, reshaping the terms of legal engagement.

This move altered not only the venue but the conflict itself. It reversed legal momentum, transforming the dispute from an accountability-driven process into one governed by claims of sovereign dignity. This illustrates the fourth mechanism of strategic impunity: the use of legal and diplomatic power to shift proceedings into more advantageous jurisdictions, thereby neutralizing legal risk. The DRC's success in relocating the case to the ICJ underscores how structural asymmetries enable states to reshape the terrain of accountability.

Belgium's action, in contrast, formed part of a broader human rights strategy that targeted legal systems with expansive jurisdictional reach. Given the ICC's restricted jurisdiction, dependent on state consent or UNSC referral for non-party states, and the principle of complementarity, which often defers to domestic courts even when prosecutions are politically constrained, advocates increasingly turned to states like Belgium. There, expansive war crimes laws created so-called "magnet jurisdictions" willing to pursue high-level cases (Bookman, 2016, p. 582). However, the effectiveness of these reforms proved fragile. Their success related less on legal merit than on geopolitical tolerance.

This mechanism shows that accountability is shaped not only by legal doctrine, but by actors' capacity to navigate jurisdictional gaps and shift threats into forums that prioritize

sovereignty over justice. It reinforces the thesis's broader claim that impunity is not a failure of law, but a function of how legal systems are structured and used.

For NGOs and legal practitioners, Belgium's legal environment offered a rare opening to close impunity gaps. These statutes allowed for extraterritorial prosecutions of serious international crimes, regardless of location or perpetrator. Yet the DRC responded with *reverse* forum shopping, steering the case into a venue structurally inclined to protect sovereign interests. This manoeuvre disarmed legal accountability procedurally while leaving the underlying violations untouched.

By bringing the case before the ICJ, the DRC repositioned the dispute within a legal space that prioritised diplomatic protocol over criminal liability. This reframing diverted scrutiny away from the violations themselves and recast the narrative in procedural terms (Pauwelyn & Salles, 2009, p. 83).

From a discourse-analytic perspective, the DRC's rhetorical strategy drew heavily on the topos of national dignity, framing accountability as an affront to sovereign honour. This transformed the conflict from legal wrongdoing into interstate decorum. The ICJ's acceptance of this framing proved decisive: it upheld the state-centric narrative and invalidated Belgium's warrant, despite its basis in IHL. In doing so, the Court reproduced a discourse privileging procedural order over substantive justice.

This highlights how forum selection becomes a mechanism of legal exclusion: the jurisdiction determines not only who is judged, but whether judgment occurs at all. The *Yerodia* ruling exposes a deeper asymmetry in international law, where actors with legal expertise and political leverage can navigate between jurisdictions to avoid scrutiny. Meanwhile, victims and civil society groups face a fragmented legal terrain marked by limited access and institutional uncertainty (Brilmayer & Seidell, 2019, p. 2036).

Crucially, this case underscores the structural effects of forum manipulation. Not only do different legal forums apply divergent standards of immunity, but forum choice itself is shaped by geopolitical power. In this sense, forum shopping is not a distortion of legal order, but a structural feature of a system lacking centralised authority, uniform enforcement, or equal access to redress (Pauwelyn & Salles, 2009, p. 83).

As the accompanying model depicts, forum shopping functions as a mediating variable. It translates pressures from sovereignty claims, geopolitical influence, institutional weaknesses, and immunity doctrines into specific legal outcomes. This mechanism bridges

abstract constraint and judicial practice: it is through forum selection that asymmetries are enacted, and accountability derailed. Actors choose forums not only for legal grounds, but for their likelihood of offering insulation, delay, or dismissal (Murphy & Kellow, 2013, p. 139).

Ultimately, the *Yerodia* case shows that access to justice depends less on legal norms than on jurisdictional positioning. Powerful actors shop for protection while advocates navigate terrain structurally skewed against them. Clearly, forum shopping is not a marginal tactic but a structural logic through which global legal inequality is reproduced.

This section substantiates the fourth mechanism of strategic impunity: forum manipulation; and demonstrates a core thesis insight: impunity results not from legal failure but from the strategic redirection of law through institutional design. Even when accountability tools exist, their deployment is constrained by an international legal architecture - a legal map that dominant actors can redraw.

V. II. V The Marginalisation of Victims and the Absence of Restorative Justice

This institutional design not only restricts who can act, but also shapes whose experiences are rendered visible. The final phase in the causal chain highlights a critical normative gap in the *Yerodia* case: the systematic exclusion of victims from the legal and discursive framework. A striking omission in the ICJ's ruling is any reference to the victims of the alleged incitement to violence. This silence is not merely procedural but reveals how state-centric adjudication sidelines human suffering when politically inconvenient.

Rather than situating mass atrocity within a human-centred legal logic, the judgment focused exclusively on jurisdictional conflict between Belgium and the DRC, abstracting the case from its human cost. This narrowing uncovers the fifth mechanism of strategic impunity: discursive legitimation, where legal authority is preserved through the erasure of political and moral content. By omitting victims and framing immunity in technical language, the Court constructed a procedural narrative that both erased harm and depoliticised obstruction, reinforcing the legitimacy of impunity. Such exclusion signals a broader structural problem in the application of universal jurisdiction: the marginalisation of victims as active agents pursuing redress (Fischer, 2011, p. 408).

Transitional justice literature insists that legal accountability cannot be divorced from the experiences of those most affected. Justice is not merely technical resolution. It is a moral and social process grounded in recognising suffering and restoring dignity. The *Yerodia* case failed to meet this standard. By bracketing out victim perspectives, the Court delivered a

procedurally coherent but substantively alienating decision (Fischer, 2011, p. 412), illustrating how legal consistency can come at the cost of moral legitimacy - a pattern in which adherence to established procedural norms is used to justify inaction, even in the face of grave human rights violations. In such moments, legal systems preserve internal coherence by excluding politically destabilising elements like victim testimony or atrocity narratives, thereby upholding sovereign order while silencing ethical imperatives.

Restorative justice frameworks deepen this critique conceptualising justice as relational repair achieved through acknowledgment, dialogue, and healing. Yet the ICJ's design and jurisprudence leave no room for this paradigm. Its reasoning consistently favours procedural certainty and sovereign dignity over moral clarity, placing state immunity above the lived experience of political violence (McCold & Wachtel, 2003, p. 3). While preserving formal coherence, this orientation displaces victim voices and limits law's ability to recognise harm. This reflects a deeper design flaw: the prioritisation of stability over justice, legal form over human content. Empirical studies corroborate this; when victims are included, through testimony, participation, or reparations, perceived legitimacy rises, and retributive demands decrease (Gromet et al., 2012, p. 376). Excluding victims, by contrast, erodes trust and reduces law to abstraction.

The ICJ's silence on both the content and consequences of Yerodia's incitement undermined the judgment's social legitimacy. This deliberate omission functioned as a normative intervention, reinforcing a legal logic that prioritises diplomacy over accountability. By constructing legal discourse around state actors, the Court enabled a system where victims must wait for justice until political conditions shift. Here, justice is governed not by legal rights but by political timing revealing law's structural role in deferring accountability.

From a discourse-analytic standpoint, this erasure is a form of exclusion. The ICJ's language reinforced a state-centric vision of justice that structurally suppressed victim narratives. As CDA emphasises, the absence of certain voices in legal reasoning does not signal impartiality, but power. In this case, the exclusion of victim terminology reflects a legal culture prioritising form over ethical engagement. Consequently, impunity is not only maintained through law, but through legal discourse legitimised by omissions that normalise state dominance over victim claims.

This final phase completes the causal arc: from Belgium's legal initiative, to the DRC's counterstrategy, through doctrinal conservatism, geopolitical resistance and institutional

fragility culminating in the *symbolic and material disappearance of victims* from the legal frame. What began as a legal challenge to impunity ended in a silence that ratified it.

Thus, the *Yerodia* case reveals an international legal regime that defers accountability and marginalises those most affected. Without a paradigm shift toward victim-centred justice, legal institutions risk reproducing the very injustices they claim to redress.

In sum, this section operationalises the fifth mechanism of strategic impunity, discursive legitimation, showing how the ICJ's judgment, through erasure and framing, weakened the normative force of victimhood. The analysis displays that universal jurisdiction fails not only through prosecutorial inaction, but through discursive exclusion. In this context, legal form becomes complicit in preserving sovereign authority, displacing the ethical imperative of justice in favour of institutional order.

In conclusion, the *Yerodia* case provided a structured opportunity to test this thesis's central claim that the failure of universal jurisdiction is not accidental, but structurally produced through legal, political, institutional, and discursive forces. Each analytical dimension revealed how a specific layer of constraint functioned: the legal construction of immunity elevated procedure over justice; geopolitical backlash discouraged enforcement; institutional fragility enabled judicial inertia; forum shopping allowed the DRC to shift venues and neutralize legal risk; and discursive framing erased victims, legitimating inaction.

These dynamics did not act in isolation but operated as an interlocking system that collectively shielded sitting officials from accountability. Forum shopping mediated this convergence, translating structural pressures into procedural redirection. The outcome was not a breakdown of law, but the successful reproduction of legal order in ways that prioritise sovereignty over justice, illustrating the strategic logic of impunity this thesis set out to conceptualise.

To support this analysis, Table B.1[3] outlines how rhetorical topoi were mobilised to recast the dispute as one of institutional decorum rather than criminal liability. Table A.1[4] applies Van Evera's typology of process-tracing tests, categorising the evidence used to support each causal link in the analysis as hoop, smoking gun, or doubly decisive test. Together, these

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[3] see Appendix

[4] see Appendix

tables substantiate how the Yerodia case operationalises the thesis's theoretical model across both causal and rhetorical dimensions.

V. III The Sharon Case

The attempt to prosecute Ariel Sharon, then Israel's Minister of Defence, under Belgium's universal jurisdiction principle marked a politically charged effort to hold a sitting official of a powerful state accountable through a domestic legal forum. Unlike cases before international courts, this initiative unfolded entirely within Belgium's national judiciary and was blocked not by legal ambiguity, but by coordinated political pressure and legislative reversal.

The case centred on Sharon's alleged complicity in the 1982 Sabra and Shatila massacre, where Lebanese Phalangist militias killed between 700 and 800 civilians under Israeli operational control. This toll is based on Israeli military intelligence estimates; however, other independent sources suggest that the real number may have reached several thousand, with many victims, including infants and pregnant women, subjected to brutal mutilations and summary executions (Human Rights Watch, 2001, p. 1).

At the time, an Israel Defence Force (hereinafter IDF) forward command post was stationed just 200 meters from the site, underscoring the operational oversight available to Sharon as Defence Minister (Human Rights Watch, 2001, p. 2). Despite credible warnings, including a diplomatic cable from U.S. envoy Morris Draper urging intervention, Sharon authorised the entry of Phalangist militias into the camps. The Kahan Commission[5] subsequently found him *personally responsible*, concluding that this was not mere negligence but a knowing disregard of a foreseeable risk of atrocity (Malone, 1985, p. 374). His failure to implement safeguards, such as IDF supervision, constituted the *actus reus* and the *mens rea* for a command responsibility claim, forming the legal basis of the subsequent criminal complaint (Human Rights Watch, 2001, p. 3).

Building on these findings, survivors and civil society groups initiated proceedings in Belgium. However, after years of legal obstruction and escalating diplomatic backlash, the Cour de Cassation dismissed the case in 2003, citing sovereign immunity.

What follows traces how Belgium's legal system, under mounting external pressure, transformed a bid for accountability into a procedural retreat. The *Sharon* case thereby offers a distinct perspective on strategic impunity, revealing how national courts can become the primary site where legal innovations are quietly neutralised.

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[5] The Kahan Commission was an Israeli state inquiry established in September 1982 to investigate the circumstances of the Sabra and Shatila massacre and determine the extent of Israel's responsibility for the killings.

V. III. I Legal Immunity and the Ascendancy of Sovereignty

The attempt to prosecute Sharon had barely advanced before it ignited fierce diplomatic backlash. As soon as the complaint was filed before the Brussels Tribunal of First Instance, Israeli officials swiftly framed the proceedings as a hostile and politically motivated attack to national sovereignty. Then-Foreign Minister Benjamin Netanyahu denounced it as a "blood libel on the soil of Europe" and summoned Belgium's ambassador to receive a formal protest. Israel also recalled its ambassador from Brussels, while senior figures, including the Justice Minister and the President, issued strong public denunciations of Belgium's legal posture. Netanyahu warned the case could set a precedent for prosecuting American officials for actions in places like Afghanistan or Vietnam (Bennet, 2003, p. 1).

This pressure embedded the proceedings in a broader narrative that depicted legal accountability for powerful states as politically subversive and destabilizing to international order. As a result, Belgium's initiative was reframed not as a pursuit of justice, but as an illegitimate intrusion into sovereign affairs - a shift that laid the groundwork for the procedural appeals and immunity-based reasoning that ultimately neutralised the case.

The core legal issue was whether a sitting Prime Minister could be prosecuted abroad for alleged international crimes (Tafadar, 2003, p. 2). The prosecution relied on the Belgian 1993 Law on Grave Breaches of IHL, which had been amended in 1999 to expand jurisdiction over atrocity crimes, regardless of location or nationality (Zuppi, 2003, p. 313). In analytical terms, this phase acts as a "hoop test" (Van Evera, 1997, p. 31) reaffirming immunity was not enough alone to dismiss the case, but it was a necessary barrier.

Unlike in the *Yerodia* case however, the Belgian courts never addressed the substance of the allegations against Sharon. The case stalled on procedural grounds before substantive issues were adjudicated. The Brussels Court of Appeal initially ruled that Sharon's absence from Belgium precluded proceedings under Article 12 of the Code of Criminal Procedure (2002, p. 10). Plaintiffs countered that the 1993 law provided an independent jurisdictional basis, but the Court rejected this, holding that no explicit derogation from the presence requirement had been made (pp. 7-8). While the Court of Cassation later acknowledged presence was not strictly required (2003, p. 5), by then political support for the case had collapsed.

Ultimately, the final ruling rested on the principle of immunity *ratione personae*. Both the Court of Appeal and the Court of Cassation accepted that Sharon, as a sitting Prime

Minister, was immune. The Court of Cassation confirmed: "Ariel Sharon bénéficie de l'immunité en sa qualité de Premier ministre d'un État étranger"[6] (2003, p. 7). It reiterated: "Les actes d'enquête ou de poursuite ne peuvent être entrepris … à l'égard d'un chef de gouvernement en exercice …"[7] (Cour de Cassation, 2003, p. 7). This interpretation reveals how procedural immunity functions not neutrally, but as a structural barrier shielding state officials even in the face of credible atrocity allegations.

Similarly, the Court of Appeal stated: "Les juridictions pénales belges ne peuvent ... connaître de faits imputés à une personne jouissant, *au moment de l'introduction de la plainte*, d'une immunité internationale de juridiction"[8] (2003, p. 9). These rulings demonstrate how legal form can be mobilized to neutralise judicial accountability, not by denying facts, but by reclassifying them as legally irrelevant through the lens of procedural status.

The silence on the Kahan Commission's findings further underscores judicial disengagement from the underlying atrocity. Although the Commission held Sharon personally responsible for authorizing the Phalangists' entry into the camps despite a known risk of mass violence (Malone, 1985, p. 386), Belgian courts made no reference to these conclusions. This omission exemplifies how legal formalism can erase the evidentiary and moral force of atrocity, reducing structural violence to a procedural abstraction.

Human Rights Watch (hereinafter HRW) underscored that even though the Kahan Commission documented Sharon's role, it was no substitute for formal accountability. The failure to prosecute, despite credible evidence that Sharon *knowingly* enabled the massacre and neglected oversight, marked a missed opportunity for justice (2001, p. 4; 2014, p. 1).

Viewed through a constructivist lens, this judicial silence reflects a deeper normative hierarchy, one that prioritises sovereignty and restraint over the confrontation of atrocity (Finnemore & Sikkink, 1998, p. 895). It also reinforces legal realism's core critique: that international law, far from neutral, often functions to protect state power at the expense of justice (Mitchell, 2017, pp. 422-430).

This dynamic was reinforced by the Belgian Court's reliance on *Yerodia*, which it cited to support a conservative interpretation of customary international law (hereinafter CIL) and

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[6] [Ariel Sharon enjoys immunity as Prime Minister of a foreign state]

[7] [Acts of investigation or prosecution may not be undertaken... with regard to a sitting head of government...]

[8] [Belgian criminal courts cannot... consider acts imputed to a person enjoying, *at the time the complaint is filed*, international immunity from jurisdiction]

to extend immunity *ratione personae* without addressing whether the Sabra and Shatila massacre fell outside the scope of *ratione materiae*. Although plaintiffs argued the massacre constituted *ultra vires* conduct beyond official functions, the Court treated all of Sharon's actions as categorically immune (Cour de Cassation, 2003, p. 7). This expansive interpretation foreclosed accountability both during and potentially after his term, blurring the line between authority and impunity.

This reaffirmation of personal immunity marked the most definitive setback in the case. Despite statutory reforms, including the 1999 amendment stating that "official status shall not prevent the application of the present law", the Court interpreted this narrowly limiting it to individual liability while preserving jurisdictional immunity (2003, p. 8). By treating immunity as a procedural constant, the Court neutralized reformist intent and institutionalised restraint. This exemplifies the first strategic impunity mechanism: legal formalism deployed to elevate procedural barriers over substantive justice.

From a discourse-analytic perspective, the Court's language reconstituted the case in highly formalistic and state-centric terms. While it did not use overtly diplomatic phrases, its emphasis on Sharon's official capacity and the absolute nature of head-of-state immunity framed the atrocity as a jurisdictional misalignment rather than a moral or legal crisis. Drawing on the topos of legality and institutional propriety (Wodak & Meyer, 2001, p. 74), the ruling turned judicial restraint into a performance of legal fidelity, rebranding silence as virtue.

In sum, this section illustrates how legal formalism serves as a structural tool of impunity. The Belgian courts' reliance on procedural immunity, despite strong evidence and legal provisions, exposed how sovereignty is preserved not only through law, but through legal discourse that masks power-shielding as compliance. This tests the strength of legal norms against credible accountability efforts and reveals a judiciary more inclined to protect power than confront it.

V. III. II Political Dynamics: Realism and the Geopolitics of Jurisdiction

After establishing how Belgian courts reaffirmed Sharon's immunity *ratione personae*, it is now necessary to analyse the broader (geo)political dynamics that conditioned this outcome. While diplomatic backlash surfaced during the judicial process, it did not merely exert external pressure but operated as an internal structuring force that fundamentally reshaped the legal environment. Thus, the failure to prosecute Sharon cannot be seen purely as a doctrinal matter but must be understood within a system shaped by geopolitical coercion, legal vulnerability,

and strategic containment. This phase constitutes a "smoking gun test" (Van Evera, 1997, p. 31) in the causal chain: the threat of diplomatic retaliation, through explicit U.S and Israeli pressure, triggered Belgian legislative rollback, dismantling the jurisdictional basis for prosecution. This confirms that political dynamics, not legal doctrine alone, were decisive in the case's collapse.

At the turn of the twenty-first century, the global legal landscape was shifting. The indictments of Augusto Pinochet and Slobodan Milošević, alongside the establishment of the ICC in 2002, signalled a renewed optimism about holding senior officials accountable for international crimes (Falk, 2004, p. 102). This momentum encouraged Belgian civil society to pursue justice against Sharon. Yet, the case quickly exposed the fragility of this emerging accountability regime when confronted with entrenched power asymmetries. Belgium's legal initiative, rather than expanding the frontier of universal jurisdiction, revealed its limits in the face of geopolitical backlash.

Despite his controversial record, Sharon was rapidly rehabilitated internationally, bolstered by U.S diplomatic support and a deferential global media environment (Falk, 2004, p. 101). This stood in stark contrast to the vilification of Yasser Arafat, who faced sharper condemnation despite weaker evidence. Such asymmetry illustrates how accountability under universal jurisdiction often mirrors geopolitical alignment more than legal principle, thereby affirming legal realism's critique that international law tends to shield the powerful while scrutinising the marginalised (Mitchell, 2017, p. 426). In Sharon's case, political solidarity effectively insulated him from legal exposure.

Geopolitical retaliation extended beyond rhetoric. After cases emerged under Belgium's universal jurisdiction law, including those targeting U.S. officials for Gulf War conduct, the U.S. escalated pressure. Secretary of Defence Donald Rumsfeld threatened to relocate NATO's headquarters and impose sanctions if politically sensitive cases proceeded (Falk, 2004, p. 104; Halberstam, 2003, p. 250). Israel similarly leveraged strategic alliances to discredit the proceedings as politically motivated (Tafadar, 2003, p. 4). These threats served as tools of jurisdictional discipline, illustrating how dominant states reconfigure the boundaries of permissible legal action.

HRW noted that Sharon's 2001 visit to the U.S. coincided with calls for investigation into the massacre. Yet the U.S. administration remained silent, despite former envoy Morris Draper's prior warnings that Phalangist involvement would likely lead to atrocities (HRW,

2001). Such silence underscored the U.S.'s complicity in shielding Sharon and contributed to the legal retreat in Belgium.

This situation embodies the "topos of threat" (Wodak & Meyer, 2001, p. 74), which frames legal initiatives as dangerous to international order and thus justifies political intervention. These coercive responses were not symbolic; they imposed real constraints, demonstrating the limits smaller states face when attempting legal innovation against powerful actors (Voeten, 2014, p. 305). Discursively, legal efforts were recoded as reckless, legitimizing Belgium's retreat.

In response, Belgium reformed its universal jurisdiction law, narrowing its scope and requiring a direct national link to alleged crimes, effectively ending cases like Sharon's (Court of Appeal, 2003, p. 1). These reforms were not neutral legal revisions but structurally induced concessions, revealing how international pressure can force domestic recalibration. This stage illustrates the second mechanism of strategic impunity: geopolitical insulation, whereby diplomatic threats restructure legal frameworks to shield elite actors. Belgium's retreat empirically affirms that universal jurisdiction is politically fragile and vulnerable to hegemonic interests.

From a constructivist perspective, the *Sharon* case underscores the selective internalisation of legal norms. Israel's invocation of universal jurisdiction in prosecuting Adolf Eichmann in 1961 contrasted with its rejection of those same principles when directed at Sharon (Falk, 2004, p. 103). Similarly, the U.S. promoted international accountability for adversaries like Saddam Hussein while opposing scrutiny of its own leaders (Falk, 2004, p. 109). These double standards reveal norm instrumentalisation, where legal principles are applied or dismissed based on power, not principle.

The case also reveals the limits of global civil society in contesting hegemonic rollback. As King-Irani observed, there was little transnational support for Belgium's legal efforts. Arab states in particular withheld diplomatic backing, leaving the process isolated (Falk, 2004, p. 106). This absence of solidarity magnified Belgium's vulnerability and accelerated its retreat, showing how fragile accountability efforts are without coordinated international defence.

From a discourse-analytic view, the courts' reliance on *Yerodia* and emphasis on sovereign dignity masked the political stakes. By drawing on the "topos of legality" (Wodak & Meyer, 2001, p. 74), the Court of Cassation presented legal deference as principled neutrality

rather than geopolitical submission (2003, p. 4). This rhetorical strategy reframed compliance with power as legal propriety, concealing the structural asymmetries embedded in the decision.

In conclusion, the *Sharon* case encapsulates this study's central claim: that universal jurisdiction faltered not due to internal legal limits, but because of its collision with entrenched geopolitical power. Sovereignty operated not as a passive shield but as an active, coercively enforced barrier to legal accountability. The Belgian judiciary did not resist these pressures; it adapted to them, redrawing the legal boundaries to reinforce existing hierarchies. The case thus demonstrates the structural limits of legal innovation in a world where dominant powers can selectively dismantle accountability efforts. Yet it also affirms the symbolic importance of such attempts in challenging the architecture of impunity.

V. III. III Institutional Constraints and the Mechanics of Judicial Inertia

The collapse of the Sharon prosecution reveals political and geopolitical pressures, but also internal institutional barriers that obstruct the implementation of universal jurisdiction, even in states that formally endorse it. Despite having one of the world's most progressive legal frameworks, Belgium's judiciary lacked the institutional insulation and procedural capacity to implement it. This illustrates the third mechanism of strategic impunity: domestic institutional weakness, where legal norms exist but remain unenforced due to administrative fragility and political vulnerability.

The *Sharon* case highlights how legal conservatism and bureaucratic complexity sabotage enforcement from within. This phase represents a "straw-in-the-wind test" (Van Evera, 1997, p. 31): institutional fragility alone didn't cause the failure, but it intensified vulnerability to external pressure, heightening the likelihood of collapse.

A major hurdle was Article 12 of the Belgian Code of Criminal Procedure, which conditioned admissibility on the physical presence of the accused (1878, p. 5). As affirmed by the Brussels Court of Appeal in 2002, Sharon's absence rendered the case inadmissible, despite universal jurisdiction provisions in the 1993 law (p. 10). Even after the Court of Cassation ruled in 2003 that presence was not required (pp. 5-6), no substantive progress followed. Instead, mounting pressure led to legislative changes that mandated a Belgian nexus for prosecution. When the Court dismissed the Sharon case in September 2003, it cited this revised criterion making a move that marked political rollback rather than judicial independence (p. 4).

The outcome reflects a pattern of institutional inertia: a convergence of rigid procedures, fragmented legislation, and judicial risk-aversion that shielded the courts from

fulfilling their legal mandate. Unlike *Yerodia*, which concluded in a clear - if disappointing - legal ruling, *Sharon*'s case unravelled gradually, through procedural retreat rather than definitive closure. From an institutionalist lens, this confirms that universal jurisdiction requires more than legal texts. It needs stable enforcement mechanisms, procedural alignment, and protection for judicial actors (Hovell & Malagodi, 2024, p. 1497). Without these, even bold statutes are eroded by both internal and external forces.

Furthermore, this episode reveals these institutional shortcomings are amplified when the defendant is a sitting official from a geopolitically aligned state. Belgian courts exhibited neither the administrative independence nor the political support necessary to withstand the pressures that accompanied the prosecution of a figure as politically sensitive as Ariel Sharon. Judicial institutions are not neutral arbiters; they are embedded in structures of political constraint, and in this case, that embeddedness proved decisive. Their vulnerability was systemic, not incidental, exposing how global disparities in power translate into unequal access to justice.

These limitations mirror a broader global retrenchment. By the early 2000s, the momentum of the 1990s toward prosecuting state leaders had reversed, particularly when accountability efforts challenged dominant powers (Falk, 2004, p. 108). The Sharon case thus reveals not only a domestic institutional failure, but also the deeper structural entrenchment of sovereign impunity within international law.

The Court of Cassation's final dismissal, stripped of substantive engagement and couched in neutral procedural terms, demonstrates the performative dimension of judicial inertia. From a discourse-analytic perspective, this reflects the use of the "topos of bureaucratic necessity" (Wodak & Meyer, 2001, p. 75), which reframes institutional disengagement as technical inevitability. Rather than acknowledge political constraints, the court presented its ruling as the mere application of revised legislative criteria. This rhetorical strategy concealed capitulation beneath a veneer of legal neutrality, transforming retreat into administrative compliance (Malone, 1986, pp. 43,73).

Ultimately, the *Sharon* case illustrates that impunity is sustained not just through overt political coercion, but through institutional design. Universal jurisdiction eroded not in formal repudiation but through cautious judges, procedural rigidity, and political exposure. This is the third mechanism of strategic impunity: passive failure embedded in fragile legal systems. Even

strong normative frameworks cannot succeed without enforcement architecture that resists pressure, aligns procedures, and incentivises action.

V. III. IV Forum Shopping and the Strategic Navigation of Immunity

Beyond legal doctrine and political pressure, the *Sharon* case was also shaped by how both plaintiffs and defendants strategically navigated jurisdiction; a process that exposes the deep structural asymmetries of the global justice system. As in *Yerodia*, plaintiffs deliberately selected a legal forum while defendants mounted countermeasures to avoid it. These were not incidental moves but central to the case's collapse. This constitutes a "test of the circle" (Van Evera, 1997, p. 31): forum strategy was a necessary condition for shaping the political and legal terrain on which the outcome depended. This strategic navigation of legal venues, enabled by asymmetries of power, illustrates how procedural opportunities in international law can be seized, neutralised, or reversed, depending on the actor's political leverage and institutional access.

The plaintiffs' decision to bring charges in Belgium was a deliberate act of forum shopping, prompted by the absence of viable alternatives. Human rights advocates identified Belgium's universal jurisdiction law as unusually expansive: unrestricted by territoriality or nationality and open to third-party complaints (Bookman, 2016, p. 582). At the time, few Western democracies allowed such reach, making Belgium an appealing forum to test the boundaries of legal accountability. This choice of Belgium as a legal forum reveals how legal activists leveraged normative openings in transnational law to compensate for domestic judicial inaction, converting universal jurisdiction from a theoretical principle into a practical legal tool, albeit temporarily.

The 2001 complaint was supported by precedents such as the Pinochet case, which had demonstrated that heads of state could be challenged through creative transnational legal tactics (Bianchi, 1999, pp. 237-238). Belgium's statute became a tool for expanding legal reach to sitting officials where traditional venues had failed. Yet this forum strategy provoked an immediate and coordinated counteroffensive. Israel and Sharon's legal team deployed reverse forum shopping: rather than contesting the claims through legal process, they exerted diplomatic pressure to delegitimise the proceedings and strategically avoided jurisdictions where accountability might be pursued (Tafadar, 2003, p. 4; Court of Appeal, 2002, p. 10; Pauwelyn & Salles, 2009, p. 83). Discursively, they drew on the "topos of sovereignty" and the "topos of external threat" (Wodak & Meyer, 2001, p. 75), casting Belgium's exercise of

universal jurisdiction as a hostile affront to international order. The Sharon case thus exemplifies the fourth mechanism of strategic impunity: forum manipulation, where plaintiffs pursue legal opportunity and defendants evade it through jurisdictional avoidance and geopolitical leverage.

As this legal struggle unfolded, Belgian courts found themselves increasingly constrained. Under mounting pressure, Belgium amended its law to require a national nexus, effectively ending pending cases without such links (Zuppi, 2003, p. 314). The Court of Cassation's final 2003 ruling, which upheld the federal prosecutor's recommendation to dismiss the *Sharon* case, marked the formal conclusion of this legal retreat (p. 4). The dismantling of Belgium's jurisdictional reach illustrates how forum shopping, when challenged by geopolitical pressure, can lead not only to case dismissal but to legislative backsliding.

Forum shopping, then, is not peripheral but central to legal and political contestation in international law. Plaintiffs often resort to foreign jurisdictions out of necessity, while powerful officials use both legal doctrine and informal influence to avoid scrutiny (Brilmayer & Seidell, 2019, p. 2036). From a structural perspective, this dynamic reveals the international legal system's profound inequalities. Justice remains contingent on political alliances, material resources, and the willingness of national systems to resist pressure. What is revealed here is not a failure of universal jurisdiction per se, but its capture by geopolitical leverage, transforming legal strategy into an extension of political contestation.

This instrumentalisation affects both sides: victims and civil society actors invoke universal jurisdiction to bypass blocked domestic channels, while state officials weaponise sovereignty to shield themselves. In the *Sharon* case, this tactical battle over jurisdiction mirrored a broader systemic tension between human rights universalism and entrenched state power. Despite the courage of survivors and advocates, the forced recalibration of Belgium's law under direct diplomatic threat exposed the fragility of using domestic courts as global justice substitutes (Falk, 2004, p. 108; Malone, 1986, pp. 73-74).

Ultimately, this episode underscores how forum navigation can both enable and disable accountability. It illustrates that unless the structural asymmetries allowing some actors to forum-shop for justice while others shop for impunity are addressed, the promise of universal jurisdiction will remain aspirational.

As in the *Yerodia* case, victims were both central and systematically sidelined in the proceedings against Sharon. The legal action was initiated by 23 Palestinian and Lebanese survivors of the Sabra and Shatila massacre, who turned to Belgium not out of convenience but necessity, as they were blocked by the absence of viable legal remedies in Lebanon, Israel, or international courts (Tafadar, 2003, p. 5). Their complaint asserted agency and sought to inscribe atrocity into an international legal narrative grounded in command responsibility, Geneva Conventions, CIL and IHL.

This moment represents a "smoking gun test", making visible how the procedural marginalization of victims was not an accidental omission but a structural effect of legal systems that deprioritise moral urgency in politically sensitive cases (Van Evera, 1997, p. 31). Their early procedural exclusion confirms the thesis that institutional priorities routinely suppress victim narratives when they disrupt geopolitical equilibrium.

Despite credible evidence, including the Kahan Commission's attribution of indirect responsibility to Sharon, the victims were quickly displaced from the legal centre. Judicial focus pivoted to procedural questions: did Belgian law require the accused's presence? was Belgium competent under amended statutes? could diplomatic immunity override jurisdiction? (Court of Appeal, 2002, pp. 6-10). These technical filters silenced claims that implicated the core of IHL. The reduction of victim claims to background noise in procedural debate underscores how institutional logics suppress moral urgency in pursuit of juridical containment.

Many testimonies - detailing executions, mutilations, and mass sexual violence - were *never* heard in court (HRW, 2001). This absence was not circumstantial but embedded in a procedural model that privileged legal restraint over restorative engagement. As HRW observed, denying survivors even symbolic recognition compounded their harm (2014, p. 1). This reveals the fifth mechanism of strategic impunity: discursive legitimation, where silence is framed as neutrality and law's inaction becomes its shield. By omitting victim testimony, Belgian courts reconstituted legal propriety in a way that erased the atrocity.

From the perspective of transitional and restorative justice, this procedural insulation from victims' narratives marks a deep normative failure. Victim-centred justice frameworks emphasise not only accountability but also recognition, participation, and narrative restoration (Fischer, 2011, p. 408). The *Sharon* case, however, effectively transformed victims into

procedural objects. Their trauma was filtered through legal abstraction, subordinated to jurisdictional thresholds and sovereign sensitivities.

Restorative paradigms stress that justice includes acknowledgment (McCold & Wachtel, 2003, p. 2). But Belgium's judiciary never created space to hear these narratives. The Court of Cassation's final decision, based solely on amended presence criteria, offered no engagement with the plaintiffs' claims (2003, p. 4). No effort was made to affirm their suffering or even recognise the legitimacy of their appeal. This exclusion reflected a legal culture more committed to insulating itself from political fallout than enabling social healing.

Structurally, the victims' marginalisation was systemic. Universal jurisdiction claims, while framed around atrocity accountability, replicated the very hierarchies they were meant to challenge. In cases involving sitting officials, victim voices end up subordinated to institutional stability, sovereign immunity, and diplomatic relations (Falk, 2004, p. 108). From a discourse-analytic lens, this silencing relied on the "topos of bureaucratic objectivity" (Wodak & Meyer, 2001, p. 74), casting disengagement as legal neutrality rather than political erasure. This rhetorical strategy masked the deliberate omission of survivors as mere consequence of formal procedure.

Moreover, the *Sharon* case exposes the gap between the emancipatory promise of universal jurisdiction and its political reality. While celebrated as a tool for justice when national systems fail, it often delivers symbolic inclusion only to structurally exclude those it purports to empower. Here, survivors' attempt to speak through law was quashed by the very system meant to enable them.

This disconnect has serious implications. When victims become procedural footnotes and their narratives are erased to preserve sovereign sensitivities, the legitimacy of international justice is compromised. Legal systems that exclude victims undercut their own normative foundations. As transitional justice warns, processes that ignore survivors risk reinforcing rather than resolving cycles of disenfranchisement (Fischer, 2011, p. 412).

In sum, the *Sharon* case demonstrates that universal jurisdiction without victim-centred mechanisms becomes hollow. The legal structure that promised moral clarity instead enacted rhetorical silence, prioritizing geopolitical restraint over truth-telling and redress. The discursive framing of law as neutral became the final shield of impunity.

Building on the comparative insights of *Yerodia*, this prosecution served as a deeper empirical test of this thesis's central claim: that strategic impunity is not accidental but systematically produced through legal design, political coercion, and institutional fragility. Whereas *Yerodia* exposed the codification of immunity at the international level, *Sharon* revealed how national courts can pre-emptively collapse under geopolitical and procedural strain foreclosing justice before it even reaches legal deliberation.

Each analytical dimension confirmed a distinct mechanism: legal immunity transformed procedural status into an impermeable shield; geopolitical dynamics compelled legislative retreat; institutional constraints enabled paralysis through procedural inertia; forum navigation allowed defendants to evade scrutiny while plaintiffs were procedurally blocked; and discursive erasure framed victim exclusion as technical necessity rather than political choice.

Together, these mechanisms operated not in isolation, but as a tightly entangled system. Their interplay confirms that strategic impunity functions through the convergence of mutually reinforcing constraints, not any single barrier. In this web of pressures, forum shopping emerged as the mediating process: it exposed structural inequality, translated geopolitical leverage into procedural containment, and ultimately determined whether law would serve justice or shield power.

The *Sharon* case thus did more than illustrate legal failure; it exposed how the architecture of universal jurisdiction can be inverted to maintain impunity when deployed against sitting officials. While victims reached outward in pursuit of legal remedy, the system folded inward, protecting institutional order over legal principle.

To support this analysis, Table B.2[9] outlines the rhetorical topoi deployed to reframe justice claims as legal overreach, while Table A.2[10] applies Van Evera's typology to trace the sequential logic of collapse. Together, they demonstrate how this case operationalises strategic impunity across both discursive and causal dimensions - not as a deviation from legal order, but as its deliberate production.

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[9] see Appendix

[10] see Appendix

V. IV Testing the Limits of Universal Jurisdiction: Lessons from Yerodia and Sharon

The analysis of the *Yerodia* and *Sharon* cases, although unfolding in distinct legal and political arenas, converged on a shared structural outcome: the failure of universal jurisdiction to impose accountability on sitting officials. Their trajectories reveal how legal, political, institutional, and strategic mechanisms align across contexts to reinforce strategic impunity, as mapped in the causal model introduced earlier (Figure 1).

Legal formalism served as the initial barrier in both cases. In *Yerodia*, the ICJ reaffirmed immunity *ratione personae* as customary international law, insulating sitting officials regardless of alleged crimes. *Sharon*'s case echoed this pattern domestically: Belgian courts invoked immunity as an absolute procedural shield, bypassing compelling evidence, such as the Kahan Commission's findings and reports by HRW. Unlike *Yerodia*, where legal debate engaged with evolving international norms, the *Sharon* case avoided substance altogether. In both instances, formalist reasoning legitimised state sovereignty over accountability.

Political pressure differed in form but not in function. In *Yerodia*, postcolonial sensitivities constrained legal innovation; the ICJ's ruling aligned with Global South resistance to perceived neocolonialism. In *Sharon*, the U.S. and Israel deployed direct coercion, threatening diplomatic fallout and economic consequences. The result was the same: a retreat from legal ambition under political duress. Notably, the U.S. response to Sharon's indictment, despite advance warnings of atrocity, demonstrated how strategic alliances override documented risk and suppress legal action.

Institutional constraints compounded these pressures. The ICJ's mandate to adjudicate state-to-state disputes structurally limited its capacity to engage in criminal accountability. Belgian courts, while theoretically empowered, lacked the procedural coherence and political resilience to enforce jurisdiction. In both cases, institutional design operated not as neutral architecture but as a mechanism of selective enforcement.

Forum shopping acted as a mediating variable. Belgium sought to expand legal reach through its universal jurisdiction law, but both the DRC and Israel countered this manoeuvre: the former by moving the case to the ICJ; the latter by reshaping Belgian law through diplomatic pressure. These moves show how stronger actors don't just navigate legal forums; they restructure them. For plaintiffs, access to justice depended on legal windows; for defendants, impunity relied on their ability to close them.

Lastly, victim marginalisation emerged as a discursive constant. In both *Yerodia* and *Sharon*, courts ignored testimonies and humanitarian claims, focusing instead on jurisdictional technicalities. This rhetorical erasure reframed atrocity as legal abstraction. In *Sharon*, this was particularly stark: detailed survivor accounts of executions and mutilations never entered the courtroom. Legal discourse, under the guise of neutrality, effaced the very harm it purported to address.

The table below maps these mechanisms across both cases highlighting where their impact diverged most significantly.

Mechanism	Yerodia (ICJ)	Sharon (Belgium)
Legal Formalism	ICJ reaffirmed immunity as customary law, codifying it as universal norm	Courts avoided substance, reaffirmed immunity as automatic and non-negotiable
Geopolitical Pressure	Indirect postcolonial pressures shaped conservative legal reasoning	Direct threats from U.S/Israel reshaped Belgian law and curtailed jurisdiction
Institutional Inertia	ICJ's inter-state mandate precluded engagement with individual accountability	Domestic courts lacked resilience, reversed course under pressure
Forum Manipulation	DRC shifted venue to ICJ (reverse forum shopping)	Israel pressured Belgium to limit its own jurisdictional reach
Victim Marginalization	No engagement with victims; judgment framed solely around state interests	Victims' testimonies excluded entirely; atrocity erased from legal record
Strategic Impunity (as Theory)	Codified sovereign power via legal doctrine and rhetorical legitimation	Operationalised impunity through procedural erosion, pressure, and silencing

Although these mechanisms were common to both cases, their relative weight and interaction varied. *Yerodia* was defined by doctrinal conservatism and institutional constraints; while *Sharon* was shaped by geopolitical coercion, institutional vulnerability, and discursive erasure. This comparison refines the thesis's model: strategic impunity is context-sensitive, adapting its form to the legal, political, and institutional environment.

Each case offered a distinct empirical test. *Yerodia* demonstrated how international adjudication can entrench impunity by converting contested norms into orthodox doctrine, and *Sharon* revealed how domestic legal systems, even when normatively ambitious, collapse under geopolitical weight before legal principles are debated. In both, victim exclusion was not incidental but structurally embedded.

The model of strategic impunity is not static. Its mechanisms interact dynamically: legal formalism is driven by political coercion; institutional inertia is consequential only when enforcement is viable; discursive erasure becomes effective when victims threaten geopolitical interests. These insights underscore the sixth mechanism: impunity as an adaptive political function rather than legal failure.

In sum, although *Yerodia* and *Sharon* moved along different procedural paths; one through international adjudication, the other through national litigation and legislative rollback. Together they illustrate a shared causal architecture: legal norms (immunity) upheld state sovereignty; political pressures (ranging from normative backlash to direct coercive threats) systematically constrained judicial independence; institutional weaknesses limited the courts' ability to innovate; strategic forum selection advantaged powerful states; victims were systematically displaced from the legal narrative; and strategic impunity operated as an overarching political logic, ensuring legal tools, institutional behaviour, and discursive framing aligned to protect elites from justice.

These converging forces, though varying in configuration, produced the same structural outcome: the systemic failure of universal jurisdiction to hold sitting officials accountable. The juxtaposition of these two cases shows that impunity is not only persistent, but flexible and compensatory: when one mechanism falters, others compensate. When law is not enough, politics intervenes; when politics is constrained, institutions absorb pressure; and when institutional manoeuvring stalls, the legal narrative is reframed to erase the victims. This adaptability makes strategic impunity durable and difficult to dismantle, unless reforms simultaneously target all six vectors.

Figure 2 below visually synthesises this convergence, mapping how legal formalism, political coercion, institutional fragility, forum asymmetries, discursive exclusion, and strategic impunity interact to produce accountability failure. The result is not just a typology, but a multidimensional account of how international law is strategically leveraged to protect, rather than prosecute, political power.

Figure 2

Figure 2: Strategic Impunity as Causal Mechanism in the Failure of Universal Jurisdiction
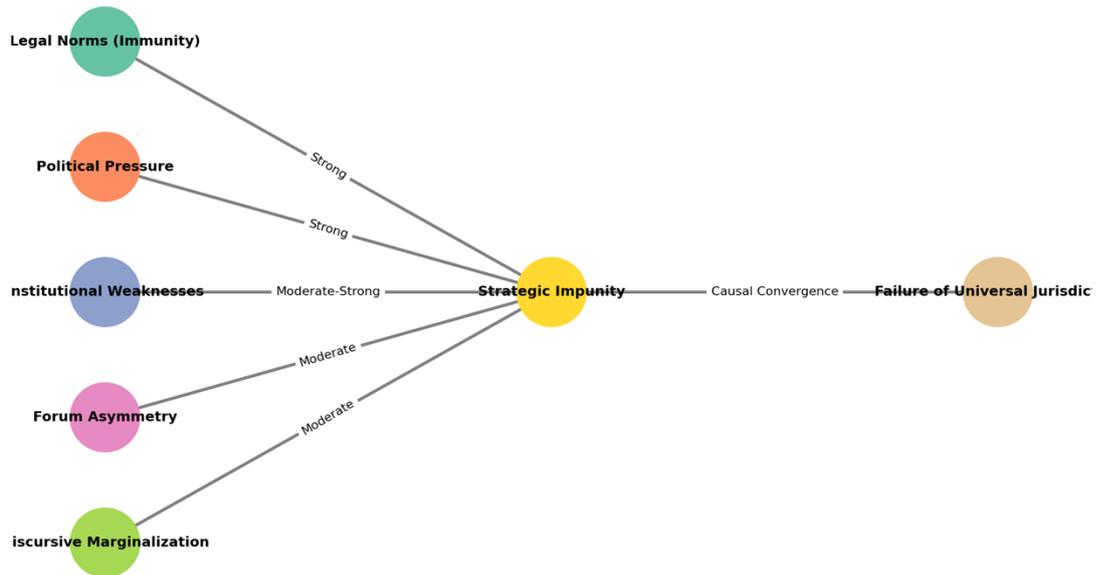
VI. Conclusion

The empirical and theoretical insights developed in this thesis compel a fundamental reconsideration of how universal jurisdiction operates in the international legal order. While the doctrine aspires to transcend sovereignty in the name of accountability, its implementation remains structurally subordinated to the very logics it seeks to counteract. This study has demonstrated that the failure to prosecute sitting officials under universal jurisdiction is not an episodic weakness but a patterned outcome, produced by strategically entangled mechanisms: legal formalism, geopolitical insulation, institutional fragility, discursive marginalisation, and forum manipulation. These coalesce into what this thesis conceptualises as *strategic impunity*: a systemic configuration through which states, courts, and legal doctrines collaborate, often implicitly, to insulate political elites from accountability under the guise of legal necessity.

This finding provides a clear answer to the central research question: *Why does universal jurisdiction fail to hold sitting officials accountable at both the international and national levels?* The answer lies in the multi-layered and mutually reinforcing structure of obstruction. It is not doctrinal ambiguity or judicial error that blocks prosecution, but the deliberate orchestration of legal, political, and institutional mechanisms that are designed, or at least function, to preserve sovereign discretion. Far from being anomalies, the *Yerodia* and *Sharon* cases exemplify how immunity operates not as a legal exception, but as a default condition embedded in the architecture of international legal order itself.

This conclusion also challenges dominant assumptions in international (criminal) law scholarship. Much of the existing literature continues to treat immunity as a legal anomaly, or to cast universal jurisdiction as a normatively settled principle undermined only by non-compliance. Instead, this thesis advances a realist-constructivist institutional critique, arguing that immunity functions not as a doctrinal anomaly, but as a politically insulated legal technology that is reproduced through institutional design, discursive legitimacy, and jurisdictional navigation. The failure of accountability is thus not a breakdown of law, but a manifestation of how law itself is structured to absorb and defer political pressure. In this sense, universal jurisdiction is not merely constrained by geopolitics; it is geopolitically constituted.

For international legal theory, these findings reinforce the inadequacy of norm-centric accounts that isolate legal ideals from enforcement structures. Universal jurisdiction, as currently framed, rests on a juridical imagination that overstates the autonomy of legal institutions and underestimates the resilience of sovereignty. To the extent that accountability

norms do emerge, they are selectively operationalised and shaped less by their legal coherence than by their congruence with power. This thesis thus calls for a paradigmatic shift: from analysing universal jurisdiction as a static doctrinal entitlement, to interrogating it as a site of strategic contestation embedded within asymmetrical political economies of law.

In terms of policy and reform, the implications are stark. Legal innovation alone, whether through domestic statutes or treaty reinterpretation, is insufficient if not accompanied by institutional recalibration. Without enforcement infrastructures that insulate judicial bodies from diplomatic coercion, or normative frameworks that centralise victim agency, universal jurisdiction risks becoming a vessel of symbolic legality rather than substantive justice. Efforts to narrow immunity doctrines, while normatively commendable, must contend with the institutional and geopolitical ecosystems that render such reforms inert in practice. Accordingly, future strategies must move *beyond* fragmented legal approaches to envision holistic models of transnational accountability; ones that redistribute jurisdictional authority, democratise victim participation, and embed enforcement within more politically autonomous structures. This raises a deeper question: if strategic impunity is a systemic outcome, rather than a legal malfunction, can we meaningfully expect different results from the current architecture of international justice? Or must we begin to imagine new frameworks beyond the state-centric legal model altogether?

Against this backdrop of systemic critique, important limitations remain. The study focused primarily on Global North legal systems, particularly Belgium, and examined only failed attempts to prosecute *sitting* officials. While these cases offered high explanatory value, they do not capture possible variation in jurisdictions from the Global South, nor do they assess whether successful prosecutions follow different causal patterns or benefit from unique structural alignments. Similarly, the thesis did not fully address how hybrid courts, regional mechanisms, or newer universal jurisdiction cases, such as those in Germany against Syrian officials, might alter or resist the dynamics of strategic impunity.

These limitations open several future research directions. Comparative analyses of universal jurisdiction efforts in Latin America, sub-Saharan Africa, or Southeast Asia could test whether different geopolitical positions yield alternative accountability dynamics. Longitudinal studies on evolving forum-shopping strategies, especially by victims and diaspora communities, would deepen understanding of how agency operates within structural constraints. Further, targeted investigation into hybrid mechanisms, such as the Kosovo

Specialist Chambers or the Extraordinary Chambers in the Courts of Cambodia, could clarify whether semi-autonomous tribunals possess greater institutional insulation against geopolitical pressure. Finally, research on the legal design of post-2020 national statutes on universal jurisdiction, especially those including explicit victim participation clauses, may reveal whether more democratic procedural architectures can challenge impunity from below.

In the end, if universal jurisdiction is to serve its foundational purpose, preventing impunity for crimes that offend the conscience of humanity, it must be reimagined not simply as law against the state, but as law capable of confronting the state's embedded authority within global legal processes. Absent this reconfiguration, the doctrine will remain structurally suspended between aspiration and abandonment.

"Every push for justice at the global level begins with law — and ends with sovereignty."

Unless the architecture of that sovereignty is systematically contested, justice will continue to arrive late, if at all.

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Appendix

Table 1

Case	Year	Jurisdiction	Alleged crime	Legal/Political outcome	Key reasons for failure	Sitting official at the time?
Yerodia Case	2000	Belgium (ICJ ruling)	Incitement to genocide	ICJ upheld immunity for a sitting foreign minister	Strict legal interpretation of immunity *rationae personae*	✓
Spain's Attempted Prosecution of Ariel Sharon	2003	Spain	Crimes against humanity (Sabra and Shatila massacre)	Case blocked due to political and diplomatic pressure	Geopolitical constraints obstructed prosecution	✓
Pinochet Case	1998-2000	UK, Spain	Crimes against humanity, torture	UK ruled partial immunity but released Pinochet on medical grounds	Diplomatic negotiations and political pressure	X
Hissène Habré Case	2000	Belgium, Senegal	Crimes against humanity, torture	Senegal refused to prosecute until compelled by the African Union & ICJ	Political reluctance and legal barriers	X
Argentina's Investigation of Franco-era Crimes	2010	Argentina (for Spain)	Genocide, forced disappearances, torture	Spain refused to cooperate, preventing prosecution	Lack of international cooperation and political resistance	X
France's Rwandan Genocide Cases	Ongoing	France	Genocide, war crimes	Mixed success; selective prosecutions,	Jurisdictional limitations and	X

				diplomatic challenges	geopolitical constraints	
Germany's Prosecution of Syrian Officials	Ongoing	Germany	Genocide, war crimes	Prosecution successful, but only after extradition	Required extraterritorial capture, not universal jurisdiction alone	X
China's Arrest Warrants for Taiwanese Officials	2003	China	Secession, political crimes	Warrants issues but no enforcement due to political conflict	Politically motivated use of jurisdiction	✓

Table 2

Dimension	Yerodia Case (2000)	Sharon Case (2003)
Jurisdiction Attempted By	Belgium (under universal jurisdiction law)	Belgium (under universal jurisdiction law)
Legal Basis for Prosecution	Belgian 1993/1999 Law on Grave Breaches of IHL	Same as left
Accused	Abdoulaye Yerodia Ndombasi (Foreign Minister of DRC)	Ariel Sharon (Prime Minister of Israel)
Alleged Crimes	Incitement to genocide, war crimes	War crimes, crimes against humanity
Legal Immunity Invoked	Immunity ratione personae affirmed by ICJ as procedural and absolute	Immunity applied through Belgian courts referencing ICJ precedent post-facto
Outcome	Case dismissed by ICJ on grounds of immunity	Case dismissed by Belgian Court; law subsequently amended under political pressure
Key Legal Mechanism Blocking UJ	ICJ's assertion that sitting officials have full immunity in foreign courts	Belgian courts and legislature defaulted to ICJ logic, reversing prior statutory logic
Political Dynamics	Multilateral state support for Congo's sovereignty claim	Direct U.S-Israeli diplomatic threats, including NATO pressure
Institutional Response	ICJ maintained formal neutrality but enforced sovereignty-preserving legalism	Belgian judiciary weakened by political context; legislature amended law retroactively
Victim Involvement	Excluded from ICJ proceedings; no reference in judgment	Victims filed complaint but were sidelined as political stakes rose
Impact on Universal Jurisdiction	Reaffirmed immunity at global level; chilled activist prosecutions in Europe	Catalysed dismantling of Belgium's universal jurisdiction experiment

Table B. 1[11]

Rhetorical Strategy	Topos Used	Source (ICJ ruling / Scholarly literature)	Discourse Function	Power Effect
Immunity framed as a procedural safeguard	Topos of legality	ICJ, 2000, paras 54-58	**Example:** The Court's repeated emphasis that immunity "does not mean impunity" (para. 60) repositions the ruling as legal formalism rather than obstruction.	Neutralizes the political implications of blocking prosecution
Emphasis on diplomatic order	Topos of threat / stability	Wodak & Meyer, 2001, p. 74	**Example:** The ICJ warns that breaching immunity would disrupt "the conduct of international relations," invoking systemic harm.	Presents universal jurisdiction as a destabilizing risk to international relations
Avoidance of victim language	Topos of omission / silence	Full ICJ ruling	**Example:** The judgment contains no mention of victims, harm, or incitement's social impact, despite the nature of the alleged crimes.	Erases suffering and removes human stakes from legal analysis
Framing Belgium's action as exceptional	Topos of national dignity	Pauwelyn & Salles, 2009, p. 83	**Example:** ICJ criticizes Belgium's universal jurisdiction law as lacking "any connection" to Belgium (para. 71), subtly depicting it as intrusive.	Frames universal jurisdiction as neo-imperial overreach against the Global South

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[11] This table applies the discourse-historical approach in critical discourse analysis (Wodak & Meyer, 2001) to categorize the rhetorical strategies used by the ICJ to legitimize immunity and marginalize accountability. It identifies how topoi such as legality, threat, and national dignity were deployed to frame Belgium's actions as disruptive and Yerodia's immunity as normatively necessary. By analyzing discursive omissions and legitimations, the table reveals how legal reasoning reinforced dominant power structures under the guise of neutrality. This complements the process tracing analysis by showing how the decision was made ideologically sustainable.

| Preference for state-to-state process | Topos of institutional propriety | ICJ design & judgment scope | **Example:** The Court states it is "not called upon to examine the charges against Mr. Yerodia" (para. 48), deferring to inter-state procedure. | Reinforces state sovereignty as the default legal authority |

Table B.2[12]

Rhetorical Strategy	Topos Used	Source (Court Decision / Scholarly literature)	Discourse Function	Power Effect
Immunity framed as legal inevitability	Topos of legality	Cour de Cassation, 2003, pp. 7-8	Emphasizes that immunity is procedural, not political, downplaying judicial agency.	Shield sovereign officials by reframing immunity as a depersonalized technical rule.
Diplomatic pressure as defence of international stability	Topos of threat / stability	Wodak & Meyer, 2001, p. 74; Falk, 2004, p. 104	Frames judicial accountability attempts as dangerous disruptions to the international order.	Normalizes the rollback of universal jurisdiction in favour of diplomatic priorities.
Silencing of victim narratives	Topos of bureaucratic objectivity	Cour de Cassation, 2003, p. 4; Cour d'appel, 2003, p. 1	Procedural formalism omits acknowledgment of harm suffered by victims.	Depersonalizes atrocity, legitimizing procedural abstention and insulating officials from moral scrutiny.
Belgium's legal activism portrayed as overreach	Topos of national sovereignty	Pauwelyn & Salles, 2009, p. 83	Critiques Belgium's broad universal jurisdiction statute as an excessive assertion of jurisdiction.	Depicts Belgium as violating proper inter-state boundaries, undermining legitimacy of accountability efforts.
Deference to inter-state mechanisms over direct justice	Topos of institutional propriety	Cour de Cassation, 2003, p. 7	Reaffirms that only states or international tribunals, not foreign national courts, can adjudicate sovereign officials.	Restores the primacy of traditional sovereignty structures over emerging human rights norms.

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[12] This table synthesises key rhetorical strategies identified through critical discourse analysis of court decisions and scholarly literature relevant to the Sharon case. Each entry illustrates how specific topoi function discursively to legitimize or neutralize legal and political claims about universal jurisdiction, while producing power effects that reinforce or defer accountability. Analytical categories draw on the discourse-historical approach (Wodak & Meyer, 2001) and reflect the author's interpretive coding of source materials.

Table A. 1[13]

Causal Step	Type of Test	Evidence	Explanation	Diagnostic Interpretation
Belgium issues arrest warrant for Yerodia under universal jurisdiction law	Smoking Gun	Belgium's issuance of arrest warrant despite lack of territorial or national nexus	Demonstrates proactive application of universal jurisdiction, directly initiating the legal challenge.	This is strong evidence that the legal basis for universal jurisdiction was asserted independently of material links, supporting the hypothesis that legal innovation was attempted. It is not necessary for the broader hypothesis but confirms that proactive legal mechanisms were in place before being obstructed.
DRC challenges Belgium by initiating ICJ proceedings	Hoop Test	DRC brings the case to ICJ citing violation of diplomatic immunity	Necessary step showing state interest in protecting high-level officials through international legal mechanisms.	Passing a hoop test indicates that this step is a necessary condition in the chain of obstruction. The judicial avenue to reaffirm sovereign immunity would not have opened without this move. It does not prove the hypothesis but must occur for the obstruction pathway to proceed.

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[13] This table synthesises the causal steps in the Yerodia case using Van Evera's typology of process tracing tests. Each event is evaluated for its diagnostic strength in supporting the overarching hypothesis: that universal jurisdiction is systematically obstructed through a convergence of legal, political, institutional, and discursive mechanisms. By consolidating the causal logic underpinning the analysis, the table shows that legal outcomes in the Yerodia case were not incidental but systematically produced by interlocking dynamics. This structured comparison operationalizes abstract theoretical claims and anchors them in observable, sequential developments.

ICJ affirms absolute immunity rationae personae	Doubly Decisive	ICJ ruling emphasizing procedural immunity irrespective of crime severity (ICJ, paras. 51–61)	Confirms the hypothesis that sovereign immunity trumps accountability; rules out Belgium's legal position.	This is very strong evidence — it simultaneously confirms the central hypothesis (immunity blocks prosecution) and rules out the alternative (universal jurisdiction being enforceable against sitting officials).
Reinforcement of sovereignty and dismissal of international criminal law advances	Smoking Gun	ICJ refusal to apply ICTY/ICTR/Rome Statute precedents	Strong evidence of conservative legal interpretation favouring state sovereignty over evolving norms.	This confirms that international legal institutions prioritized stability and precedent over evolving interpretations of justice, reinforcing the hypothesis that entrenched norms structurally block accountability. Not necessary but highly supportive.
Geopolitical backlash contributes to Belgian legislative retreat	Hoop Test	Belgium repeals universal jurisdiction law under diplomatic pressure from US/Israel	Illustrates the necessary mid-sequence effect of political backlash constraining legal action.	A necessary condition to demonstrate how political pressure discourages legal innovation. On its own, it doesn't confirm obstruction, but its presence is needed for the political dimension of the causal
Discursive framing reinforces procedural over moral considerations	Straw-in-the-Wind	Use of topos of legality and omission of victim language in ICJ judgment	Suggests an ideological undercurrent in ICJ's reasoning, consistent with the broader hypothesis.	This weakly supports the hypothesis, suggesting a discursive environment that favours legal formalism over moral accountability. It is neither necessary nor sufficient

				but provides context to interpret institutional behaviour.
Institutional weakness and lack of enforcement capacity	Smoking Gun	National courts lack the means to enforce an arrest without the suspect's presence	Directly supports a claim of structural barriers to universal jurisdiction enforcement.	Strong supporting evidence that enforcement failures are structurally built into national judicial systems. Not a required condition but affirms a key part of the mechanism — the inability to act even when law permits it.
Forum shopping by DRC leads to favourable ICJ outcome	Hoop Test	DRC selects ICJ to shift case framing from criminal responsibility to state immunity	Illustrates strategic legal behaviour and supports a causal link to obstruction of accountability.	Necessary but not sufficient — this strategic move was essential for redirecting the legal discourse away from accountability. It shows how actors manipulate institutional contexts to influence legal outcomes.
Marginalization of victims in legal discourse	Straw-in-the-wind	ICJ ruling lacks mention of victims or restorative justice	Suggests discursive exclusion reinforcing a state-centric approach to justice.	Provides weak support by highlighting normative deficiencies. It does not establish causation but reveals a background condition that legitimizes procedural over moral frameworks.

Table A.2[14]

Causal Step	Type of Test	Evidence	Explanation	Diagnostic Interpretation
Palestinian victims initiate complaint under Belgium's universal jurisdiction law	Smoking Gun	Filing of criminal complaint without territorial or national nexus (Cour d'appel, 2002, p. 2)	Demonstrates an activist effort to apply universal jurisdiction expansively, initiating the legal challenge independently of national links.	Strong evidence that Belgium's law enabled the proactive invocation of universal jurisdiction against high-level officials. It is not strictly necessary, but it provides robust support for the hypothesis of attempted legal innovation.
Israeli diplomatic pressure against Belgium escalates	Hoop Test	Threats by Israeli officials and U.S warnings regarding NATO (Falk, 2004, p. 104)	Necessary step demonstrating external political pressure mobilized against the prosecution.	A required mid-sequence event showing that geopolitical retaliation constrained judicial independence.
Belgian courts reaffirm immunity ratione personae	Doubly Decisive	Court of Cassation decision affirming absolute immunity for Sharon (Cour de Cassation, 2003, pp. 7-8)	Confirms that sovereign immunity blocked accountability; rejects plaintiffs' arguments based on jus cogens and international crimes exceptions.	Very strong evidence which confirms the main hypothesis and rejects alternatives regarding the enforceability of universal jurisdiction against sitting officials.
Failure to harmonize procedural and substantive law (presence requirement issue)	Smoking Gun	Appeals court reliance on presence rule despite universal jurisdiction law (Cour d'appel, 2002, p. 10)	This indicates that procedural obstacles internally undermined universal jurisdiction enforcement, independently of external pressure.	Strong support for the claim that national judicial architecture was structurally inadequate to sustain accountability efforts.
Belgian legislative reform restricts universal jurisdiction scope	Hoop Test	2003 amendments requiring Belgian nexus for prosecution (Cour d'appel, 2003, p. 1)	Necessary political-legislative step triggered by geopolitical pressure, structurally terminating the case.	Passing this step is essential to showing that political backlash led to legal retreat.

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[14] This table applies process tracing methodology using four canonical test types (smoking gun, hoop test, doubly decisive, and straw-in-the-wind) to evaluate the causal logic of strategic impunity in the Sharon case. Each row represents a distinct causal step in the hypothesized accountability failure. Tests are based on Bayesian reasoning and adapted from qualitative research design literature. The diagnostic strength of each test varies, offering cumulative rather than deterministic confirmation. Sources include both judicial rulings and scholarly analysis.

Forum shopping and reverse forum shopping dynamics	Straw-in-the-Wind	Plaintiffs choose Belgium; Sharon avoids risky jurisdictions (Cour d'appel, p. 2, 10; Pauwelyn & Salles, 2009, p. 83)	Suggests that strategic behaviour by both sides shaped jurisdictional contestation but does not directly determine the outcome.	Weakly supports the broader causal chain by illustrating the environmental conditions of strategic legal behaviour.
Marginalization of victims in Belgian rulings	Straw-in-the-Wind	Absence of engagement with victim narratives in judicial decisions (Cour de Cassation, 2003, p. 4)	Shows discursive sidelining of victims, aligning with proceduralism over restorative justice.	Provides weak support. It is not decisive on its own but reveals ideological orientation of legal discourse favouring state-centric norms.