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Introduction

The Israeli-Palestinian conflict still stands as one of the most protracted and most contentious geopolitical disputes of modern times. Rooted in historical violations, competing national aspirations and complex international dynamics, the conflict has defied resolution despite multiple peace initiatives.

Amid this scenario, an especially involved actor is the European Union. The European Union has acted as an advocate for peace, stability and respect for international law, with multiple initiatives spanning through political dialogue, financial assistance, humanitarian aid and human rights advocacy. Its involvement highlights its commitment to fostering a peaceful resolution.

In recent times, the conflict has intensified, raising questions about the EU's actual influence, if any, and the consistency it displays in upholding the principles it claims to stand for. Although the European Union insists on supporting a two-state solution and condemns Israeli settlement expansion and Israel's violation of human rights in the Occupied Palestinian Territories, it seems to lack the instruments and the assertiveness to exert any influence on the matter.

The aim of this study is to critically evaluate the EU's involvement in the dispute, to gauge the effectiveness of its measures, and to identify possible ways for it to play a more significant role. This thesis incorporates the analysis of international paradigms, conflict resolution and European foreign policy. Moreover, this study works with legal frameworks, especially international humanitarian law and human rights law, to engage with the question of the EU's actual commitments in these areas.

This study uses qualitative methods, such as policy and discourse analysis, along with case studies, to understand the European Union's role in the Israeli-Palestinian conflict. The principal research question is: how can the EU exert a stronger influence in protecting human rights in the Occupied Palestinian Territories by activating the humanitarian clause of its EU-Israel Association Agreement? Primary sources include official EU statements, agreements, and resolutions, while secondary sources consist of academic literature, reports from international organizations and expert analyses. Moreover, comparative

analyses are conducted to assess the EU's engagement with the conflict relative to other international actors, such as the United Nations and the United States.

The human rights situation in the Occupied Palestinian Territories and the effects of international law are the subjects of examination in the first chapter of this work. The second chapter provides a detailed analysis of the EU's political, economic, and humanitarian relationships with Israel and Palestine, focusing on the specific policies in the Occupied Palestinian Territories, the challenges and strategies of the EU's intervention. The third chapter pays particular attention to the EU-Israel Association Agreement and its humanitarian clause, exploring potential avenues for new applications and drawing comparisons with the EU's humanitarian commitments in other trade agreements. The fourth chapter provides a set of conclusions and recommendations for enhancing the EU's role in conflict resolution and for ensuring stronger enforcement of commitments to human rights.

This thesis identifies a legal vacuum in the EU's policy framework, which raises fundamental questions about the EU's leverage and capacity to bring about meaningful and effective human rights protections for people in danger in conflict settings. The study provides recommendations for a more coherent and assertive EU approach, aiming to bridge existing policy gaps. Furthermore, the research highlights broader implications for the EU's global influence and its ability to uphold international law and human rights in conflict settings.

Chapter 1: Human Rights Conditions in the Occupied Palestinian Territories

1.1. Living in “Occupied” Territories: What Does It Mean from a Human Rights Standpoint

The definition of “occupation” has been the subject of protracted debate in international legal circles with respect to human rights. An occupation occurs when a foreign military force controls a territory without the consent of the formerly governing authority. Occupations allegedly push aside the principles of respect for sovereignty and a people’s right to self-determination, and they raise a number of difficult legal and moral questions¹. As for the legal framework governing the occupation, the main sources to reference in international law are the Hague Regulations of 1907, the Fourth Geneva Convention of 1949 and Protocol I to the GC. These sets of rules provide a comprehensive and detailed description of the obligations that an occupying power must follow and a civilian population must live under. For instance, they impart on the occupying power the duty to maintain public order, safeguard human dignity and provide essential services. Nevertheless, despite the presence of these legal frameworks spelling out clear norms and principles, the lived reality of occupation starkly contrasts with these ideals. As a matter of course, occupying powers engage in practices that very predictably lead to the violation of large numbers of fundamental human rights, a fact that is well-known and well-documented. This gap between the standards that are supposed to direct the behavior of occupying powers and the reality of that behavior, which of course goes way beyond not just fundamental human rights but also serious breaches of international law, throw into sharp relief the problems with enforcing international law.

¹ Article 42 Hague Convention: Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation applies only to the territory where such authority is established, and in a position to assert itself.

In the context of the Occupied Palestinian Territories (OPT), including the West Bank, East Jerusalem and Gaza, the law regulating occupation has been subject to considerable legal and political scrutiny that has cast serious doubt on the legitimacy of international law as it is supposed to be directing the behavior of occupying powers. Under the aforementioned frameworks, Israel is bound both by International Humanitarian Law (IHL) and International Human Rights Law (IHRL) to ensure respect for and compliance with these legal frameworks. The military rule set up by Israel after the Six-Day War in 1967 has since then, over the decades, in the eyes of many international legal experts, thereby lowered the standard and consequently the basic human rights of the civilian population living under this prolonged military rule². The standard of international law, as set forth in International Humanitarian Law, is that all parties to a conflict must respect and ensure respect for this body of law. Indeed, international legal rules consider occupations as inherently temporary arrangements which are meant to strike a delicate balance between the military needs of the occupying power and the preservation of the rights and well-being of the civilian population living under occupation. This temporary nature is the foundation of the legitimacy of the legal framework as it presumes the eventual restoration of sovereignty to the occupied territory³. However, Israel's extensive and enduring control over the OPT has given rise to serious legal and ethical concerns. Moreover, this extended occupation directly challenges the basic tenets of international law, which regard such situations as temporary and place strict limits on the powers of the occupying authority⁴. Additionally, the ongoing expansion of settlements, restrictions on movement, and other measures have further intensified debates about whether the occupation has evolved into a form of de facto annexation, undermining the rights of the Palestinian people and eroding the principles of sovereignty and self-determination that lie at the heart of international legal frameworks.

² Gilles Giacca & Ellen Nohle, *Positive Obligations of the Occupying Power: Economic, Social and Cultural Rights in the Occupied Palestinian Territories* (2019) Human Rights Law Review, 2-3.

³ United Nations Office of the High Commissioner for Human Rights (OHCHR), *International Legal Protection of Human Rights in Armed Conflict* (United Nations, New York and Geneva 2011) HR/PUB/11/01, 52.

⁴ Gilles Giacca & Ellen Nohle (n 2) 17.

Under Article 43 of the Hague Regulations, the occupying power has to ensure that public order and civil life are safeguarded while at the same time respecting the laws in force in the occupied territory⁵. Similarly, the Fourth Geneva Convention further mandates that the occupier maintains the status quo in place before the occupation began unless absolutely prevented and prohibits actions that alter the demographic and territorial composition of the occupied territory⁶. Also, it introduces the concept of “protected persons”, which refers to civilians in occupied territories⁷. Furthermore, article 4 of the Convention obligates occupying powers to ensure humane treatment, prohibiting torture, collective punishment and forced transfers. However, the Israeli occupation has often been critiqued for contravening these provisions through policies that systematically alter the demographic and territorial composition of the OPT, including the expansion of settlements, annexation efforts in East Jerusalem, forced displacement of Palestinian residents and the construction of the separation barrier, which has progressively annexed significant portions of Palestinian land to Israel⁸.

Israeli policies have also blurred the lines between military occupation and annexation. Not only is settlement expansion recurrent, but there is also de facto annexation of occupied land, which is incorporated into the Israeli administrative framework, contravening international prohibitions against acquiring territory by force. According to findings from the UN High Commissioner for Human Rights⁹, these policies constitute deliberate demographic manipulation, systematically undermining Palestinians’ right to self-determination, violating both Article 1 of the ICCPR¹⁰ and Article 49 of the Fourth

⁵ Article 43 Hague Convention: The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

⁶ Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949.

⁷ Article 4(1) GC: Persons protected by the Convention are those who at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

⁸ United Nations, *Report on Settlements and Annexation Efforts* (2023).

⁹ UN High Commissioner for Human Rights, *Human Rights Violations in the OPT* (2023).

¹⁰ Article 1 ICCPR: All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Geneva Convention¹¹. Additionally, the expansion of settlements and their incorporation into the Israeli administrative framework has created a dual legal system in the West Bank where Palestinians live under military law and Israeli settlers enjoy civilian legal rights. This system has been condemned by international human rights organizations as inherently discriminatory, violating principles enshrined in the International Covenant on Civil and Political Rights (ICCPR)¹². Moreover, Israeli policies, including the expansion of settlements, construction of the separation wall, and military governance, have systematically eroded the human rights of Palestinians¹³.

The International Court of Justice (ICJ) has played a pivotal role in clarifying Israel's legal obligations under international law. It has affirmed in its 2004 Advisory Opinion on the Wall that Israel's obligations under the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) extend to all territories including the OPT, therefore clarifying that IHRL applies alongside IHL¹⁴. The convergence of IHRL and IHL plays a complementary role in mitigating abuses in occupied territories. At the core of this convergence are the principles of proportionality, distinction and necessity. These principles state that actions by occupying powers must not cause excessive harm to civilians related to the military advantage, civilians and civilian objects must not be targeted and military actions must be strictly required for security purposes and military operations¹⁵. Although, the ICJ's

¹¹ Article 49(1)(2) IV GC: Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

¹² Amnesty International, *Dual Legal Systems in the West Bank* (2022).

¹³ UN Human Rights Council, *Human Rights Situation in the OPT* (2024).

¹⁴ ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion, 2004) Rep 136, paras 86-101.

¹⁵ Aeyal M Gross, *Human Proportions: Are Human Rights the Emperor's New Clothes of the International Law of Occupation?* (2007) 18 EJIL 1, 8-9.

2004 ruling has underscored the applicability of IHL and IHRL in occupied territories, both governing frameworks do not apply simultaneously without creating tensions between security and rights. The occupying power, for example, may invoke IHL's "necessary and proportionate" privilege to sidestep the obligation to respect the rights of the occupied population. Indeed, the occupying power often cites "security" concerns to justify restrictive measures. For example, Israel's security arguments for the separation wall were deemed disproportionate by the ICJ¹⁶. In addition to that, settler rights and occupied population's rights need to be addressed. The presence of settlers in occupied territories complicates human rights analysis because the rights of settlers, often framed within IHRL, conflict with the protections afforded to the occupied population under IHL. The question whether human rights treaties should apply extraterritorially is positively resolved by the ICJ's assertion that IHRL remains applicable even during armed conflict and military occupation. Additionally, in the Wall Advisory Opinion the ICJ maintains that treaties such as the ICCPR and ICESCR extend protections beyond a state's territory during occupation, even as the application intersects with international humanitarian law. However, the expansive interpretation by the ICJ that human rights law applies even extends well into the highly controversial application of law in places under military occupation runs the risk of equating the two legal paradigms. Thus, International Humanitarian Law should keep its *lex specialis* nature, adhering to the specificity and proportionality requirements it entails¹⁷. Despite Israel's claims that these treaties do not apply extraterritorially, the ICJ underscored that effective control over a territory compels the occupying power to comply with human rights standards. The ICJ further clarified that under the previously noted Article 49(6) of the Fourth Geneva Convention¹⁸, Israel's settlement activity in the West Bank and East Jerusalem is illegal, as it involves the transfer of the occupier's population into occupied territory¹⁹. In the ICJ's view,

¹⁶ ICJ, *Legal Consequences of the Construction of a Wall in the OPT* (Advisory Opinion, 2004).

¹⁷ Michael J. Dennis, *Application of Human Rights Treaties Extraterritorially in Times of Armed Conflict and Military Occupation* (2005) 99 AJIL 119, 141.

¹⁸ Article 49(6) IV GC: The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

¹⁹ Aeyal M Gross (n 15) 6.

settlement construction and related policies, such as land confiscation, undermine Palestinians' right to self-determination²⁰.

Conversely, from a legal standpoint, Israel adopts a stance that is opposite to that of other international actors. It does not dispute that International Humanitarian Law applies when a situation meets the criteria for its application, that is, where one party to a conflict has control over territory formerly under the jurisdiction of another state. However, Israel asserts that International Human Rights Law is not applicable in such situations. In fact, according to Israel, IHL and IHRL, when interpreted correctly, are mutually exclusive, which creates a legal vacuum that disproportionately affects the rights and protections of Palestinians who live under Israeli occupation. Also, Israel maintains the delegation of some governance responsibilities to the Palestinian Authority under the Oslo Accords absolves it of direct human rights obligations in those regions. Israel claims that because it does not have "effective control" over certain regions, it has "diminished responsibility" for ensuring the rights of the people in those areas²¹. This argument, however, is not consistent with international law, which makes it clear that a country can have significant influence over a region and still be bound by de facto obligations to ensure that the people in that region have their human rights respected. This is especially pertinent for Israel, which, despite its claim that the areas are now governed by the Palestinian Authority, still exercises a lot of direct and indirect influence over many important aspects of life for the people living in those regions²². Indeed, Israel's position has serious ramifications because this interpretation chips away at crucial human rights protections and has been especially visible in forced eviction cases, the expansion of settlements, and the inequitable distribution of resources. By severely undermining fundamental rights, these systemic violations that have become deeply entrenched in the OPT have made the humanitarian situation there even worse. Restrictions on freedom of movement, inequitable access to water and agricultural land, and collective punishment, especially in the form of blockades and widespread demolitions, have sharply reduced the already inadequate living conditions for many Palestinians, leaving them in a situation that has

²⁰ Amnesty International (n 8).

²¹ Orna Ben-Naftali & Yuval Shany, *Living in Denial: The Application of Human Rights in the Occupied Territories* (2003) 37 Isr L Rev 17, 38.

²² *Ibid.*, 64.

become unsustainable. Essentially, international law does not permit an occupying power to evade its obligations through local agreements, such as the Oslo Accords. Therefore, Israel's reliance on these accords to deflect responsibility for rights violations is not legally tenable and has far-reaching implications for the welfare of the civilian population and the broader pursuit of justice and accountability in the OPT²³.

Notably, the recent 2024 ICJ Advisory Opinion²⁴ further reaffirmed the application of these principles to the Occupied Palestinian Territories (OPT). According to the Court, Israel's prolonged occupation violates both international humanitarian law and international human rights law. The opinion highlighted the illegality of settlement expansion, forced displacement, and the destruction of essential infrastructure. The ICJ also maintained that these actions not only alter the demographic composition of the OPT but also deprive Palestinians of their right to self-determination and their fundamental human rights, which are safeguarded under the Fourth Geneva Convention and the ICESCR. Firstly, the Court established its jurisdiction and dismissed assertions that it should refuse to offer an advisory opinion, underscoring that the OPT's status is a worldwide issue, not merely a bilateral matter concerning Israel and Palestine²⁵. Then, it reflected on the territorial scope of the applicable law. More specifically, the question of whether Gaza qualifies as an occupied territory has historically been debated because of Israel's 2005 unilateral disengagement. However, the ICJ Advisory Opinion of 2024 put this debate to rest and reaffirmed that Gaza is an occupied territory under international law. The Court ruled that Israel's continued control over the airspace, the waters, the population registry, and the borders of Gaza, as well as its ability to exercise military control at any time, clearly demonstrates effective control, which is the key legal criterion for determining any territory's occupation status under the Hague Regulations and the Fourth Geneva Convention. It also added that "this is even more so since 7 October 2023", referring to the intensifying of the conflict particularly in the Gaza strip since Hamas' terrorist attack²⁶. The Court's conclusion is significant. It strongly implies that the legality

²³ Ibid., 101.

²⁴ ICJ, *Advisory Opinion on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (19 July 2024).

²⁵ Ibid., paras 23-29.

²⁶ Ibid., paras 87-93.

of controlling a territory lies with the law of occupation and that a constant military presence is not necessary for occupation to exist. Thus, effective control proved to be the key term that linked the previous debate to the contemporary question of Gaza's occupation status.

Regarding settlements, the Court found that Israel's transfer of its civilian population into the West Bank and East Jerusalem contravenes Article 49(6) of the Fourth Geneva Convention. Furthermore, the Court determined that Israel's confiscation of land, use of natural resources, and imposition of Israeli law in the OPT further entrenches its control in contravention of the law of occupation. Lastly, the Court noted that forcing people from their homes through displacement, demolition, and obstruction of movement violates Article 49(1) of the Fourth Geneva Convention²⁷. Moreover, the Court found Israel's annexation efforts to be unlawful. It considered and dismissed several key Israel arguments aimed at justifying the annexation. It stated that the annexation is part of a process aimed at altering the West Bank and East Jerusalem in a way that "is intended to be permanent and to change in a fundamental way the character of these areas". The Court said that these policies and practices violate fundamental aspects of international law, specifically, the prohibition against acquiring territory by force²⁸. Also, concerning laws that discriminate and apartheid, the Court emphasized Israel's two legal systems in the OPT that limit Palestinians' movement, land ownership, and residency rights while giving preferential treatment to Israeli settlers. It found that these policies amount to a violation of the International Convention on the Elimination of Racial Discrimination (CERD)²⁹. Lastly, the Court found that Israel's continued presence in the OPT is illegal and that it must withdraw without delay. It emphasized that other states and international organizations needed to take practical steps to ensure that they did not recognize or support Israel's unlawful actions, affirming that they have a legal obligation to refrain from actions or trade relations that support or sustain Israel's illegal presence in the OPT, highlighting that the prolonged occupation imposes additional legal obligations on the occupying power to ensure fundamental human rights and humanitarian protections. The

²⁷Ibid., paras 115-123.

²⁸ Ibid., paras 157-179.

²⁹ Ibid., paras 180-229.

ICJ specifically mentioned the UN in this regard and said that it should take “immediate and effective” steps to ensure that the OPT was no longer under Israeli control and uphold Palestinian’s self-determination³⁰.

Furthermore, international bodies have increasingly emphasized the illegality of Israeli policies in the OPT with international institutions like the UN and ICC consistently calling for adherence to international legal standards. As a matter of course, international organizations are essential in keeping an eye on and responding to abuses of human rights in occupied areas. For instance, the UN Relief and Works Agency (UNRWA) and the Office of the High Commissioner for Human Rights (OHCHR) are two UN agencies that were created with the purpose of offering humanitarian aid³¹. Also at the UN level, the UN Human Rights Council regularly adopts resolutions condemning violations in the Palestinian territories. Reports highlight that settlement expansion, displacement, and the blockade violate Palestinians’ fundamental rights, including access to healthcare, water, and education³². Similarly, the International Criminal Court (ICC) investigates alleged war crimes and crimes against humanity in the occupied territories, particularly focusing on settlement expansion and military operations³³. Moreover, the concerted efforts of civil society organizations play an important part in protecting human rights. For instance, NGOs such as Amnesty International, and Human Rights Watch document violations and advocate for accountability³⁴.

³⁰ Ibid., paras 265-283.

³¹ United Nations Office of the High Commissioner for Human Rights (OHCHR) (n 3) 93.

³² For instance, Resolution A/HRC/RES/46/26 (March 2021) denounced the expansion of Israeli settlements, highlighting their detrimental impact on Palestinian self-determination, human rights and territorial integrity. It also expressed grave concern over settler violence and the demolition of Palestinian homes. More recently, Resolution A/HRC/55/L.28 (March 2024) reiterated these concerns, emphasizing the continued expansion of settlements, the forced displacement of Palestinians, and the role of economic activities in sustaining the occupation. Both resolutions call on Israel to cease settlement activities and urge the international community to ensure compliance with humanitarian law.

³³ International Criminal Court, *Situation in the State of Palestine* (ICC-01/18) <https://www.icc-cpi.int/palestine>.

³⁴ Gerald Steinberg, *NGOs, the UN, and the Politics of Human Rights in the Arab–Israeli Conflict* (2011) Israel’s Journal of Affairs Vol.1, 73.

In addition to that, the Court's 2024 Advisory Opinion went on to clarify that international actors, including the European Union, have a responsibility to take concrete measures to prevent trade or investment activities supporting illegal settlements. Consequently, the European Council's March 2024 conclusions³⁵ reiterated that Israel's settlements are illegal under international law and represent a major obstacle to the two-state solution³⁶. Also, on the basis of the new ICJ advisory ruling, the European Union's differentiation policy, which excludes settlement goods from trade agreements, is viewed by civil society actors such as Amnesty International, as an insufficient measure to discourage illegal settlements³⁷. In various NGOs' stance, the ICJ's opinion underscores the necessity of implementing comprehensive bans on trade with entities operating in occupied territories to ensure compliance with international legal standards³⁸. The Advisory Opinion also places heightened pressure on global and regional actors to enforce accountability mechanisms for ongoing violations in the OPT. Moreover, The ICJ's conclusions offer a crucial legal and moral baseline for assessing how effectively the international community is addressing the extended occupation of the OPT and the related human rights violations.

The Council of Europe's engagement with Israel and Palestine provides an insightful perspective on the intricate role of international institutions when they address protracted conflicts. As an organization founded on the principles of human rights, democracy, and the rule of law, the Council of Europe is expected to uphold these values consistently

³⁵European Council, *European Council Conclusions 21-22 March 2024* (22 March 2024) <https://www.consilium.europa.eu/media/70880/euco-conclusions-2122032024.pdf>.

³⁶ This stance was also supported by the EU's subsequent Council resolutions in June 2024 and October 2024. Although not citing specifically the two-state solution, both resolutions called for a ceasefire in Gaza and urgent distribution of humanitarian assistance.

³⁷ The EU Differentiation Policy is the approach the European Union has adopted to make clear the distinction it draws between Israel and the territories it has occupied since 1967, such as the West Bank, East Jerusalem, and the Golan Heights. This policy's aim is to ensure that the EU's bilateral agreements and actions with Israel do not cover these occupied territories, in a manner that is consistent with international law and with the EU's own position that it does not recognize Israeli sovereignty over these areas.

³⁸ Amnesty International and others, *Letter to President von der Leyen on Banning EU Trade and Business with Israel's Illegal Settlements* (4 February 2025).

across its member and partner states. However, its approach to the Israeli-Palestinian conflict has highlighted a degree of tension between diplomatic engagement and adherence to these foundational principles. Israel's status as an observer state within the Council of Europe reflects a complex and nuanced relationship. Despite the ongoing allegations of human rights violations in the OPT, Israel has maintained an active participation in Council activities, including signing key treaties such as the Convention on Action Against Trafficking in Human Beings. This active engagement underscores the dual nature of the Council's relationship with Israel, which combines diplomacy with tacit acknowledgment of its role in regional and global affairs. However, critics argue that the Council's response to Israel's policies in the OPT has often been marked by inconsistency and silence. The truth of this statement has been particularly evident in the aftermath of high-profile conflicts, such as the 2023 Gaza bombardment, which drew widespread international media coverage and condemnation but elicited limited concrete action or response from the Council. Such actions, or rather inactions, have fueled accusations that the Council's engagement with Israel prioritizes its political considerations over the enforcement of human rights norms, undermining the credibility of the Council itself as a guardian of international law³⁹. In contrast with that, the Council of Europe's engagement with Palestine takes on a marked different tone. Thus, Palestine holds the status of a "Partner for Democracy", a designation intended to encourage democratic reforms, good governance and the protection of human rights. While symbolically significant, this status has been widely criticized as offering little tangible support or influence to address the severe challenges faced by Palestinians under occupation. Moreover, the designation serves more as a token of acknowledgment of Palestine's plight rather than a strong and substantive commitment to alleviating its struggles or promoting meaningful and concrete change⁴⁰. Also, the disparity in the Council's engagement with Israel and Palestine reflects a broader specter of challenges faced by international institutions in maintaining impartiality while navigating the geopolitical complexities of the Israeli-Palestinian conflict. Balancing the demands of diplomacy, the principles of international law and the need for effective advocacy for human rights remains a persistent challenge for the Council. The delicate balance struck underscores the difficulty

³⁹ Conor Gearty, *The Council of Europe and Israel* (2024) European Human Rights Law Review, 7.

⁴⁰ Ibid., 5.

of addressing deeply entrenched conflicts within the framework of international institutions, where political realities often constrain the ability to act decisively in support of justice and accountability.

For Palestinians, living under occupation translates to daily infringements of basic freedoms and human rights. Movement restrictions, such as checkpoints, curfews, barriers and the Gaza blockade severely restrict access to employment, education, and healthcare and impair Palestinians' ability to travel within and outside the territories. The disproportionate military responses also result in significant violations of international humanitarian norms. Moreover, home demolitions, land confiscations, forced evictions and settlement expansions further exacerbate the vulnerability of the civilian population and violate the right to adequate housing under the ICESCR. The occupying power's control over water, land, and natural resources has led to inequitable distribution, disproportionately affecting Palestinian livelihoods⁴¹. All of these conditions violate the fundamental tenets of international human rights law, including the rights to dignity, security, and development. The reliance of the Palestinian population on Israeli policies that control basic resources and infrastructure, makes the population dependent on an unstable and complicated government which only exacerbates the humanitarian crisis and the systemic violations of economic, social, and cultural rights. As a matter of course, the Israeli occupation fundamentally impedes the right to an adequate standard of living by restricting access to resources, movement, and essential services. These violations highlight the tension between the long-term situation of protracted occupation and the inadequacy of occupation law's transient framework and international institutions' mechanisms of accountability in the face of the reality of the violations in the Occupied Palestinian Territories⁴².

Addressing these systemic violations requires a multifaceted approach that combines robust international legal mechanisms, sustained political will and a genuine commitment to justice and accountability. This involves holding the occupying power accountable for actions that contravene international standards, ensuring that mechanisms for redress are

⁴¹ Xavier Pons Rafols, *The War in Gaza and the Israeli-Palestinian Conflict: A Turning Point in the Midst of an Endless Cycle of Violence* (2024) *Peace & Security Internationales* 12, 18.

⁴² Gilles Giacca & Ellen Nohle (n 2) 25.

accessible to victims and fostering an environment where human rights are respected and upheld as universal and non-negotiable principles. Moreover, addressing these violations is not merely a matter of enforcing legal standards, it is also a crucial step toward creating the conditions for a just and lasting resolution to the conflict. Without meaningful efforts to confront and rectify these injustices, the prospects for peace remain elusive. Indeed, failing to confront these violations and the environment that allows them to thrive enables a continuation of “business as usual”, damaging the prospect of a resolution to the conflict and the lives of those caught in its crosshairs. If these injustices are to be confronted and rectified, then meaningful efforts must be mounted to do so. Peace is not something that can be imposed from the outside. It requires the active engagement of many parties including states, institutions and civil society and, most importantly, the people living among the conflicts. It cannot be achieved without all sides first coming to understand that injustice begets injustice and only through concerted and coordinated action can the cycle of suffering in the OPT be broken, paving the way for a future where Palestinians can live with dignity, security and freedom.

1.2. How Israeli Occupation Impacts Human Rights: An Overview

The Palestinian territories, comprising the West Bank, East Jerusalem, and Gaza, have seen a protracted and complex occupation by Israel. This has caused an intricate conflict that has entangled many in its grasp for several decades now. Affecting millions, it has deeply etched itself upon the political, social, and human rights conditions of the lives of people living in the territories. The impact of the occupation on human rights is comprehensive and profound, it cuts across many domains and affects all kinds of human rights. It especially undermines the civil and political rights of Palestinians, which are protected under international law, and it has far-reaching effects that concern the economic, social, and cultural rights of Palestinians. The Israeli military government, from the moment of Israel’s establishment in 1948 until today, has imposed a harsh regime of military rule that mainly extends forms of discrimination and deprivation to the great majority of the Palestinian people. Measures such as arbitrary arrests, administrative detentions, and restrictions on political participation have curtailed civil and political

rights in the OPT. Also, economic and social rights have been hit even harder, with policies that threaten access to vital resources. Together, these sets of rights, long guaranteed by international law, are meant to secure the basic conditions necessary for human dignity everywhere as well as the fundamental freedoms and rights essential for self-determination and future prospects and aspirations of the Palestinian community. Today's situation in the OPT is a blatant violation of all those rights, with severe restrictions on both sets of rights. This section endeavors to shed light on the policies of the Israeli occupation and their effects on the life of the Palestinian people. It does so by taking a closer look at the interplay of the various rights at stake and the policies that are aggravating their situation highlighting the urgent need for sustained efforts to address these violations and promote a just and lasting resolution to the conflict. Moreover, it aims at highlighting the importance of accountability, equality, and justice as foundational principles for peace by raising awareness on the human rights dimensions of the occupation.

To begin with, the multiple mechanisms of control that Israel enforces also inflict many human rights violations. The most visible and numerous violations affecting the Palestinian population are found in the restrictions placed on their movement. These restrictions are imposed by means of the establishment of 793 permanent checkpoints, roadblocks, and the separation barrier, which have effectively turned the areas of the Palestinian Authority and Gaza into a series of partitions⁴³. The Blockade of Gaza, now in its 16th year, has turned the territory near the coast into what has been referred to as an “open air prison”. This severely restricts the movement of people, goods, and even aid in and out of Gaza. The blockade is widely condemned as a form of “collective punishment” that creates and allows the persistence of the humanitarian crisis in this emergency-riddled part of the Palestinian territories. Moreover, these restrictions disproportionately affect Palestinians’ access to healthcare, education, and economic opportunities⁴⁴. For instance, patients requiring specialized medical treatment often face delays or denials of travel permits, leading to preventable deaths⁴⁵. Also, food access and availability are

⁴³ UN OCHA, *Movement and access in the West Bank* (September 2024) 2.

⁴⁴Xavier Pons Rafols (n 41) 6.

⁴⁵ World Health Organization, *WHO operational response plan: occupied Palestinian territories: April 2024-December 2024* (May 2024) 4.

severely deteriorating with aid shipments frequently unable to access Palestinian lands due to military closures, undermining food security and increasing the levels of malnutrition and starvation in the Gaza strip⁴⁶. Additionally, the severe conditions cause a lack of essential goods, medical supplies and basic infrastructure. In particular, the water, sanitation and hygiene infrastructure in Gaza has borne the brunt of the impact, with over 80% of important WASH facilities destroyed and massive damage to distribution networks. The energy sector, sewage and wastewater management, and solid waste mechanisms have all collapsed as a result of widespread damage, inaccessibility, and a shortage of vital operating resources. The lack of electricity, usually limited to just a few hours a day, also adds difficulty to the dire situation, making it impossible for hospitals, schools, and businesses to function adequately and deepening the already serious crisis. These conditions constitute a clear violation of the Palestinians' right to an adequate standard of living⁴⁷.

As for Israel's settlement policy in the West Bank and East Jerusalem, not only settlement expansions directly contravene international law, but also undermine the Palestinian right to housing, enshrined in article 25 of the Universal Declaration of Human Rights (UDHR) adopted by the United Nations in 1948⁴⁸. This policy fosters a dual legal and administrative system that discriminates based on the ethnicity of the population addressed, creating an environment of inequality and causing entire communities to be displaced. According to UN OCHA and UNRWA reports, since October 2023, 43 new settlement outposts, primarily farm outposts, have been established in the West Bank⁴⁹. These new settlements caused the demolition of multiple infrastructure, with housing being the most affected sector, accounting to 53 per cent of total damages between the

⁴⁶ UN FAO, *Gaza Strip IPC famine review committee alert* (November 2024) 2.

⁴⁷ UN OCHA, *Flash Appeal for the Occupied Palestinian Territories 2025* (December 2024) 7.

⁴⁸ Article 25(1) UDHR: Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

⁴⁹ UN OCHA (n 47) 12.

West Bank and Gaza⁵⁰. Following these measures, over 90 per cent of Gaza's population has been internally displaced⁵¹.

The effect of the Israeli regime's military operations on civilians, especially in Gaza, has drawn attention from the whole international community. The adoption of measures such as airstrikes, artillery bombardments, and incursions by the Israeli regime have resulted in high civilian casualties that are hard to justify under the rules of proportionality and necessity that govern international humanitarian law. Moreover, the long-term consequences of these violent measures for both the physical and mental health of the affected population must be taken into account⁵². The death toll in Gaza since the 7th October 2023 and February 2025 is staggering, with UNRWA reporting at least 48,291 Palestinian deaths and 111,722 injured⁵³. Moreover, the Israeli regime's policies has drawn severe criticism for their repression of Palestinians along with evidence of ill treatment and torture which led human rights observers to define Israeli authorities policies as crimes against humanity of apartheid and prosecution and caused the ICC to issue arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant, for war crimes and crimes against humanity⁵⁴.

Furthermore, the toll taken by the Israeli occupation on the economy and society is very heavy. The occupation's effects on the economy are truly profound. Economic development in the OPT has been suffocated by restrictions on movement, trade, and access to resources. Since 2023 the OPT's unemployment rate has skyrocketed reaching 51% in the Gaza strip and 35% in the West Bank. This is combined with the chronic underdevelopment of the OPT which has been exacerbated by the destruction of infrastructure and lack of investment wrought by the Israeli military and has the population dependent on humanitarian aid and constantly struggling with poverty⁵⁵. Moreover, trade restrictions further hinder economic activity, with export made almost

⁵⁰ UNRWA, *Situation Report #160 on the Humanitarian Crisis in the Gaza Strip and the West Bank, including East Jerusalem* (February 2025) 2.

⁵¹ UN OCHA (n 47) 7.

⁵² *Ibid.*, 10.

⁵³ UNRWA (n 50) 5.

⁵⁴ Human Rights Watch, *World Report 2025* (January 2025) 243.

⁵⁵ World Bank, *Impacts of the conflict in the Middle East on the Palestinian Economy* (December 2024) 6.

impossible due to border closures and feeble connections which, together with the fragmentation of West Bank's territories exacerbate the conditions of poverty and inequality. The grossly inadequate economic environment is viewed as a serious violation of several articles of the Universal Declaration of Human Rights (UDHR), notably Articles 23, 24, and 25.

From a social point of view, access to education and healthcare is seriously compromised. Due to checkpoints and road closures, students face barriers to reaching schools and universities. Military operations have damaged or destroyed facilities, further compounding the problem. In addition to potentially resulting in a lost generation of Palestinian youngsters who are profoundly scarred, the protracted war in Gaza will cause children and young people's education to lag by up to five years. 658,000 youngsters have been impacted by the closure of Gaza's schools for the second year. Nearly 95% of basic, secondary, and higher educational facilities have either been damaged or destroyed, according to preliminary estimates. Even if the children could be adequately educated, which is impossible in the present circumstances, their ability to focus on learning is almost down to zero because of the toll that living under such a repressive system takes on their psychology⁵⁶. These same conditions exist in the healthcare system, which is equally strained and is almost as ill-equipped as the education system, with 94% of all health facilities in Gaza either damaged or destroyed and the remaining ones overflowed and inaccessible⁵⁷.

With the situation being extremely delicate for the Palestinian population, the contribution of international institutions to mitigate the situation is vital to try to achieve peace by intervening with resolutions and investigations. The current situation highlights a dire need for immediate action, however this is not to say the framework of violations was not already precarious to begin with. While it is true that since 2023 the conflict escalated, the animosity between Israel and Palestine goes back to Israel's foundation and has consistently required the attention of international actors. Throughout the years, numerous UN resolutions attempted to pressure Israel into addressing its rights violations,

⁵⁶ UN OCHA (n 47) 12.

⁵⁷ Ibid., 11.

all to no avail. For instance, the UN Security Council's Resolution 2334⁵⁸, which condemned Israeli settlements as a flagrant violation of international law. This followed multiple other resolutions, starting with the UN Security Council's Resolution 242⁵⁹, which calls for the withdrawal of Israeli forces from occupied territories. These resolutions have both called for the cessation of settlement activities and adherence to international law. Moreover, the global momentum for implementing boycotts, divestments and sanctions (BDS) campaigns has increased, emphasizing how grassroots pressure can be used as a tool for accountability when institutional responses don't take any meaningful action. Furthermore, the debate surrounding the international community's "Responsibility to Protect" (R2P) principle has become more relevant. On the one hand, it is arguable that R2P mandates international action to prevent mass atrocities, including war crimes and crimes against humanity, within the occupied Palestinian territories. On the other hand, detractors of this position underscore that the R2P principle has been applied inconsistently and it has been used more like a political statement rather than for an effective intervention⁶⁰. Since October 2023, with the escalation of the conflict, international attention has sharpened on the rights violations taking place in the occupied territories. The Security Council of the United Nations has underscored, via its resolutions, the urgent need for the establishment of humanitarian corridors to enable unhindered humanitarian access and for the forced displacement of civilians in Gaza to cease⁶¹. These propositions are in line with previously referenced international legal frameworks that consider forced displacement and targeted military operations against civilians as violations of international law and possibly constituting crimes against humanity. Furthermore, the ICC has begun preliminary investigations into actions of Israeli officials in the occupied territories, exploring potential war crimes and crimes against humanity. Concern is also raised about acts that might fit the definition of

⁵⁸ UN Security Council, *Resolution 2334* (23 December 2016).

⁵⁹ UN Security Council, *Resolution 242* (22 November 1967).

⁶⁰ Sara Aziz, *A qualitative analysis of the UN's responsibility under the principle of R2P to combat the violations of articles 3 & 13 of the UDHR in Gaza*, University of Gothenburg (2023) 7.

⁶¹ UN Security Council, *Resolution 2712* (15 November 2023).

genocide under Article 2 of the Genocide Convention⁶². The systematic nature of rights violations in the occupied territories is what legal experts say makes this situation particularly dire, urging a stronger enforcement of existing and future international rulings. However, political hurdles within the ICC and insufficient collaboration from crucial stakeholders obstruct the path to accountability. While the ICC has the potential to prosecute crimes like genocide and war crimes in the occupied territories, Israel's rejection of ICC jurisdiction and the geopolitical influence of its allies, such as the United States, constitutes a major challenge to its efficiency. In 2019, the ICC initiated an investigation into purported war crimes that involved several serious allegations, such as the use of white phosphorus in Gaza, which violates international humanitarian law and poses long-term health and environmental risks⁶³. Moreover, in its announcement the ICC's Prosecutor pursued a ruling on the ICC's jurisdiction over the territory in question, pursuant to article 12(2)(a) of the Rome Statute⁶⁴. The ICC's actions have faced significant pushback, with claims of political interference undermining its efforts to hold perpetrators accountable⁶⁵. The debate over whether the ICC can assert jurisdiction over

⁶² Article 2 of the Genocide Convention: In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

⁶³ ICC, *Statement of ICC Prosecutor, Fatou Bensouda, on the Conclusion of the Preliminary Examination of the Situation in Palestine, and Seeking a Ruling on Jurisdiction* (20 December 2019) <https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-conclusion-preliminary-examination-situation-palestine>

⁶⁴ Article 12(2)(a) Rome Statute: In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

- (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft.

⁶⁵ Dion Untung Wijaya et al., *The Role of the International Criminal Court (ICC) in Resolving Israeli War Crimes Against Palestinian Civilians* (2024) *Formosa Journal of Sustainable Research*, 855.

the Israeli-Palestinian conflict is still contested, although the Pre-Trial Chamber of the ICC in its decision on the 5th February 2021 affirmed its jurisdiction in the matter and subsequently confirmed the opening of the Prosecutor's investigation on the Situation in Palestine⁶⁶. Even though Israel is not a signatory to the Rome Statute, Palestine's admission in 2015 means that the ICC can now look into and also bring to justice any crimes that might be committed in Palestinian territories, including Gaza. Most recently, arrest warrants issued for Israeli leaders Benjamin Netanyahu and Yoan Gallant highlighted the seriousness of the situation, with the allegation of violations of international humanitarian law, including the war crime of starvation as a method of warfare, the crimes against humanity of murder, persecution and other inhumane acts⁶⁷. The seriousness of the accusations faced by Israel is also underscored by the International Court of Justice's order in the South Africa v. Israel case. The Court highlighted its power to instate decisions other than those asked for by South Africa and deemed it essential to modify its 28 March 2024 order in light of the deteriorating humanitarian emergency. The Court ordered Israel to immediately stop its military offensive in Rafah. It said such actions might bring about conditions that could result in the destruction of the population in Gaza in violation of the Genocide Convention. Moreover, the Court directed Israel to keep the Rafah crossing open to guarantee the unimpeded supply of essential services and humanitarian aid. To maintain the evidence that pertains to the alleged genocide, Israel must also ensure that access to the Gaza Strip is granted without delay or difficulty to the commissions of inquiry and fact-finding missions that the UN has mandated. The ICJ reaffirmed the provisional measures from its January 2024 and March 2024 orders, reaffirming that all of them apply in Rafah and throughout Gaza. Also, it urged Israel to submit a report to the committee within one month detailing its compliance with these obligations. In addition, the ICJ conveyed serious concern over the hostages seized by Hamas during the attack on 7 October 2023 and demanded that they be set free right away and without any conditions. This order bolstered the Court's earlier rulings and demands that the military stop all operations in Rafah immediately, that humanitarian assistance be

⁶⁶ *Situation in the State of Palestine* (Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine') (ICC-01/18) Pre-Trial Chamber I, 5 February 2021

⁶⁷ Kwalar Raymond Gwaya, *The Authority of the ICC to Institute Criminal Proceedings against Israeli and Hamas Leaders: The Gaza Conflict* (2024) Beijing Law Review 2213.

allowed in and that investigations into the alleged genocide be conducted⁶⁸. The Palestinian territories under Israeli occupation represent an enduring conflict between power and principles of human rights. Even with international legal structures set up to safeguard the weak, an absence of enforceable accountability means that systemic violations keep happening. This issue requires resolution through both diplomacy and the rigorous enforcement of international law to achieve justice and dignity for Palestinians.

Palestinians have adopted a range of grassroots strategies to advocate for their rights in the face of systemic oppression and the enduring realities of occupation. The village of Bil'in serves as a model of nonviolent resistance. Since 2002, when the Israelis first started to bulldoze their way into the community, Bil'in's campaign against the construction of Israel's "security barrier" through its farmland has involved coordinated, nonviolent protests, legal challenges and alliances with international activists. This grassroots model is participatory, direct, and inclusive. Thanks to these efforts in a 2007 ruling the Israeli Supreme Court decided to reroute the barrier, a resolution which was implemented in 2011. Bil'in's resistance strategy incorporates the "ABC" model of civil resistance: Avoidance, Breaking, and Constructive resistance. Avoidance activities include evading Israeli military controls, Breaking involves weekly protests that publicly disrupt the imposed occupation and Constructive resistance is visible in the community's initiatives to build alternative governance structures, enhance local solidarity, and humanize their struggle through media campaigns. The establishment of the Bil'in Popular Committee to Resist the Wall and Settlement ensured that decisions were made inclusively, fostering a direct democratic structure within the village. This participatory approach encouraged community empowerment and solidarity, breaking down social hierarchies and increasing political agency among women and youth⁶⁹. Similarly, the Boycott, Divestment, Sanctions (BDS) campaigns serves as an effective means for amplifying local resistance. Launched in 2005 by Palestinian civil society, BDS draws a parallel to the South African anti-apartheid struggle and seeks to hold Israel accountable for its violations of international law and human rights. In doing so, the BDS movement

⁶⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (South Africa v Israel), Provisional Measures, Order of 24 May 2024, ICJ Reports 2024.

⁶⁹ Michael Schulz, *The Democratizing Qualities of the Palestinian Village Bil'in's Civil Resistance Campaign* (2023) 16(2) Journal of Political Power, 258-259.

asks that people across the world disengage from Israel, from the personal to the institutional: cut off trade, stop investing and don't associate with Israel in any way that is educational, artistic, or cultural. These grassroots initiatives serve not only as acts of defiance but also as powerful tools for raising awareness globally. They serve an agenda that demands ending the occupation, achieving equality for Palestinian citizens of Israel, and upholding the right of return for refugees thus redefining the narrative of resistance from a territorial dispute to a comprehensive human rights struggle. By framing its objectives through universal rights, BDS transcends traditional political binaries, engaging a diverse coalition of supporters urging individuals, institutions, and governments to apply economic and political pressure on Israel to comply with international law and respect Palestinian rights. On the other hand, it faces criticisms for its perceived ambiguity regarding the one-state or two-state solution, this strategic ambivalence can alienate potential allies focused solely on opposing the occupation⁷⁰. Furthermore, Israeli-Palestinian grassroots dialogue workshops represent another facet of resistance. They focus on dismantling entrenched narratives and fostering mutual understanding. They seek to reach a level of understanding that can transcend judgments of right or wrong and make sense of the viewpoints held by the participating individuals, challenging biases, building empathy, and humanizing "the other". On the one hand, these micro-level transformations hold promise for a peace-building that sustains a vision of coexistence among systemic tensions. On the other hand, their macro-level impact often falters due to structural inequalities and limited scalability⁷¹. Since 2023, these movements have intensified, rallying support from numerous non-governmental organizations and, more generally, from the international community. Additionally, a recent development with the rise of digital activism has further amplified Palestinian voices and transformed the way their stories are told and perceived around the world. Documenting rights violations in real time, Palestinians are using social media to tell their own story in a way that bypasses the traditional media and reaches an incredibly diverse

⁷⁰Sean F McMahon, *The Boycott, Divestment, Sanctions Campaign: Contradictions and Challenges* (2014) 55(4) *Race & Class*, 77.

⁷¹Hélène Pfeil, *Understanding the Dynamics of Israeli-Palestinian Grassroots Dialogue Workshops: The Contribution of a Habermasian Approach* (2015) 28(1) *International Journal of Politics, Culture, and Society*, 125.

set of international audiences. Using platforms such as Facebook, Instagram and X⁷² activists organize campaigns, spread their message through popular hashtags⁷³ and attracting international solidarity. The stories that Palestinians are using digital platforms to tell have in many cases become the go-to resource for understanding the situation on the ground⁷⁴. Collectively, these initiatives constitute a multifaceted resistance, one that seemingly combines local action with global outreach. By way of grassroots mobilization, digital platforms and multiple cultural expressions, Palestinians continue to challenge the systemic oppression while building awareness all over the world. These strategies demonstrate how, amid the violence and the conflict, there is still a voice calling for respect of values such as justice, dignity, and freedom.

It is fundamental to note that on the 15th of January 2025 an agreement for the ceasefire was reached between Israel and Hamas. The ceasefire agreement was mainly mediated by the US, Qatar and Egypt and its implementation begun on the 19th of January. It comprises three main phases, each lasting 42 days, and was modeled after the one that was struck between Israel and Hamas on May 27, 2024, but was later blocked by Benjamin Netanyahu. Increased humanitarian assistance, a limited prisoner exchange, and a partial withdrawal of Israeli forces will make up the first phase. The second phase entails Israel's complete withdrawal from the Gaza Strip and the completion of the prisoner exchange, while the third comprises a reconstruction deal and the two parties exchanging bodies and remains of the dead. While the first phase is already being enacted, details negotiation on other parts of the agreement are still ongoing⁷⁵. Although the international community has welcomed the agreement with shows of support from the

⁷² Previously known as Twitter.

⁷³ Most notably, since 2023 hashtags such as #AllEyesonRafah, #BoycottIsrael and #FreePalestine have trended worldwide.

⁷⁴ Fitrah Ainun Mutmainnah, *The influence of social movements on the international legal process: a case-study of the Israeli-Palestinian conflict in the International Court of Justice* (2024) POLITEA: Jurnal Kajian Politik Islam Vol. 7 No. 2, 80.

⁷⁵ MEE staff, *Israel-Gaza ceasefire: Full text of agreement* (15 January 2025) Middle East Eye, <https://www.middleeasteye.net/news/israel-gaza-ceasefire-full-text-agreement>

UN⁷⁶, the EU⁷⁷ and multiple international governments, violations in the OPT are still being perpetrated, the conditions of the ceasefire show instability and peace is still a very far objective to achieve.

1.3. Case Study: The Right to Health

Although the picture painted in the previous section already underscores the seriousness of the violations of human rights occurring in the OPT, a more detailed approach focusing on a single component such as the right to health could help identify critical areas requiring immediate international intervention. This approach may also pave the way for practical measures to address these violations and ensure that the level of protection meets adequate standards. The right to health is a fundamental human right recognized under International law, included in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁷⁸. This right encompasses a range of articulations such as access to healthcare, a clean and safe environment, and the conditions necessary for the overall well-being of the population. The complexity of the framework serves to show the severe impact of the conflict that encompasses all areas. In the OPT, this right is seriously compromised and systematically violated due to the lengthy occupation, the imposition of robust barriers, and environmental degradation. The degradation of health in the OPT represents a deep, protracted health crisis that affects millions of people. The healthcare crisis in Gaza provides a stark illustration of the occupation's detrimental effects on basic human rights. This case study highlights the deficiencies in current

⁷⁶ In a press release from the day following the agreement, UN Secretary-General António Guterres welcomed the announcement of the deal and the hostage release in Gaza, expressing the UN's support in the efforts for its implementation and humanitarian relief needed to ease the suffering caused by the conflict.

⁷⁷ Council of the European Union, *Israel/Palestine: Statement by the High Representative on behalf of the EU welcoming the ceasefire and hostage deal in Gaza* (18 January 2025) <https://www.consilium.europa.eu/press>

⁷⁸ Article 12 (1) ICESCR: The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

protections, emphasizing the violations of the right to health and a healthy environment for present and future generations.

As previously stated, the OPT, which includes the Gaza Strip, the West Bank and East Jerusalem, has faced decades of political conflict and military occupation. Since the Arab-Israeli War of 1967, Israel has maintained control over these areas, which has resulted in fragmented governance, socio-economic instability, and restricted sovereignty. The Oslo Accords of the 1990s divided the West Bank into Areas A, B, and C, creating a complex administrative structure that further hinders equitable development and service delivery. Starting from this framework, the prolonged occupation and the resurgence of the conflict since 2023 have severely affected the health infrastructure of the OPT: repeated military incursions have damaged hospitals, clinics, and essential equipment, while the blockade on Gaza has crippled the delivery of medical supplies and services. In addition to that, restrictions on movement and limited resources have hindered the ability of health authorities to maintain adequate levels of health protection. This historical context underpins the ongoing health crises that disproportionately impact the vulnerable population of the OPT, including women, children, and those living in rural areas. As an occupying power, Israel is obligated under the Fourth Geneva Convention and other international treaties to ensure the health and well-being of the Palestinian population. Additionally, the Palestinian Authority (PA), a governing body formed as a result of the Oslo Accords, runs health services in the OPT and is obliged to ensure the health of the population in its jurisdiction⁷⁹.

The well-being of Palestinians is largely influenced by social and environmental health determinants, which were heavily impacted by occupation. Unfavorable conditions associated with housing, education, and employment conspire to create an unhealthy population. For most Palestinians, living in refugee camps or under similar conditions, space and privacy are entirely lacking. Also, the ratio of people to living space is so unreasonable that infectious diseases find an optimal social environment in which to spread. Meanwhile, because good health is also linked to an appropriate education⁸⁰, the inadequate educational opportunities available to Palestinians keep them from attaining

⁷⁹ Giles Giacca and Ellen Nohle(n 2) 23.

⁸⁰ According to WHO studies the number of years spent in school is correlated to good health.

the kinds of social and economic conditions that could foster real improvements in population health⁸¹. Environmental issues in the OPT, including water scarcity, pollution, and the destruction of agricultural land, directly affect public health. The Israeli occupation has restricted Palestinian access to water resources and prevented the development of waste management systems, leading to increased waterborne illnesses and pollution-related health issues. These environmental challenges underscore the need for sustainable interventions to protect the health of current and future generations. The principle of intergenerational equity, enshrined in frameworks such as the 1992 Rio Declaration, emphasizes the obligation to preserve a healthy environment for future generations. Addressing the environmental and social determinants of health in the OPT is essential to ensuring that future generations inherit a livable and sustainable environment⁸².

As for the challenges in access to healthcare and delivery, the blockade of Gaza has critically weakened the healthcare infrastructure. Hospitals are in chronic shortage of not just medicine but also the supplies and equipment needed for surgical and inpatient care. They operate on such a thin in that between the lack of equipment and the irregularities in the electricity supply they are barely functional. Moreover, disfunction, and the actual attacking of such hospitals, which contravenes the Geneva Conventions, further aggravates the situation. In fact, 2023 saw unprecedented attacks in Palestine on health facilities. The World Health Organization documented over 147 attacks on healthcare facilities in the OPT, leaving many non-functional, such as Al-Shifa which used to be the largest hospital in the Gaza Strip. Moreover, during military operations, healthcare facilities and personnel are often directly targeted⁸³. The targeting of healthcare infrastructure contravenes the Geneva Conventions, which requires the protection of medical facilities during armed conflict⁸⁴.

⁸¹WHO, *WHO's work in health emergencies. Health conditions in the occupied Palestinian territory, including east Jerusalem* (May 2024), 77th World Health Assembly.

⁸²UN OCHA (n 43) 32.

⁸³ WHO (n 81).

⁸⁴ Article 18(1) GC IV: Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack, but shall at all times be respected and protected by the Parties to the conflict.

Under these conditions, Palestinians find it almost impossible to access anything resembling adequate healthcare. This situation is exacerbated by several factors such as checkpoints, blockades, and closures severely hinder Palestinians' movement and undermine their authority to govern, as even health professionals struggle to reach patients. For example, patients from Gaza or rural West Bank areas often face delays or denials when seeking critical care in more advanced facilities. Moreover, individuals requiring emergency medical services living outside of Gaza face insurmountable obstacles due to the blockade, while permit denials and delays frequently result in them missing critical treatments, including chemotherapy and cardiac surgery. The situation is compounded by the inability to import advanced medical equipment and medications, forcing patients to rely on limited and inadequate local resources⁸⁵. Additionally, the ongoing blockade on Gaza has resulted in chronic shortages of medical supplies, fuel, and electricity, leading to the collapse of essential healthcare services with hospitals frequently operating at reduced capacity⁸⁶.

The effect of the occupation on child and maternal health is evident in the poor health indicators of these two vulnerable groups: high rates of malnutrition and infant mortality, signs of the severe food insecurity and poverty that characterize life in Gaza. UN OCHA reports that 1 in 10 children suffer from malnutrition, while the odds before the 7th October 2023 were 1 in 100. Moreover, malnutrition has long-term implications for children's physical and cognitive development. As for maternal health, restricted access to maternal healthcare facilities, particularly in rural and conflict-affected areas, results in preventable complications and deaths. A lack of specialized care and delayed access to hospitals exacerbates the risks for pregnant women during both the pregnancy and the delivery⁸⁷. Another gravely impacted area is mental health. Indeed, the mental health impacts of violence and displacement are compounded by poverty and inadequate healthcare. The long-term effects of childhood trauma are still unfolding with widespread cases of anxiety, depression and post-traumatic stress disorder (PTSD). Mental health services remain underfunded and understaffed, further exacerbating the crisis. Also,

⁸⁵WHO (n 81)

⁸⁶Marion Birch, *Collective punishment and "conditions of life" in dark times: tracking health consequences and accountability in contemporary conflicts* (2024) *Medicine, Conflict and Survival*, 1.

⁸⁷UN OCHA (n 43) 10.

public health indicators, including child malnutrition and maternal mortality, show that the mental health crisis, and the health of the population in general is a direct consequence of the long years of poverty, healthcare access, and inadequate living conditions⁸⁸.

Moreover, environmental health problems like water contamination and poor sanitation lead to a high prevalence of waterborne diseases. The public health crisis in Gaza that results from all these factors is compounded by the deteriorating water quality and infrastructure. Thus, in the epidemiological landscape of the OPT appear non-communicable diseases such as diabetes, hypertension, and cardiovascular diseases which are now leading causes of morbidity and mortality. Additionally, with the poor health care and surveillance system, there are alarming and growing trends of hepatitis A, acute respiratory infections, diarrheal illnesses, suspected occurrences of meningitis, and other illnesses ⁸⁹.

Although the conditions are exacerbated by the ongoing conflict, it is important to reiterate that a relevant factor that aggravates the situation is inherent to the political situation of the OPT itself. It is the absence of a robust international accountability mechanism that allows systemic violations of health rights to persist. In fact, where national governments don't intervene, international bodies often lack the enforcement capacity to hold actors accountable for breaches of IHL and HRL in the OPT. Furthermore, fragmentation among international organizations and a lack of coordinated responses contribute to the inefficiency of existing mechanisms. When pervasive health rights violations occur over decades, they surface as clear-cut, serious, and systematic breaches of international law, first and foremost, the International Covenant on Economic, Social and Cultural Rights, to which Israel and the Palestinian Authority are signatories.

The steady destruction of the medical infrastructure, the mass displacement of people, food shortages, and the outbreak of infectious diseases have plunged the population of Gaza into an unprecedented humanitarian catastrophe. The health system in Gaza cannot survive unless the international community intervenes urgently. The needed steps are a ceasefire, unrestricted access for humanitarian workers, and a commitment to invest in

⁸⁸ WHO (n 45) 5.

⁸⁹ Ibid., 5.

the healthcare infrastructure of Gaza for the long term. Otherwise, the broken health system will occasion an enormous increase in mortality from entirely preventable causes. WHO's reports emphasize the crucial necessity for a continuous, concerted effort to reestablish not just health services but also the means to prevent any further appreciable loss of life. The reference plan makes clear that it will take much more than just the immediate influx of international health humanitarian relief to achieve that.

Chapter 2: The European Union's stance

2.1. EU – Israel – Palestinian Authority relations

The Israeli-Palestinian conflict is a deeply rooted and long-standing issue that has been a significant and persistent matter in the realm of foreign politics. This extensive and multifaceted conflict has repeatedly captured the attention of international observers and pushed the global community to discussing possibilities for collective action in pursuit of a final resolution. Throughout the decades, the conflict has been one of the most widely debated and contentious issues in the international arena, demanding considerable engagement by multiple nations and diplomatic entities. Among those international actors, the European Union has emerged as one of the most committed participants, devoting significant effort, time, and resources to attempt addressing and resolving the various aspects of this enduring conflict. For many years, the EU has been working, in various ways and with varying degrees of success, to try to foster peace and stability in this part of the world. Indeed, the EU has a pronounced stake in fostering peace-building in the Mediterranean region because both the EU and its member states have a long and deep history of substantial ties to the region and to the key actors involved in this conflict. Moreover, the EU's active involvement does not just stem from its historical ties but also from its political, economic and humanitarian interests. The EU is an important player in the Israeli-Palestinian conflict. It combines three important roles: that of a significant donor, an influential actor in the realm of diplomacy, and a high-level coordinator of the policy dialogue. This section delves into the EU's nuanced stance on the conflict and endeavors to shed light in its complex relationships with Israel and the Palestinian territories.

To begin with, the relationship between Israel and the European Union is layered, comprising not just mutual interests but also political frictions and a diversified cooperation portfolio. EU-Israel interaction spans through historical, political, economic, and legal aspects, which render it difficult to detangle. It has always been a matter of striking a balance between mutual benefits and diverging policies. The ties between Israel and the European Union go back to the formation of the European Economic Community

(EEC) in 1957. Almost immediately, Israel sought to connect with this new type of partnership, culminating in the 1975 Free Trade Agreement, one of the first trade pacts between the EEC and a non-European state. The stipulation of the aforementioned agreement is a testament to the recognition of the role that Israel plays in the Mediterranean, particularly to foster stability in the Middle East⁹⁰.

The political situation, though, is delicate. The EU's unwavering support for a two-state solution to the Israeli-Palestinian conflict frequently puts it at odds with Israel's policies, especially with the latter's policy of settlement expansion in the West Bank. This divergence highlights the EU's commitment to international law and human rights in its foreign policy⁹¹. Moreover, the European Neighborhood Policy (ENP), begun in 2004, illustrates the way in which the EU seeks to balance political dialogue and economic cooperation while working with countries around its borders toward peace and stability⁹².

Nowadays, the cornerstone of bilateral relations between the EU and Israel is the EU-Israel Association Agreement, entered into force in 2000. It provides not only the legal framework for the trade relationship but also for the political dialogue and cultural exchanges that go on between Israel and the EU. It gives Israel preferential access to European markets, which favors commercial exchanges. It opens the door to far-reaching cooperation in science, research, and innovation, which are Israel's strong suit⁹³.

Nevertheless, even with close relations sometimes there can be disagreements. The EU's policy of distinguishing between Israel and the Palestinian territories it has occupied since 1967, including East Jerusalem and the West Bank, has caused considerable friction. In 2015, the EU issued guidelines requiring that products from Israeli settlements be labeled accordingly when sold in Europe. This was an attempt to ground trade policy in international law. Consequently, Israel accused the EU of bias and of behaving in a legally

⁹⁰ Alexandre Veuthey, *EU Foreign Policy via Sectoral Cooperation: The EU Joined-up Approach Towards Switzerland, Israel and Morocco* (2023) Springer Nature Switzerland, 133.

⁹¹ Toby Greene and Jonathan Rynhold, *Europe and Israel: Between Conflict and Cooperation* (2023) Survival 60.4 Routledge, 2.

⁹² European Union External Action Service, *European Neighbourhood Policy* (2004).

⁹³ European Union-Israel Association Agreement [1995] OJ L147/3.

preposterous manner by not respecting the territorial sovereignty that Israel says it possesses over all parts of the land⁹⁴.

The EU-Israel relationship has trade at its center. Indeed, Israel's top trading partner is the EU, with about a third of its total trade coming from there. Moreover, the cooperation covered different sectors such as agriculture, environment, energy, financial services, tourism, migration, transport, research and innovation⁹⁵.

Furthermore, a strategic key area is energy. Israel's discovery of the natural gas reserves in the Eastern Mediterranean has opened up new avenues for collaboration with Europe, which is trying to diversify its energy sources. Projects like the proposed EastMed pipeline illustrate the potential for partnerships that serve both sides. They enhance Europe's energy security while reinforcing Israel's status as a regional energy hub. Also, with Russia's invasion of Ukraine, the shortage of energy which used to be provided by the former country has left an opening to be filled with resources from different providers such as Israel, which is gaining more relevance in this field⁹⁶.

In addition to that, Israel has a reputation as a "start-up nation" that makes it a key partner for the EU in innovation and technology. Its advancements in cybersecurity and counterterrorism have been praised by the international community which values its solutions and expertise. Under the Horizon Europe program, Israel ensures the continuation of the exchange of information in research and development matters that benefit both sides and foster advancement⁹⁷.

Although there is a strong collaboration, the EU-Israel relationship confronts some challenges. The Israeli-Palestinian conflict continually stirs up trouble and puts the relationship under duress. Much of the European criticism involves Israeli settlement policies and puts a strain on the diplomatic ties between the countries. The EU is pretty much in favor of and publicly supports the idea of Palestinian statehood. However, while

⁹⁴ Alexandre Veuthey (n 90) 139-140.

⁹⁵ Ibid., 137.

⁹⁶ Joel Peters, *Routledge Handbook on Israeli Foreign Relationships* (2024) Routledge, 12.

⁹⁷ Ibid., 9.

much of the EU's public diplomacy with Israel focuses on this point, sectoral cooperation in fields like aviation and agriculture is consistent and still ongoing⁹⁸.

Another contentious issue is the labeling of settlement products and "rules of origin", which mandate that products must indicate their city of origin. While the EU maintains that this policy is in line with international law and international human rights law, its effective applicability is loose and Israel still manages to maintain control over the resources and products of the OPT creating a "custom envelope" where Israel withholds custom duties and taxes which should belong to the PA. This creates a system where Israel becomes effectively a sort of intermediary between the EU and the PA. On the one hand, it freely accesses European markets, on the other hand it still benefits from its economic control over the OPT⁹⁹.

The renewed conflict in Gaza in 2023 has sharpened the focus on EU-Israel relations. The European Union has demanded an immediate ceasefire, insisting on full respect for international humanitarian law and the protection of civilian lives. It has reiterated its support for the two-state solution and urged the parties concerned to enter into negotiations immediately. Moreover, in countering the terrorist attack from Hamas, Israel has taken strong military actions in the Gaza Strip. Although maintaining that Israel does have a right to defend itself, European Union states have deemed its interventions of questionable proportionality. This divergence is pushing EU member states to work on a very difficult diplomatic balancing act: support Israel's right to take necessary security steps while at the same time advocating for EU humanitarian values¹⁰⁰.

Furthermore, the European Parliament has underscored the dire humanitarian situation in Gaza in its resolution of 14 March 2024. It condemned both Hamas for taking over humanitarian convoys and the Israelis for obstructing aid delivery. The resolution called for an immediate ceasefire and the need to stop the further escalation, in line with UN

⁹⁸ Veuthey (n 90) 158.

⁹⁹ Marco Guasti, *Israeli Territory, Settlements, and European Union Trade: How Does the Legal and Territorial Jurisdictional Regime That Israeli Imposes throughout Israel-Palestine Affect the EU-Israel Association Agreement and the EU-Palestinian Authority Association Agreement?* (2018) 21 Pal. Y.B. Int'l L. 3, 22-24.

¹⁰⁰ European Council, *Conclusions on Middle East* (26 October 2023) 806/23.

Resolutions and international humanitarian law. Moreover, it stressed its concern for the catastrophic humanitarian conditions, particularly the risk of starvation, also exacerbated by Israeli settlers rising violence¹⁰¹. The newly revived violence emphasizes how delicate the EU-Israel bond is during times of extended conflict. It shows how urgently needed nuanced diplomacy and comprehensive strategies are to deal with the escalation of the Israeli-Palestinian conflict and to foster peace and stability¹⁰².

The relationship between Israel and the EU is influenced by global and regional dynamics which make it a constantly evolving matter. The EU's quest for strategic autonomy, coupled with its need for reliable partners in the Mediterranean, which is illustrated in the aforementioned ENP, positions Israel as an ally crucial to achieving both those ends. Conversely, the EU's emphasis on partnerships with a diverse set of crucial allies is met with Israel's interest in multilateralism to establish itself firmly in the region¹⁰³. Overall, EU's trades with Israel have been and still are prolific and beneficial to both countries. Nonetheless, continuous progress necessitates focusing on the political divisions that prevent deeper integration. A dialogue that is more productive, with mutual respect, and a somewhat more pragmatic take on contentious issues, especially the Israeli-Palestinian always ongoing conflict and Israel's occupation of the West Bank and Gaza, could allow the partnership to deepen.

As for the relationship between the European Union and Palestine, most particularly the Occupied Palestinian Territories, it is also a complex matter, extending across many areas. Indeed, the EU has invested energy, commitment, and resources into this relationship. Furthermore, it has spent many diplomatic efforts, underpinned by well-intentioned maneuvers to achieve a peaceful resolution to the Israel-Palestine conflict. Moreover, with the recent developments and the out spurt of the conflict in 2023, the EU's contribution and intervention to promote peace is even more pressing. Since the Oslo Accords of the 1990s, the EU's diplomatic work with Palestine has intensified. It has

¹⁰¹ European Parliament, *The Immediate Risk of Mass Starvation in Gaza and the Attacks on Humanitarian Aid Deliveries* [2024] P9_TA(2024)0159.

¹⁰² European Commission, *Statement by President von der Leyen on the One-Year Anniversary of the 7 October 2023 Acts of Terror against Israel* (6 October 2024) STATEMENT/24/5061.

¹⁰³ Veuthey (n 90) 141.

emerged as a top donor and a strong political advocate for the two-state solution that leads to the self-determination of the Palestinian people and their quest for statehood. Nevertheless, the internal divisions of member states and the overarching influence of the United States in the peace process often put a damper on the EU's diplomatic strategy¹⁰⁴.

The EU has a clear position that consistently supports the formation of a Palestinian state that is viable and based on pre-1967 borders, with East Jerusalem as its capital. The Venice Declaration of 1980, which reflects this stance, recognized the Palestinian right to self-determination and stated that the EU would work to help it become a reality. Following that declaration, the European Economic Community and subsequently the EU have worked to strengthen the Palestinian leadership and have supported the establishment of governmental institutions in the Palestinian territories¹⁰⁵.

Moreover, State-building has been a fulcrum of the EU's engagement with Palestine. The EU has poured a lot of money into institutional reforms, good governance, and infrastructure. Programs such as EUPOL COPPS and EUBAM Rafah focused on augmenting the security and border management capabilities of the Palestinian Authority. The EU also supported judicial reforms, educational improvements, and healthcare initiatives¹⁰⁶.

Still, some critics have voiced concerns that these state-building efforts may be reinforcing the Israeli occupation's status quo. They argue that the EU is not just "making the best of a bad situation" but is also prolonging it by focusing on institution building in a context where there is no sovereignty and by supporting dependencies that prevent the Palestinians from achieving a real kind of autonomy. In addition, these critics say, the

¹⁰⁴ Emile Badarin, *Palestine and EU* in Gürbey, Gülistan, Hofmann, Sabine, and Seyder, Ferhad Ibrahim (eds), *Between Diplomacy and Non-Diplomacy: Foreign Relations of Kurdistan-Iraq and Palestine* (2023) Springer, 169.

¹⁰⁵ Lisa Strömbom and Anders Persson, *The Two-State Impasse in Israel/Palestine—The EU Caught Between Egalitarian Norms and Expansionist Realpolitik* (2023) 5 *Frontiers in Political Science*, 6.

¹⁰⁶ Dimitris Bouris, *The European Union's Role in the Palestinian Territory After the Oslo Accords: Stillborn State-building* (2010) 6(3) *Journal of Contemporary European Research*, 385-386.

internal Palestinian political struggle makes it very hard to achieve anything like coherent governance¹⁰⁷.

The economic relationship between the EU and Palestine has its legal basis in the EU-Palestine Interim Association Agreement on Trade and Cooperation (1997). This agreement, however, only provides limited benefits to Palestine. Although goods exported from Palestine to the EU have preferential access to European markets, the economic situation and restrictions of movement make exports meager with EU exports dominating the relationship¹⁰⁸. In 2022 the total trade in goods between the EU and Palestine was worth 444 millions of euros, however while the volume of exports coming from Palestine, mostly comprised of agricultural goods, amounted to 25 millions of euros, the EU's exports were far more substantial with 419 millions of euros worth of goods, particularly transport equipment¹⁰⁹.

The trade relationship between the EU and Palestine is convoluted. It is influenced by the structural dependency of the Palestinian economy from the Israeli one. Indeed, the political economy of Palestine is almost entirely governed by relations with Israel. About 60% of exports from the West Bank and the Gaza Strip go to Israel and close to 90% of Palestinian imports come from Israel. This makes it difficult for Palestine to develop a fully functioning relationship with the EU. Vice versa, even though the EU tries to maintain a relationship with Palestine in its State-building capacity, it is difficult to make progress in any significant way¹¹⁰.

With the 2023 Gaza conflict the already fragile two-state solution was made much less probable. Israeli unilateralism, settlement expansion, and political dysfunction in the OPT are pushing us closer to a “one-state reality”, where Israel controls everything west of the Jordan River and Palestinians have little to no say in the matter. Though it still says it

¹⁰⁷ Ibid, 389.

¹⁰⁸ Amir Khalil and Gaël Le Roux, *Trade Relations Between the European Union and Palestine: Assessment and Potential Improvements* (2021) Middle East Law and Governance, 3.

¹⁰⁹ EU Trade Policy, <https://ec.europa.eu/trade/policy/countries-and-regions/countries/palestine/>

¹¹⁰ Amir Khalil and Gaël Le Roux (n 108) 3.

believes in the two-state solution, the EU's ability to influence events on the ground is questionable¹¹¹.

Furthermore, the EU leans on humanitarian aid and economic assistance as tools of diplomacy. Yet, to date, this combination has not produced significant political results. EU officials state they are "frustrated" with Israel's many violations of international law. They object to its settlement policies, its blockade of Gaza, and other violations, characterizing Israeli policies as "apartheid". However, thus far, EU officials have not taken the next step and directed member states to implement punitive measures, like sanctions, as a means of expressing EU discontent¹¹².

Palestinian diplomatic work, with the support of the EU, has had some success in the international sphere despite multiple hurdles. The United Nations' 2012 designation of "non-member observer state" for Palestine provides one clear example of this growing recognition. Since then, a number of European Union countries have gone even further, establishing full diplomatic missions with Palestine. This constitutes a significant ongoing European engagement with the PA and an interesting case of EU member states engaging with a "non-state actor"¹¹³,¹¹⁴.

The Palestinian leadership, however, has numerous difficulties, such as internal dissent, that undercut its ability to present a unified strategy. Yet, this badly divided group is not the only obstacle to a diplomatic rapprochement¹¹⁵. The ENP and the Joint Action Plan pour considerable resources into trying to achieve the otherwise unobtainable goal of a united Palestinian leadership. Still, even with this intellectual and financial investment, it's hard to see what these programs might actually yield. Their fruitfulness is rendered

¹¹¹ Lisa Strömbom and Anders Persson (n 105) 9.

¹¹² Ibid., 10.

¹¹³ The UN defines non-state actors as "entities that participate or act in international relations. They are organizations with sufficient power to influence and cause a change even though they do not belong to any established institution of a state."

¹¹⁴ Emile Badarin (n 104) 170.

¹¹⁵ Dimitris Bouris (n 106) 387.

almost moot by the extraordinary power asymmetry in the Israeli-Palestinian relationship¹¹⁶.

A major part of the EU's engagement in Palestine centers around humanitarian aid. The EU is the biggest donor to UNRWA, which supplies crucial services to the Palestinian refugee population. In addition, the EU bankrolls a variety of civil society organizations throughout the Occupied Palestinian Territory that labor to secure human rights, promote gender equality, and establish and enhance democratic governance¹¹⁷.

The EU's attempts to bolster civil society and state-building are challenged by the realities of weak state structures and authority in the contested statehood of Palestine presented opportunities for state-building that the EU could embrace. It quickly became the largest donor to the establishment of a Palestinian state, contributing more than half the funds required for development and one-third of all donor funds for police expenditures in the period between 1994 and 1995. Yet the unanticipated outcome of the EU's efforts was that it began adopting and enforcing certain policies or lines of action that the parties had agreed upon. However, in reality, this meant that Israel made the decisions about what kind of assistance the EU was "permitted" to provide in relation to security cooperation with the PA, as well as how and when the measures would be adopted¹¹⁸.

The EU's dealings with Palestine epitomize its overall troubles in handling intricate geopolitics. Significant as they are, the EU's contributions to Palestinian state-building, economic development, and humanitarian relief can do little to resolve the conflict. This is because the EU is not permitted, nor has it the ambition, to address the root causes of the conflict. Most notably, these causes include Israeli occupation and settlement expansion.

The EU stands at a critical juncture. It must decide whether to persist with its current method or switch to a more assertive one. This would involve using economic and diplomatic pressure to hold Israel accountable for breaching international law. At the

¹¹⁶ Amir Khalil and Gaël Le Roux (n 108) 18.

¹¹⁷ Emile Badarin (n 104) 167.

¹¹⁸ Olga Burlyuk and Gergana Noutcheva (eds), *Unintended Consequences of EU External Action* (2020) Routledge, 95.

same time, the EU would need to step up its support for the Palestinian Authority and civil society as a way to increase the PA's resilience and self-reliance, something it does not do at present.

Lastly, the EU's unwavering commitment to a two-state solution contrasts with the weak political action it upheld up to this moment. Notably, the most recent developments with the signing of the ceasefire agreement in Gaza, although seemingly putting an end to the exacerbation of the conflict started in 2023, reveal how the EU remained a marginal actor. The same EU released a statement praising the countries who actively negotiated the peace process and remarking the support for the two-state solution without committing to any particular strategy moving forward other than providing unspecified humanitarian aid¹¹⁹. This highlights the need for a more effective approach to achieve a more prominent role and a concrete level of protection in line with European stated commitments.

2.2. EU's human rights commitments in external policies

The European Union has positioned itself as a global proponent of human rights, embedding these principles into its external policies. It has sought to integrate democracy, the rule of law, and fundamental freedoms into the countries that border the EU. Article 21 of the Treaty on the European Union (TEU) sums up these commitments. It states that the Union's external action will be "guided by the principles which underpin [the Union], namely democracy, human rights, and respect for international law"¹²⁰. Nonetheless, the effective embedding of human rights into trade agreements, development aid, and diplomatic efforts seems to still be a challenging matter for the EU. Indeed, there are some inconsistencies associated with the application of the EU's human rights policies. This section aims at exploring the legal framework, policy instruments and impact of the EU's

¹¹⁹ Council of the European Union, *Israel/Palestine: Statement by the High Representative on behalf of the EU welcoming the ceasefire and hostage deal in Gaza* (18 January 2025) <https://www.consilium.europa.eu/press>

¹²⁰ Treaty on European Union [2016] OJ C 202/13.

human rights commitments in external policies while addressing the challenges that hinder their effective implementation.

Firstly, the external human rights framework of the EU is anchored in the foundational treaties, including the TEU and the TFEU. EU actions in human rights are mandated by Article 3(5) TEU, which states that the EU must promote its values, including human rights, in its external relations. Article 21 TEU obliges the EU to orient its international actions according to the principles of democracy, rule of law, and respect for human rights. Moreover, the European Union Charter of Fundamental Rights (ECFR) plays a significant role in establishing human rights standards within the EU, and it serves as a major influence on the EU's external policies. Though it started off as a non-binding instrument, the ECFR was granted the same legal status as the treaties with the coming into force of the Lisbon Treaty, thus placing it right at the heart of the EU's human rights policy toolbox¹²¹.

The obligations of international law bolster the EU's commitment to human rights in its external actions. As a signatory to multiple United Nations human rights treaties, the EU is an active supporter of the work carried out by the United Nations Human Rights Council (UNHRC)¹²². Moreover, an important reaffirmation of the EU's commitment to international human rights law came from the European Court of Justice (ECJ). Indeed, the ECJ's case law underscores the binding nature of human rights obligations in trade and development agreements¹²³. The ECJ, for instance, upheld the idea that fundamental rights are essential to EU external accords when it decided in *Portugal v. Council*¹²⁴ that the EU must take human rights provisions into account in external commercial dealings. Furthermore, the ECJ affirmed in *Kadi and Al Barakaat International Foundation v.*

¹²¹ Vivian Kube, *The European Union's External Human Rights Commitment: What is the Legal Value of Article 21 TEU?* (2016) European University Institute, 2.

¹²² Grainne de Búrca, *The Road Not Taken: The European Union as a Global Human Rights Actor* (2011) 105 Am J Int'l L 649, 682.

¹²³ Ibid., 650.

¹²⁴ *Portugal v Council* (Case C-268/94) [1996] ECR I-6177.

*Council and Commission*¹²⁵ that EU actions must respect basic rights even when facing international sanctions.

Additionally, the EU uses a variety of tools to uphold its human rights mandate in foreign relations, such as trade agreements, development cooperation, and diplomatic engagement. When these fail, the EU can impose sanctions such as suspending trade benefits established by its trade agreements. Firstly, the EU has taken the lead in incorporating human rights clauses into its trade agreements. These clauses, often called “essential elements clauses”, make trade benefits contingent on the respect for fundamental rights. For example, the Generalized Scheme of Preferences Plus (GSP+) grants trade incentives coming to developing countries in exchange for those countries adhering to and respecting fundamental rights and key international human rights conventions¹²⁶.

Furthermore, the EU links humanitarian aid and development assistance to human rights. The establishment of organizations and tools, most notably the European Initiative for Democracy and Human Rights, founded in 2000 and superseded in 2007 by the European Instrument for Democracy and Human Rights (EIDHR)¹²⁷, which was tasked with assisting in the advancement of democracy and human rights in non-EU nations, reflects the EU’s strong emphasis on human rights in its external relations. Moreover, the European External Action Service (EEAS) is responsible for carrying out significant human rights activities. Also, the EU Strategic Framework on Human Rights and Democracy¹²⁸, which established the EU’s priorities for external human rights action, and the Action Plan on Human Rights and Democracy, which sought to put the Strategic Framework into practice, were two significant new initiatives that the Council of the European Union took in 2012. The Action Plan was superseded by the Action Plan on

¹²⁵ *Kadi and Al Barakat International Foundation v. Council and Commission* (Joined Cases C-402/05 P and C-415/05 P) [2008] ECR I-6351.

¹²⁶ Vivian Kube (n 121) 6.

¹²⁷ Regulation (EU) 235/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide [2014] OJ L77/85.

¹²⁸ Council of the European Union, *EU Strategic Framework on Human Rights and Democracy* (2012) 11855/12 <https://data.consilium.europa.eu/doc/document/ST-11855-2012-INIT/en/pdf>

Human Rights and Democracy 2015-2019 and most recently by the 2020-2024 version¹²⁹. This approach led to the development of a comprehensive set of instruments for interacting with other countries in human rights dialogues and guidelines. Additionally, the establishment of an EU Special Representative (EUSR) for Human Rights was another first that followed the 2012 approval of the EU Strategic Framework on Human Rights and Democracy. It was the first EUSR with a thematic mandate, namely to contribute to the implementation of the action plan and improve the effectiveness and visibility of the EU's Human Rights policy¹³⁰.

The EU is the second-largest humanitarian donor in the world after the United States. It pours financial assistance, as well as much technical and policy support, into a range of relief efforts and funding mechanisms aimed at alleviating suffering in conflict zones, responding to natural disasters, and propping up very vulnerable populations. Indeed, one of the EU's priorities is to provide humanitarian aid, pushing with great diplomatic skill to make certain that humanitarian principles are upheld and that the delivery of aid is not hampered by political or military obstructions. The EU's body primarily responsible for delivering this aid is the European Civil Protection and Humanitarian Aid Operations (ECHO). ECHO ensures that delivery of the aid is efficient by working with international organizations and non-governmental organizations. The strive to mold the humanitarian and development policy areas brought about the birth of the concept of Linking Relief, Rehabilitation, and Development (LRRD). This initiative attempts to bridge the gap between the immediate, life-saving humanitarian assistance provided in times of crisis and the long-term development programs that make up the bulk of EU spending in standard times. Moreover, LRRD invests in sustainable programs targeting the education, infrastructure, and capacity-building areas that allow local communities to better withstand crises. More recently, the discourse shifted from LRRD to the concept of the

¹²⁹ European Commission, *Action Plan on Human Rights and Democracy 2020–2024* (2020) JOIN(2020)5 final <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020JC0005>

¹³⁰ Eva Maria Lassen, *Factors Enabling and Hindering the Promotion and Protection of Human Rights by the EU* (2020) Oxford University Press, 43.

“humanitarian-development nexus”¹³¹ and has since developed into the framing of the “humanitarian-development-peace nexus”, with the aim of integrating conflict prevention and peacebuilding into “humanitarian aid and development assistance” efforts. The 2017 European Consensus on Development¹³² pointedly reframed the conversation, offering a clear articulation of this emerging line of work among EU institutions and member states. At the organizational and procedural level this new nexus approach has been implemented through different instruments such as “Nexus Task Forces” involving EU delegations, national embassies and ECHO field officers joint Conflict Analysis Screenings (CAS) in areas affected by conflicts in line with the Neighbourhood, Development and Cooperation Instrument¹³³ (NDICI)¹³⁴.

Furthermore, the EU's financial tools, such as the Neighbourhood, Development, and International Cooperation Instrument (NDICI-Global Europe), allow it to be flexible in responding to humanitarian crises. They direct funds into projects that bolster local capacities and revamp the infrastructures of the regions affected. They also use part of their development aid budget, reallocating it to immediate relief measures that help restore a semblance of the local socioeconomic conditions that existed prior to the crisis. They help in finding local employment with a range of different jobs to bolster economy, they work to ensure local health, security and promote peace and they contrast terrorism

¹³¹ European Union, *Shared vision, common action: A stronger Europe. A global strategy for the European Union's foreign and security policy* (2016) https://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf

¹³² European Union, *The new European consensus on development. “Our world, our dignity, our future”* (2017) https://www.consilium.europa.eu/media/24004/european-consensus-on-development-2-june-2017-clean_final.pdf

¹³³ European Parliament and Council *Regulation (EU) 2021/947 of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe* [2021] OJ L 209/1.

¹³⁴ Julian Bergmann and Patrick Müller, *Towards an integrated approach to EU foreign policy? Horizontal spillover across the humanitarian– development and the security–migration interfaces* (2024) *Journal of European Public Policy*, 11-12.

and cyber menaces¹³⁵. In addition to that, the EU has emerged as one of UNRWA's most substantial benefactors and a strong proponent of its core mission: providing critical, day-to-day services and long-term developmental opportunities to a largely impoverished refugee population. It does this not only with a significant financial contribution but also through the fostering of a collaborative partnership with UNRWA that is built around several key areas such as promoting human rights, advocating for gender equality and inclusive education¹³⁶.

Overall, the EU has a long tradition of using a wide array of strategies and instruments cutting across different policy fields to serve its human rights purposes. It has used its economic power, for instance, to push the kind of reforms that would be more adherent to the global governance model the EU prefers. It has used a "carrot and stick" strategy in its bilateral relations, association and trade agreements, to push various countries to bring their human rights records up to a standard that would make them internationally acceptable, using sanctions, together with the UN, against states and individuals that have been deemed to pose threats to international security¹³⁷. The EU Global Human Rights Sanctions Regime is, in essence, the EU's own version of the U.S. Magnitsky Act¹³⁸, which authorizes the US government to sanction officials from foreign governments who have trespassed on human rights, freezing their assets and preventing them from entering the US territory. Similarly, the 2020 Sanctions Regime elaborated by the Council of the EU through the Regulation 2020/1998¹³⁹ and Decision 2020/1999¹⁴⁰ is aimed at sanctioning people, organizations and entities which abuse or infringe on human rights. The restrictive measures are provided for violations such as genocide, crimes against

¹³⁵ Camera dei deputati Ufficio Rapporti con l'Unione Europea, *L'azione esterna e la Politica estera e di sicurezza comune dell'UE* (2022) Documentazione per le Commissioni Attività dell'Unione Europea Dossier n°7, 15.

¹³⁶ David Newman and Haim Yacobi, *The Role of the EU in the Israel/Palestine Conflict* (2004) Department of Politics and Government Ben Gurion University of the Negev, 20.

¹³⁷ Vivian Kube (n 121) 5.

¹³⁸ Global Magnitsky Human Rights Accountability Act, Pub L No 114-328, 130 Stat 2533 (2016).

¹³⁹ Council Regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses [2020] OJ L410I/1.

¹⁴⁰ Council Decision (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses [2020] OJ L410I/13.

humanity, slavery, torture and other serious abuses of human rights. Finally, the European Union works together with global organizations such as the United Nations and the Council of Europe to promote and secure human rights around the world. It has a strong voice in the Human Rights Council of the UN and is knowledgeable about international human rights issues. The EU is also a strong supporter of the International Criminal Court and promotes accountability and respect for its decisions from all the parties involved¹⁴¹.

Although the EU has made robust commitments to human rights, they face serious challenges in implementation. The political, economic, and geopolitical challenges often lead to a frustrating lack of consistency in EU policy enforcement. Indeed, the EU draws criticism for not being consistent in applying its human rights policies. It has close economic relations with a number of authoritarian regimes and keeps conducting business with them, even when those regimes are guilty of flagrant human rights violations. This business-as-usual attitude towards authoritarian regimes takes a toll on the EU's credibility as a global human rights promoter. The EU's position is heavily influenced by the conflict between human rights and economic objectives. This tension is illustrated by the trade agreements that the United States and the European Union negotiate with countries that have poor human rights records. These agreements yield significant economic benefits. However, even though there are human rights clauses in trade agreements, the enforcement is weak. The EU has seldom suspended trade agreements due to human rights violations, which makes the credibility of the EU in this regard questionable¹⁴².

2.3. EU's policies in the Occupied Palestinian Territories

The European Union's engagement in Palestine stems from its abiding commitment to international law, a two-state solution, and the recognition of Palestinian self-

¹⁴¹ Camera dei deputati Ufficio Rapporti con l'Unione Europea (n 135) 24-25.

¹⁴² Vivian Kube (n 121) 7.

determination. Ever since the Venice Declaration of 1980¹⁴³, the EU has consistently called for a resolution to the conflict that ensures both Israel's security and the Palestinians' right to statehood. This diplomatic stance has been reinforced through various initiatives, including the Berlin Declaration of 1999¹⁴⁴ and the EU's participation in the Quartet on the Middle East Peace Process¹⁴⁵. However, words in the realm of diplomacy can sometimes seem empty, practical contributions are what matters. In this regard, the EU has indeed done a great deal. It has engaged in a consistent and substantive set of economic and humanitarian actions that make it the largest donor by far to the Palestinian Authority¹⁴⁶. Nonetheless, the situation in Palestine, especially in the Occupied Palestinian Territories, has become more and more dire, particularly in recent years.

The European aid program for Palestine, which is managed by EU Member States, has given Europe a strategic presence in the region. This was challenging to achieve, given that the U.S. and Israel dominate the power play in the region. During the 1990s, nearly half of all international assistance provided to the Palestinians came from the European Union, including the European Community, its member states, and the European Investment Bank. This assistance was funneled through different streams such as support for the UNRWA, funds for the Middle East Peace Process, MEDA funds under the Euro-Mediterranean Partnership and humanitarian aid via ECHO. In addition to that, the assistance extended by the EU had a substantial impact in helping initiate the regional peace process. This started with the creation of the Regional Economic Development Working Group (REDWG), which was born from the Madrid peace process and is aimed at achieving some level of cooperation and coexistence between Israeli and Arab

¹⁴³ European Council, Venice Declaration (13 June 1980) Bulletin of the European Communities 6-1980, 10–11.

¹⁴⁴ European Council, Berlin Declaration (25 March 1999) Bulletin of the European Communities 3-1999, 11.

¹⁴⁵ Established in 2002, the Quartet comprises the United Nations, the European Union, the United States, and Russia. Its job is to broker Middle East peace negotiations and to back the Palestinians in their efforts to develop an economy and build institutions so that they will be ready for statehood when the time comes. The Quartet main actors meet regularly at the level of the Quartet Principals and the Quartet Special Envoys.

¹⁴⁶ David Newman and Haim Yacobi (n 136) 17.

societies. The REDWG is mainly concerned with serving 'people-to-people' projects that have the collaborating societies in mind, dealing with specific projects in sectors such as the environment, legal affairs, health, and human rights. Nonetheless, over time, European assistance began to focus more on relief measures, especially in the form of direct, substantial financial assistance to the Palestinian Authority, which is typically not the case with ordinary Barcelona aid packages. With the help of regional NGOs and UN organizations such as the WFP, FAO, and UNRWA, the EU has also substantially ramped up its humanitarian aid and has undertaken a significant food security initiative¹⁴⁷.

In addition to diplomatic activities, the EU has tried to play an active role on the ground by sending in civilian missions that support Palestinian governance and security. One of these missions, the European Union Border Assistance Mission (EUBAM) Rafah, works at the crossing between Gaza and Egypt; however, the mission has been mostly idle because of the Israeli-Egyptian blockade of Gaza. Another mission, known by the abbreviation EUPOL COPPS, is meant to strengthen law enforcement in the Palestinian territories, but this mission, too, has limited access and uninterrupted operational abilities due to restrictions placed by Israeli authorities. While all of this seems to indicate that the EU has steadfastly and courageously attempted to work on the ground for the betterment of Palestinian civil society, critics point out that this is essentially a futile exercise¹⁴⁸.

The EU states that it is trying to help people in the Palestinian territories, however it is still an intricate and complicated business. Even though the EU has given a lot of funds to the cause, it is still extremely difficult to make certain that those funds are actually committed to the efforts they are meant to sustain. In its action in Gaza and the Westbank the EU is usually confronted with counterproductive interference of the Israeli government. Another point of contention is the water supply. Indeed, the main resource for supplying water in the middle east is the Jordan Basin, with its occupying of the West Bank and the Gaza strip, the Israeli government controls most of the water resources, exerting control over the physical origin of the water. Moreover, Israel's water management disparately affects the Palestinian population, especially in the OPT. A

¹⁴⁷ Anne Le More, *International Assistance to the Palestinians After Oslo. Political guilt, wasted money* (2008) Routledge, 88.

¹⁴⁸ European Council, *Resolutions of the European Council*, 25 June 2024 (Brussels, 27-28 June 2024) 36.

significant factor in the siege of Palestinian political autonomy is the use of water restrictions. Israeli restrictions on the use of water have a negative impact on Palestinian society and amount to collective punishment. The most affected areas are the C-areas, which constitute 60% of the West Bank, that are under total Israeli authority. In these areas, water use is severely restricted, and infrastructure projects are almost never allowed. Furthermore, although the EU has funded the construction of facilities through EWASH, it was reported that these are usually destroyed or confiscated¹⁴⁹.

The crisis has worsened due to restrictions placed on accessibility to humanitarian aid, which have made it very difficult for international organizations, including those funded by the EU, to provide assistance. Israeli policies have resulted in a limited working space for NGOs, which are finding it increasingly difficult to operate in the West Bank and Gaza. Those same policies have also made it difficult for those organizations to carry out the near miracle that is required to distribute medical supplies, food, and educational materials to the people of Gaza and the West Bank¹⁵⁰. Moreover, the EU funds efforts to build a “civil society”. The direct approaches of societal actors and activities in a conflict region, in particular those actors which are regarded as possible agents of successful conflict transformation, is, in fact, one of the paths of EU involvement in the conflict. This connects conflict societies with the EU's institutional and discursive framework¹⁵¹. Because there is no stigma of either terror or corruption attached to them, civil society actors have the potential to be very effective and forceful. Therefore, they can push the political system in a direction that is good for resolving the lack of political autonomy. Leading civil society representatives can take the initiative and be advocates for a truly democratic alternative to the two main Palestinian resistance groups, Fatah and Hamas. International actors view this as a possible scenario. This third force, operating within civil society, bases its claim to be engaged in state-building not on involvement in armed conflict but rather on the services it offers to ensure the survival of society in the face of

¹⁴⁹Margret Johannsen, *The Middle East Conflict: An Introduction* (2024) Springer Texts in Political Science and International Relations, 49.

¹⁵⁰ Ibid., 69.

¹⁵¹ David Newman and Haim Yacobi (n 136) 28.

occupation. They may represent a good way to open a dialogue with Israel in order to broker peace, however this is still a very far off possibility¹⁵².

As the situation in Palestine becomes ever more intolerable due to the resurgence of the conflict in 2023, the EU faces a pivotal moment in its dealings. If it is to remain a credible protagonist in the advocacy concerning Palestinians' rights and the conflict's just resolution, it must at least consider the option of using its diplomatic and economic pressure to make Israel comply with international law, not tiptoeing around the idea of applying sanctions and leaving all the practical decision-making to other actors, such as the United States. Other than deploring the loss of civilian lives and the humanitarian initiatives, the EU has not assumed a relevant role in the recent conflict, although proclaiming itself a mediator and notwithstanding its own interests in the region. A European stance that is more assertive and backed by economic and political measures could help bolster the EU's image as a protagonist working for the kind of justice and stability that renders peace possible in the region.

2.4. Challenges and limitations of EU's intervention

The European Union has attempted to have a mediator role in the Israeli-Palestinian conflict, advocating for a two-state solution while managing complicated diplomatic and economic relations with both the Israelis and the Palestinians. Yet, in spite of its significant political and financial commitments, the EU has found itself largely sidelined and unable to exert any real influence over the peace process. This section examines the reasons for that sidelining, both in terms of the EU's own strategic limitations and in terms of external factors and internal obstacles over which the EU has little if any control.

Firstly, an overwhelming limitation on the EU's influence in the Israeli-Palestinian conflict is the enormous diplomatic and financial weight of the US. Israel has been supported by the Trump presidency, without qualifications and almost to a fault, a break with the historical US policy in which the US always acted as a broker, although not

¹⁵² Margret Johannsen (n 149) 75.

properly a neutral one in the Israel-Palestinian conflict. Trump's administration's approach to the conflict, unwavering support for Israel while tightening the screws on the Palestinians, was encapsulated in January 2020 when his "deal of the century" for Israel and Palestine was published. The concept offers a one-state reality while promising a "realistic two-state solution". It violates decades of US and EU policy and utterly defies the previous international consensus. Moreover, US support to UNRWA was cut, along with bilateral support to the Palestinian Authority, effectively taking a stand in favor of Israel¹⁵³. During Trump's presidency, he also acknowledged Jerusalem as capital of Israel transferring the US embassy from Tel Aviv to Jerusalem itself and recognized as legitimate Israel's annexation of the Syrian Golan Heights, infringing on international law, particularly the Geneva Convention. The Biden administration has not changed that diplomatic trajectory. President Joe Biden hasn't done much to improve the deteriorating security situation on the ground, and the Palestinian representative office in Washington is still closed. The result of this is that Washington continues to lack effective pressure on Israel to do what an honest mediator would¹⁵⁴. Furthermore, with the beginning of Trump's new mandate US policy can be expected to become more and more favorable to the Israeli government. Indeed, Benjamin Netanyahu, Israel's Prime Minister, has been the first Head of State to be received by newly-appointed President Trump and the two have announced a plan to morph Gaza into the "Riviera of the Middle East", forcing the relocation of all Palestinians living there. Although no concrete action has followed these statements yet, the prospects are surely not conducive for Palestinians' political autonomy and more broadly to their identity and right to exist.

In addition, the perception that the EU is unable to counterbalance US. policy has grown. The EU's attempts to call for negotiation processes and to demand respect for international law has not provoked any changes. The very nature of the EU as a high-level, multinational negotiation partner has been called into question. As a result, the EU has become a partner in conflict mediation that has little direct influence on the matter at hand. It has been able to offer economic aid and support, as well as make helpful political

¹⁵³ Beth Oppenheim, *Can Europe overcome its paralysis on Israel and Palestine?* (2020) Centre for European Reform, 9.

¹⁵⁴ Sinem Akgül-Açıkmeşe and Soli Özel, *EU Policy towards the Israel- Palestine Conflict: The Limitations of Mitigation Strategies* (2024) *The International Spectator*, 59:1, 63.

statements. Still, the EU has largely failed to set an agenda for or influence the negotiation framework of this conflict. By and large, at the center of the current diplomatic regression is the failure of the US-led version of the Middle East Peace Process, resulting from the Oslo Accords, which has kept the EU in a peacemaking model that cannot produce a definitive peace accord and that ends up solidifying Israel's protracted occupation. Indeed, the EU has held back from taking any important measures to challenge Israel's long-running occupation. Its aim has been to give the peace process that follows the Oslo Accords chance after chance to succeed without, however, facing up to the reasons why this process has been stuck on the same track at every turn, leading to the current situation. As a result, the EU no longer effectively supports plans to end the occupation and assist Palestinian self-determination, instead it acts as an enforcer of the status quo set by the Oslo Accords¹⁵⁵.

Alongside the harmful stance adopted by the Trump administration, EU member states have become ever more divided, effectively paralyzing the Foreign Affairs Council, which makes foreign policy decisions by unanimity. The EU's effectiveness is hampered by internal divisions among its member states. Some countries, such as Germany and Austria, still support Israel's decisions, including due to their role in the Holocaust or the strength of the bond they maintain with the US, like the United Kingdom, while other member state have a more pro-Palestine approach, e.g. Spain, Ireland or Belgium¹⁵⁶. Indeed, national political developments have brought about a divide inside the EU, with some states holding different beliefs, values, and policies. This is making it more difficult for the EU as a whole to agree on delicate subjects like the conflict between Israel and Palestine. The politicization of the Israel-Palestine issue allows some states to consciously act in a way that not only supports one party in the conflict but also undermines the EU's overall unity. This splits the EU and makes it almost impossible for the EU to adopt a coherent policy, hindering the implementation and subsequently the application of the EU's policies which can't be employed to put any serious diplomatic pressure on Israel to get it to change course on settlement expansion or on human rights issues. For instance,

¹⁵⁵Hugh Lovatt, *Occupation and Sovereignty: Renewing EU Policy in Israel-Palestine* (2017) European Council on Foreign Relations, 2.

¹⁵⁶ Beth Oppenheim (n 153) 10.

the January 2020 Trump Prosperity to Peace plan drew combined criticism from EU states. However, when the EU attempted to make a statement for joint criticism, the Czech Republic, Hungary, Poland, and Slovakia vetoed it. Also, at a foreign ministers' conference on the 12th of May 2021, Hungary resisted a demand for Israel and Hamas to end hostilities in the Gaza Strip. Hungary claimed the proposal did not sufficiently condemn Hamas. Then, on the 12th of December 2023, the EU demonstrated its internal division when votes were taken concerning a UN resolution calling for a ceasefire in Gaza and the unconditional release of Israeli hostages with member states taking different stances from opposing to abstaining to voting in favour¹⁵⁷.

More in depth, the decisiveness of the EU's international actions is impaired by its institutional structure. Requiring unanimous approval among member states for foreign policy decisions, it is hard for the EU to adopt tough measures in response to Israeli policies. This model not only allows individual member states to slow down the resolution process but it also allows member states to stop serious resolutions with the EU's well-known lengthy procedures along the way. Achieving unanimity means that even when a clear majority of EU states favors stronger measures against Israeli policies, a single dissenter can stop the process. This has led to an inconsistent approach in which EU resolutions often lack enforcement mechanisms. As a result, many of them are largely symbolic¹⁵⁸.

Moreover, the confusion also spreads out between EU institutions. This disunity has stopped the EU from functioning as a unified and influential actor in the region, making it less credible as a peace broker. On the one hand, by urging both parties to reach a consensus on the 1967 borders and the parameters of peace, the Commission has formally demonstrated a balanced position. The European Parliament has taken a more critical stance and adopted more outspoken stances in support of Palestinian rights. It recently urged Israel to stop its illegal settlements and called for a European peace plan that would support the two-state solution, while acknowledging Israel's right to retaliate against any

¹⁵⁷ Sinem Akgül-Açıkmeşe and Soli Özel (n 154), 65.

¹⁵⁸ Alessandra Mignolli, *L'Unione europea e la crisi di Gaza. Un equilibrio sempre più complesso* (2024) Ordine Internazionale e Diritti Umani, 266.

violent acts¹⁵⁹. In addition, the EU Parliament demands that Palestine have elections, which have not happened since 2006. The differences among EU institutions increase as the disparate range of viewpoints across member nations has become apparent since the crisis began on the 7th of October 2023¹⁶⁰.

In tandem, the EU's lack of a clear enforcement mechanism means that even when it does reach a coherent policy agreement, the EU is largely ineffective in making Israel follow through on promises and in making Israel adhere to international law. The soft power of the EU, which emphasizes economic incentives and normative persuasion, has had difficulty gaining ground in the face of firm geopolitical interests and the asymmetric nature of the Israeli-Palestinian conflict. The EU has tried to balance its engagement by supporting Palestinian institutions and civil society. Yet, it has not been able to impose any serious consequences on Israeli policies like settlement expansion that might make it look as if the EU were in fact balancing its actions. This has led Israel to perceive EU actions as weak and to see the EU as a sympathetic actor only to the Palestinians. The EU has limited power to influence the conflict resolution process by using its leverage. The EU has just as much to lose from degrading its existing level of commerce and cultural connections as Israel does, given the USA's backing for Israel, the fact that Israel is not a candidate for full EU membership, and the sizeable trade between the two countries. Israel's hostility with Europe would only grow, and no side would gain.¹⁶¹

Among the EU's many contributions to the Israeli-Palestinian conflict, the most important is probably the provision of extensive humanitarian and development assistance to the Palestinian territories. However, despite the financial commitment, the EU remains a weak political player in the East Mediterranean. International assistance has often attracted criticism for making the Palestinians dependent rather than helping them build an independent, functioning state. The EU's aid policies, in particular, have been constrained by Israel's restrictions on the movement of goods and people, which limits

¹⁵⁹ European Parliament, Israel and Palestine: MEPs Call for a European Peace Initiative (14 December 2022) <https://www.europarl.europa.eu/news/en/press-room/20221209IPR64421/israel-and-palestine-meps-call-for-a-european-peace-initiative>.

¹⁶⁰ Sinem Akgül-Açıkmeşe and Soli Özel (n 154) 66.

¹⁶¹ David Newman and Haim Yacobi (n 136) 16.

the development projects' impact¹⁶². Ensuring that humanitarian aid does not perpetuate the status quo but rather helps achieve a meaningful political resolution is the real challenge. The way the EU provides aid has also raised concerns about its conditions. Aid should help with governance and economic development, it should not just be aimed at providing relief in crisis situations at the risk of becoming a poor substitute for political inaction. When aid is provided by the international community during a violent war, it becomes a component of the conflict itself. Even while aid organizations frequently aim to be impartial or nonpartisan toward war winners and losers, their assistance has an impact that is not neutral in terms of whether the conflict gets worse or better. When aid is provided in conflict situations, it can extend, intensify, and reinforce the conflict; it can also serve to lower tensions and increase the possibility of putting a stop to fighting and finding moderate solutions to conflict situations¹⁶³. Therefore, throwing money at the problem is not going to solve it, although it is noble to sustain the Palestinian population affected by the conflict and even if relief measures are certainly needed, there should also be a clearer agenda and enhanced transparency for the funds the EU dedicates to the cause.

Furthermore, the EU has consistently framed its commitment to the Israeli-Palestinian conflict as an upholding of international law, particularly as an implementation of UN resolutions. Most recently, the EU has condemned Israel's expanding settlements as in breach of international law. Unfortunately, the EU has not backed up its legal rhetoric with any enforceable legal mechanism, such as a suspension of its trade agreements with Israel, and certainly no mechanism has been enacted that would have any revenue impact for Israel. As a result, the EU's rhetoric does seem to have a "double standard" appearance. The EU is quite firm in condemning rule violations by Israel and the international law implications, but Israel does not seem to care, and the EU has not taken any serious action¹⁶⁴.

¹⁶² Anne Le More (n 147) 90.

¹⁶³ Ibid, 20.

¹⁶⁴ Alfred Pijpers, *The EU and the Palestinian-Israeli conflict: the limits of the CFSP* (2007) Netherlands Institute for International Relations "Clingendael", 2.

The European Neighbourhood Policy Action Plan of 2004 (ENP) and the EU-Israel Association Agreement (1995) serve as the two primary pillars of the EU-Israel relationship. Free commerce in products, liberalized services, institutionalized political discourse, and improved cooperation on economic and other issues are all provided for under the Association Agreement. In areas like commerce, services, energy, migration, and police and judicial cooperation, the ENP is a bilateral political agreement that aims to “gradually integrate Israel into European policies and programs”. However, both instruments are conditional upon respect of human rights and more generally “common values”. In any case, the EU never imposed sanctions on Israel using this framework, its only action regarding trade was the labelling of products coming from the OPT. Nonetheless, even in this case the EU has been criticized for being inconsistent in its policies regarding occupied territories¹⁶⁵. Indeed, the EU has been far more stringent with Russia than with Israel. The EU placed sanctions and restrictive measures on Russia following its illegal annexation and occupation of Crimea in 2014, depriving Russian entities in the region of the advantages of the bilateral relationship between the EU and Russia¹⁶⁶. Although the EU has imposed sanctions on Russia for its annexation of Crimea, it has refrained from similar measures against Israel for its policies in the West Bank. This perceived double standard has diminished the EU's ability to act as a credible and impartial mediator in the eyes of Israel, Palestine and other international actors. Good point

The way the EU struggles to assert its influence in the Israeli-Palestinian conflict affects its global reputation as a credible foreign actor. This occurs because the EU has not been taking decisive action that unquestionably shows it is committed to advancing human rights and fostering conflict resolution. Additionally, the division is further compounded by a lack of internal coherence in the EU's external relations, where economic and security interests often trump commitments to human rights. On the one hand, Israel has an ambivalent relationship with the EU and has recently become quite antagonistic towards Europe for what they perceive to be a pro-Palestinian bias, on the other hand, the Palestinian Authority welcomes direct EU intervention as a way to counter what they see

¹⁶⁵ Sinem Akgül-Açıkmeşe and Soli Özel (n 154) 12.

¹⁶⁶ Ibid., 17.

as pro-Israel bias from the US. Israel perceives EU assistance to Palestine negatively, maintaining the funds allocated for “Palestine State-building” have been used for Palestinian terrorist attacks and to promote “a post-Zionist extremist agenda”. For its part, Palestine and other Arab countries argue that the EU’s policies are not effective and maintain the EU should assume a more active stance in the peace process¹⁶⁷. Overall, the lack of cohesion and consistency in EU policies make it seem untrustworthy in the view of both Israel and Palestine.

The only unshakeable commitment the EU has managed to consistently support is the two-state solution has its preferred policy for the conflict resolution, but its feasibility has steadily diminished. The expansion of Israeli settlements, the rightward shift in Israeli politics, and the fragmentation of Palestinian governance have all made a negotiated settlement seem more and more unlikely. The EU has been having a rough time establishing a foothold in Middle Eastern diplomacy, and not only because its preferred vision of a two-state solution seems increasingly out of touch with “on-the-ground realities”. Increasingly, the EU isn't even part of the diplomatic negotiations, the agreements between Israel and the Arab states that are emerging now are a clear instance of something happening in the Middle East that doesn't involve European influence. They are a clear sidelining of the EU and its influence, while the growing strategic partnerships between Israel and Gulf states like the UAE and Bahrain are clearly moving those countries in a different and increasingly anti-Iran direction¹⁶⁸.

Finally, the two-fold problem of the EU’s disengagement from the peace process and the Israel-Palestine conflict’s increasing marginalization in EU institutions means that even less attention is being given to the conflict at a time when the EU supposedly remains committed to a two-state solution. As noted above, however, the EU does not yet have a single policy that it enforces with all member states in a consistent manner. Currently, the EU remains well-intentioned but largely ineffective, and the absence of a single coherent voice among its member states weakens its supposed commitment to a two-state

¹⁶⁷ David Newman and Haim Yacobi (n 136) 26.

¹⁶⁸ Özlem Tür and Başak Alpan, *What accounts for the EU’s actorness within its “geopolitical awakening”?: The Israeli- Palestinian conflict and effectiveness and cohesion of the European Union* (2024) 271.

solution¹⁶⁹. Moreover, the geopolitical realities, internal divisions, and the predominance of US diplomacy constrain the EU's engagement in the Israeli-Palestinian conflict. Although it is the key financial contributor to Palestinian state-building, it has limited political influence. The EU has policy coherence problems, it won't leverage economic relations with Israel and it has been virtually unable to implement diplomatic measures with any meaningful impact. These challenges make it unlikely that the EU will play a primary role in the peace process anytime soon. If the EU wants a "seat at the peace process table", it will have to adopt a clear and resolute policy and implement it with more diplomatic skill than it has shown in recent times.

2.5. EU mitigation strategies: delegation, multilateralization and selective engagement

The proposed framework offers a detailed look at the extent to which the European Union remains mired in an impasse. This is not to say that no efforts have been made to improve the situation, many initiatives have been undertaken, with varying degrees of success, to shore up the EU's position as a key actor in the region. If the EU wishes to enhance its relevance and effectiveness in the peace process, it needs to adopt a more coherent, more assertive, and more unified stance. The EU's direct engagement in the peace process has been often and justifiably criticized for being operationally inefficient and strategically incoherent. Despite the challenges and limitations, the EU has introduced a series of mitigation strategies that are supposed to help the bloc navigate the problematic situation while maintain its engagement in the region. These strategies include: overcoming internal divisions within the EU, undertaking delegation of responsibility, using a multilateral approach, practicing selective engagement, and enjoying enhanced diplomatic autonomy. Over the next few pages, we will consider what strategies the EU has employed to improve this state of affairs.

Disagreement among member states is one of the EU's primary challenges in the Israeli-Palestinian conflict. This lack of consensus has consistently hindered the Union's ability

¹⁶⁹ Ibid., 272.

to adopt a clear, effective approach to the conflict. Individual member states have complicated the formulation of a cohesive EU foreign policy by maintaining unique diplomatic relationships with both Israel and Palestine. For example, states such as Ireland and Sweden press for a strong EU response to Israeli policies that contravene international law, while member states such as Hungary and the Czech Republic pursue a closely aligned foreign policy with Israel that prioritizes the stability of the economic and security relationship maintained. This clearly fragmented picture is politically unhelpful, subjecting the EU to frequent policy deadlock and limiting the Union's ability to exert significant diplomatic leverage¹⁷⁰. To reduce these internal rifts, the EU has sought to develop mechanisms that let smaller groups of member states take the lead in initiatives without needing the consensus-driven European Council to go along. One such mechanism is the formation of contact groups with willing states that can drive specific efforts. These groups let the EU "proactive states" work around internal opposition to engage in targeted diplomacy within the EU framework bypassing the need for a consensus¹⁷¹.

An additional mitigation strategy has been the reinforcement of the EU's differentiation policy, which seeks to allow the EU to take a principled stand on settlements without requiring unanimity among member states. According to this 2012 policy, the settlements should not be eligible for any of the advantages of the bilateral ties between the EU and Israel or between the member states and Israel¹⁷². However, because political and economic factors differ among member states, the differentiation policy is still not always used consistently. Belgium, Denmark, France, Germany, Ireland, and the Netherlands are the only six of the 28 member nations that have actively attempted to incorporate the policy into their domestic laws. Only a small percentage of the 260 bilateral agreements between member states and Israel, according to the ECFR, have a provision outlining the territorial scope. Furthermore, clauses are vague when they are present¹⁷³.

¹⁷⁰ Sinem Akgül-Açıkmeşe and Soli Özel (n 154) 66.

¹⁷¹ Hugh Lovatt (n 155) 12.

¹⁷² More specific information on this EU's policy in section 3.1.

¹⁷³ Beth Oppenheim (n 153) 13.

The EU has leaned more and more on delegation as a way to maintain its involvement in the conflict while working around its structural limitations. Via its Common Security and Defence Policy (CSDP), the EU has set up missions that offer technical support alternatives to direct mediation. For instance, the EU Police Mission in the Palestinian Territories (EUPOL COPPS), which has been a big help in quietly reforming the Palestinian security sector. By assigning responsibilities to technical missions, the EU has been able to support state-building initiatives without directly addressing the political impasse. Moreover, another aspect of delegation is the EU's dependence on NGOs and international institutions to carry out its humanitarian aid and development programs. Through funding to bodies like UNRWA, the EU ensures that vital resources flow to Palestinian refugees. Yet, in this case, too, the indirect approach means limited leverage to condition aid on political progress¹⁷⁴.

Moreover, the EU has consistently sought to channel its limited unilateral influence into the multilateral frameworks of global governance to enhance its diplomatic clout. One of the main stages on which it plays out this act of foreign policy is the Middle East Quartet, which comprises, along with the EU, the UN, the US, and Russia. Despite the platform's meaningful interventions, however, the effectiveness of the Quartet can hardly be seen as a model of multilateral governance. Indeed, it seems more of a case study in US hegemony¹⁷⁵. Acknowledging these constraints, the EU has pursued other multilateral forums, like the Munich Group, which also counts France, Germany, Egypt, and Jordan among its members. This alternative allows European states to work with regional actors without the Quartet barriers that have made direct negotiations seem impossible at times. Furthermore, the fact that the EU's two biggest nations, France and Germany, meet with important regional players, Egypt and Jordan, to discuss the two-state solution, the cornerstone of EU policy toward the MEPP, attests to the EU's ability to stay involved in the matter even though it is not an EU-led or EU-represented process. Moreover, the EU has intensified its involvement with the Union for the Mediterranean, a regional body that promotes dialogue between Arab and European nations, heir to the Barcelona process. By means of these various multilateral initiatives, the EU has endeavored to retain some of

¹⁷⁴ Sinem Akgül-Açıkmeşe and Soli Özel (n 154) 69.

¹⁷⁵ Beth Oppenheim (n 153), 11.

its influence in the area of the peace process, even when other global actors have taken the lead. Yet, these initiatives have only marginally succeeded in influencing Israeli policy and have had almost no impact in advancing Palestinian statehood¹⁷⁶.

The European Union has also embraced a strategy of selective engagement, which tailors diplomatic and economic relations according to the political circumstances. This allows the EU to maintain relationships with both Israel and Palestine without fully endorsing the policies of either side. On the one hand, the EU has been particularly consistent in its trade and security cooperation with Israel. That engagement continues even when there are major disagreements over settlement policies¹⁷⁷. On the other hand, the EU has also been selective in its engagement with the Palestinian Authority (PA). It is providing financial aid while at the same time expressing ongoing concerns about governance issues and the lack of democratic reforms. However, EU foreign policy is hampered because Hamas is a major political actor in Gaza. Since Hamas is classified as a terrorist organization, the EU has a no-contact policy with it. It goes without saying that Hamas' radical rhetoric and violent tactics are unacceptable. Despite its unpopularity, Hamas continues to be the leading military and political power on the Palestinian side and Israel's harsh measures have simply made Hamas more powerful while undermining the PA. Hamas may be forced to play the diplomatic game if engagement rather than recognition is used to encourage moderation. Since the Union must rely on a third party as a conduit, having no interaction at all minimizes the EU in talks about the war and regional issues. Additionally, it keeps the EU from actively participating in intra-Palestinian reconciliation. Therefore, if the EU wishes to back Palestinian elections, interaction will be required. The ultimate objective should be for the EU to delist Hamas as a terrorist organization, with specific goals like the rejection of violence and the recognition of Israel. Development funding to Gaza, as opposed to humanitarian aid, should be contingent upon the achievement of these goals¹⁷⁸.

Moreover, the EU should enhance his degree of autonomy in its diplomatic process. A key angle of the drive for enhanced autonomy is the individual recognition of Palestinian

¹⁷⁶ Sinem Akgül-Açıkmeşe and Soli Özel (n 154) 71.

¹⁷⁷ Ibid., 71.

¹⁷⁸ Beth Oppenheim (n 153), 18.

statehood by EU member states. Among the European countries only some of them have already recognized Palestine as an autonomous State, however discussions have taken place about a coordinated push for recognition both at the EU level and by the UN. This would certainly enhance the EU's credibility as an independent and coherent diplomatic actor, although some internal divisions among member states have so far limited progress on this front¹⁷⁹. Moreover, since the European Economic Community released its Venice Declaration in June 1980, numerous European nations have recognized the right of the Palestinian people to self-determination. Furthermore, 136 nations have recognized the State of Palestine directly, while numerous others have done so inferentially. In November 2012, the UN General Assembly acknowledged Palestine as a "non-member state". In its 2004 advisory judgment on the legal ramifications of Israel's wall building in the OPT, the International Court of Justice recognized Palestinian statehood. Similar conclusions have been reached by the International Criminal Court (ICC), which has accepted Palestine's admission to the ICC's Rome Statute, confirmed the Gaza Strip's occupied status in the case of the Mavi Marmara relief ship, and opened a preliminary inquiry into its circumstances. Therefore, the increasing recognition in different legal forums should be a sign for the EU to push more actively towards a more uniform acknowledgement of the Palestinian statehood¹⁸⁰.

To sum up, the EU has taken a structured and pragmatic approach to mitigating the Israeli-Palestinian problem. The EU's involvement in the Israeli-Palestinian conflict is extremely complex. Delegation, multilateralism, and selective engagement have all helped the EU work around geopolitical limitations, but they haven't been enough to drastically change how the crisis has played out. The efficacy of the EU is still being weakened by multiple factors such as internal conflicts, the predominance of US-led diplomacy and Israeli opposition to outside pressure. The EU would need to adopt a more direct approach with Palestinian leaders and a somewhat less diminishing form of engagement with Israel in order to reclaim some of its lost influence.

¹⁷⁹ Ibid., 14.

¹⁸⁰ Hugh Lovatt (n 155) 10.

Chapter 3: The Humanitarian Clause in the EU-Israel Association Agreement

3.1. The EU-Israel Association Agreement: innerworkings

The association agreements (AAs) that the European Union uses as an external policy instrument are a key aspect of the EU external action. They serve to build economic integration and political cooperation with third countries and to build regional stability with different third countries. Rooted in Article 217 of the TFEU¹⁸¹, these agreements create relationships that consist of much more than just trade, they set up dialogues at all levels of politics, and they lead to all sorts of structured, sectoral cooperation. Though the scope and intensity of these agreements vary, they are a linchpin of the EU's strategy of engaging non-member states, and a necessary part of its toolkit if the EU is to act like a global power.¹⁸²

The EU-Israel Association Agreement (EUIAA) is trade-oriented and geopolitically significant. Its implementation, however, has been rocky, and this is mainly due to two factors: disagreements over Israeli settlements in the Occupied Palestinian Territories and the EU's differentiation policy. Although the EUIAA has its limits, since its entrance into force in the 2000, it has established the legal framework for the relationship between the EU and Israel, comprising trade, sectoral cooperation and research collaboration¹⁸³. This section analyses the general purpose of the Association Agreements in the EU's foreign

¹⁸¹ Art. 217 TFEU: The Union may conclude with one or more third countries or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure.

¹⁸² Peter Van Elsuwege and Merijn Chamon, *The Meaning of 'Association' under EU Law: A Study on the Law and Practice of EU Association Agreements* (2019) Policy Department for Citizens' Rights and Constitutional Affairs, 9.

¹⁸³ European Union-Israel Association Agreement (signed 20 November 1995, entered into force 1 June 2000) OJ L147/3.

policy and the specific innerworkings of the EU-Israel Association Agreement, including its structure, benefits and challenges.

Determining the precise meaning of association is a difficult undertaking. It is nearly impossible to come up with a precise understanding of article 217 of the TFEU due to its ambiguity and the wide variety of association agreements that exist in practice. It is possible to distinguish between several kinds of association agreements and, thus, “association”. Generally speaking, there are different types of association, such as pre-accession, membership substitution, and privileged status for non-European nations. Even if the specific goals and extent of the established relationship are generally flexible, there are some restrictions on what the association formula allows. Specifically, the associated nations’ procedural and institutional rights are restricted to the decision-making process, however they cannot include representation or decision-making powers within the EU Institutions. Moreover, the precise structure of the new relationships is not predetermined due to the intrinsic flexibility of the legal concept of “association”¹⁸⁴.

Article 217 TFEU provides the legal foundation for the negotiation of association agreements. There are no procedural guidelines for concluding an association agreement in Article 217 TFEU. Association agreements, on the other hand, are treated as a unique instance under Article 218 TFEU, which states that such agreements must be formed after a unanimous vote in the Council¹⁸⁵ and with the assent of the European Parliament¹⁸⁶. To

¹⁸⁴ Olha Shpakovych and Yaroslav Kostyuchenko, *Legal Basis of the Association in the Relations of the European Union with Third Countries as One of the Forms of Implementation of the EU’s External Relations in the Sphere of Environmental Protection* (2020) *European Energy and Environmental Law Review* Vol.29 Issue 4, 143.

¹⁸⁵ Article 218(8) TFEU: 8. The Council shall act by a qualified majority throughout the procedure. However, it shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article 212 with the States which are candidates for accession. The Council shall also act unanimously for the agreement on accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms; the decision concluding this agreement shall enter into force after it has been approved by the Member States in accordance with their respective constitutional requirements.

¹⁸⁶ Article 218 (6) TFEU: 6. The Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement.

put it more simply, association is a privileged relationship under public international law and should be separated from the overseas country and territory association outlined in Part 4 of the TFEU. Although reciprocal rights and obligations are normally established by international agreements, the reference to “common action and special procedure” is what distinguishes an association agreement. In actuality, this means that the agreement will create joint institutions with the authority to make legally binding decisions. The EU legal system is based in large part on these rulings. This makes it possible for the association to grow beyond the terms of the original agreement, though clearly within this paradigm¹⁸⁷.

Additionally, the legal foundation of EU external action has been substantially modified by the Lisbon Treaty. The addition of a legal foundation for the evolution of the Union’s ties with its neighbors is especially important, aside from the much-discussed institutional changes and the removal of the pillar system. A new kind of bilateral agreement based on political and geographic factors can be legally concluded thanks to Article 8 TEU¹⁸⁸.

Except where agreements relate exclusively to the common foreign and security policy, the Council shall adopt the decision concluding the agreement:

(a) after obtaining the consent of the European Parliament in the following cases:

- (i) association agreements;
- (ii) agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- (iii) agreements establishing a specific institutional framework by organising cooperation procedures;
- (iv) agreements with important budgetary implications for the Union;
- (v) agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required.

The European Parliament and the Council may, in an urgent situation, agree upon a time-limit for consent.

(b) after consulting the European Parliament in other cases. The European Parliament shall deliver its opinion within a time-limit which the Council may set depending on the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act.

¹⁸⁷ Peter Van Elsuwege and Merijn Chamon (n 182) 11.

¹⁸⁸ Article 8 TEU: 1. The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.

According to this article, a special relationship can only be granted to neighboring countries that uphold the values of the Union. Furthermore, the fact that Article 8 TEU is a part of the so-called “common provisions” rather than the Treaty’s provisions on EU foreign action shows how important neighborhood connections are¹⁸⁹.

Although these agreements do not grant EU membership, they often include deep economic integration through free trade agreements (FTAs) and political cooperation mechanisms. Region-to-region negotiations and free trade agreements have been heavily utilized by the EU. The goal of fostering political stability and economic growth in the EU's immediate neighborhood has been a major driving force behind the Association Agreements with the nations of the Euro-Med partners and the south-eastern European Union and western Balkans. Development policy goals are a major driving force behind the Economic Partnership Agreements (EPAs) with the African, Caribbean, and Pacific nations. Lastly, there are the more commercially driven bilateral free trade agreements that have been signed with South Africa, Mexico, and Chile, as well as the ongoing region-to-region talks with MERCOSUR. A variety of other cooperation agreements, such as initiatives to promote regulatory cooperation with the US, exist in addition to these fully functional free trade agreements¹⁹⁰. These agreements often include conditionality mechanisms, whereby access to EU markets and financial assistance is tied to compliance with democratic and human rights norms.

The association agreements are comprehensive by nature and style, but they are not uniform in their application. Some of them, like the one with Norway and Switzerland, provide a high level of regulatory integration. Others, like the association agreement with Israel, are more focused on trade and economic matters. The political conditionality attached to these agreements varies widely. The EU-Ukraine Association Agreement, for instance, has very strong governance and rule-of-law provisions. The EU-Israel

2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.

¹⁸⁹ Peter Van Elsuwege and Roman Petrov, *Article 8 TEU: Towards a New Generation of Agreements with the Neighbouring Countries of the European Union?* (2011) *European Law Review* Issue 5, 3.

¹⁹⁰ Stephen Woolcock, *European Union Policy Towards Free Trade Agreements* (2007) ECIPE Working Paper No. 03/2007, European Centre for International Political Economy (ECIPE), Brussels, 2.

Association Agreement, on the other hand, although comprising a human rights provision in its Article 2, seems to be mainly focused on the commercial benefits¹⁹¹. The lack of uniformity is furtherly complicated by the challenge of mixity. Indeed, the EU-Israel Association Agreement, like most of the EU's AAs, is a mixed agreement, which means that it does not only involve the EU but also the EU's member states as parties in their own right. This means that implementation is needed both at the EU level and Member States level, which may cause inconsistencies in the application of the agreement's policies. The point of allowing mixed agreements seems moot, since the Member States already have veto power when concluding association agreements at the EU level, considering that the entrance into force of these agreements requires unanimity. However, there are several reasons why association agreements are often mixed. First of all, they are usually all-encompassing, offering a broad framework for collaboration across EU and Member State competences. Secondly, mixity is frequently a practical way to prevent disputes over internal competence between EU institutions and Member States. Third, Member States prefer to be a contracting party separate from the EU, which is explained by the political significance of association agreements. It maintains their prominence in relation to third countries and gives them negotiating power during the talks and ratification process¹⁹².

The Euro-Mediterranean Partnership (EMP) must be considered while considering the signing of bilateral association agreements with seven Southern Mediterranean nations (Tunisia, Morocco, Israel, Jordan, Egypt, Algeria, and Lebanon) between 1998 and 2006. The EMP, sometimes referred to as the Barcelona process, began in 1995 and sought to establish regular communication on issues of politics and security; financial, trade, and economic cooperation, including the establishment of a free trade area; and collaboration on social, cultural, and human affairs. The prior cooperation agreements from the 1970s were superseded by the bilateral Euro-Mediterranean Association Agreements (EMAAs), which also served as the legal foundation for the EMP's implementation. Moreover, the EU's ties with its southern neighbors have further expanded and deepened with the

¹⁹¹ Kataryna Wolczuk, Laure Delcour, Rilka Dragneva, Klaudijus Maniokas, Darius Žeruolis, *The Association Agreements as a Dynamic Framework: Between Modernization and Integration* (2017) EU-STRAT Working Paper No. 06, 8.

¹⁹² Peter Van Elsuwege and Merijn Chamon (n 182) 19.

introduction of the European Neighbourhood Policy (ENP) in 2004. For example, bilateral agreements with Mediterranean nations including Israel, Egypt, Morocco, and Jordan on agricultural, processed agricultural, and fishery products have been reached through letter exchanges and subsequently added as protocols to the EMAAs. Furthermore, new norms for resolving disputes have been reached with Egypt, Lebanon, Morocco, Jordan, and Tunisia. A further amendment of the EMAAs has not yet been the outcome of negotiations with Tunisia and Morocco on the further liberalization of trade with the goal of establishing a Deep and Comprehensive Free Trade Area (DCFTA)¹⁹³.

In more specific terms, the background of trade liberalization between Israel and the EU originates in 1975, when a deal was signed to establish a free trade zone for industrial items by 1989 and to give Israeli agricultural exports preferences. The terms of these deals were extended by the so-called Association Agreement, which was signed in 1995 and came into effect five years later. Since 2000, there has also been an agreement on acceptable laboratory procedures aimed at boosting confidence in the trade of pharmaceuticals, industrial chemicals, food additives, and cosmetics. The establishment of the European Neighbourhood Policy and the introduction of an individualized partnership in 2004 brought about yet another significant shift by enabling the customization of cooperation mechanisms to Israel's advanced economic status. In more recent years, trade liberalisation grew to incorporate processed foods and fresh categories of agricultural products. The coordination of facilitation measures for organic goods was updated in 2022. Moreover, an agreement reached in 2012 removed barriers to trade in medicines. The trade was expanded to the point of reaching the sector of tourism. Indeed, as of 2018 the “open skies” agreement allows Israeli charter and passenger airlines to capitalize on air travel to and from every international airport in the EU¹⁹⁴.

The EUIAA consists of two major components: economic provisions and the institutionalization of political discussion. In terms of economic provisions, the AA establishes increased liberalization of trade in goods, particularly increasing liberalization of trade in agricultural products. Articles 6 to 66 of the EU-Israel AA focus on provisions

¹⁹³ Peter Van Elsuwege and Merijn Chamon (n 182) 33.

¹⁹⁴ Karolina Zielińska, Politics prevails – Israel’s trade relations with the European Union (2023) OSW Commentary Centre for Eastern Studies number 527, 2.

regarding the economic side of the relationship between Israel and the EU. In particular, articles 6 to 9 provide the foundation for trade liberalization. These articles reinforce the free trade area between the EU and Israel, while aligning the WTO agreements and GATT 1994. Moreover, duty-free trade in industrial products is ensured by Article 6. It requires that goods be classified using the Combined Nomenclature of the European Union (EU system) and the Israeli customs tariff. Also, the agreement's scope is clarified in Article 7 which unequivocally states that this is an agreement dealing with industrial products, while agricultural and processed agricultural products are dealt with in separate provisions. Additionally, an essential part of trade liberalization is the abolishment of customs duties under Article 8, which prohibits tariffs on imports and exports as well as any charges that have an equivalent effect, including duties that are fiscal in nature. Nonetheless, Article 9 presents exceptions that apply to agricultural products, permitting both the EU and Israel to maintain agricultural elements in specific goods that are enumerated in annexes. Subsequently, articles 10 to 15 focus on the trade in agricultural products providing for further concessions to establish in specific protocols to progressively liberalize trade. Furthermore, articles 16 to 28 specify the mechanisms in place to achieve the free movement of goods and fair-trade practices. They prohibit quantitative restrictions on imports and exports and discriminatory taxation to ensure there is no limit to the volume of the trade and to prevent unfair advantages for domestic products. Additionally, they allow the parties to establish custom unions and trade agreements with other parties. Lastly, they set up anti-dumping and safeguard measures to protect domestic industries and allow for temporary trade restrictions during times of economic crisis or when public interest concerns arise, such as security and health. The EUIAA goes on to market access, competition and intellectual property, supporting the right of establishment and services. The agreement also promotes the free movement of capital and payments while admitting that temporary restrictions may be necessary in situations of financial instability. It aims to open public procurement markets to better competition and more transparency. At the same time, it contains very strict rules on competition that prohibit anti-competitive practices, abuse of dominant positions and unfair state aid. Finally, the agreement strengthens intellectual property protections,

bringing standards into alignment with international conventions¹⁹⁵. In addition to broader liberalization in trade-related concerns, the pact calls for increased collaboration in other sectors. It intends to strengthen collaboration in research and technology as well as several other sectors spanning through agriculture, environment, energy, financial services, tourism, migration, and transportation. Finally, it provides for cooperation in the audiovisual, cultural, and social fields. Indeed, the AA offers a wide range of partnership opportunities. Since the scope is quite comprehensive, its success depends on the actual implementation of the provisions themselves¹⁹⁶. Also, an additional agreement was concluded between the EU and Israel in 1996 regarding association in the research field¹⁹⁷.

In addition to the technical and sectoral components of cooperation, the AA establishes a political discourse between the EU and Israel. The statement calls for a regular political discussion between the parties to “strengthen their relations and contribute to the development of a lasting partnership and increase mutual understanding and solidarity”. In practice, this political interaction should take place at the ministerial and senior official levels, as well as between the European and Israeli parliaments. This discussion should “facilitate the pursuit of joint initiatives” by utilizing diplomatic channels, conducting consultations, and exchanging information on foreign and security policy. The AA offers institutional provisions in addition to this political discourse. The deal thus creates an Association Council between the EU and Israel, which will convene at the ministerial level once a year. An Association Committee is also formed, “subject to the powers of the Association Council”. It is in charge of putting the AA into practice and brings together officials from both sides. Additionally, the agreement establishes 11 expert subcommittees. Lastly, the AA offers a dispute resolution procedure. As a result, any disagreement should be resolved at the Association Council level. Each party shall designate an arbitrator, and the Association Council should select the third one in

¹⁹⁵ Articles 29 to 39 of the EUIAA.

¹⁹⁶ Alexandre Veuthey (n 90) 137.

¹⁹⁷ Agreement on Scientific and Technical Cooperation between the European Community and the State of Israel (signed 25 July 1996, entered into force 8 June 1998) OJ L 209/23.

situations when the Council is unable to resolve the dispute. By majority vote, the three arbitrators reach a ruling, which must be followed by all parties¹⁹⁸.

The most contentious parts of the EUIAA are Article 2's provision regarding the protection of human rights and the territoriality scope of the agreement. Starting from the latter, as previously stated the main function of the arrangement is to encourage trade and to give Israel a preferential position in the European Union market. The arrangement provides for the elimination of tariffs on industrial goods and for the reduction of tariffs on agricultural products, which, of course, helps Israeli exports to the EU. Consequently, Israel holds a preferential position when having access to the European market for goods, which has allowed a substantial upscaling of economic interactions. To address the legality of establishing a free-trade zone or preferential tariff regime with Israel between its territory and the territory of the EU, one must first determine whether the Israeli territory's size and the jurisdictional regime it has established there are legal. This is because the Israeli territory and the goods produced there will receive preferential treatment with regard to tariffs. Although the majority of the international community acknowledges that the Israeli territory is limited to the region on the Israeli side of the "Green Line"¹⁹⁹, Israel has implemented a number of measures in both that region and the OPT to include Palestinian areas inside its borders. Under Israeli law, these incorporated lands, both inside and outside the Green Line, have the same ultimate status: they are regarded as belonging to Israeli territory and falling under Israeli authority, albeit through distinct legal processes. For nations and international organizations that have developed trade links with Israel and the PA, this has serious ramifications²⁰⁰. Through the "Orders Regarding the Management of Regional Councils and of Local Councils", which essentially replicate Israeli law in the settlements by regulating them in areas such as elections, budgets, education, the establishment of local courts and the makeup of Regional and Local Settlement Councils, Israel began the process of expanding its

¹⁹⁸ Alexandre Veuthey (n 90) 138.

¹⁹⁹ The 1949 Armistice Agreements between Israel and its neighbors (Egypt, Jordan, Lebanon, and Syria) during the 1948 Arab-Israeli War established the demarcation line known as the "Green Line", or 1949 Armistice border. It still serves as the internationally acknowledged border between Israel and the two Palestinian territories, the West Bank and the Gaza Strip.

²⁰⁰ Marco Guasti (n 99) 5.

jurisdiction over Palestinian lands in the OPT. All of the land in the OPT is included in the municipal boundaries that each of these Settlement Councils has control over. By changing the Israeli Development Towns and Areas Law in 1988, the Knesset extended its authority over the settlements to include local government officials and Israeli residents living in the OPT, virtually applying Israeli law to settlement territories. This framework has to be taken into consideration by international actors such as the EU. The lack of a solid border makes it difficult to distinguish Israel's proper territory from the OPT, dealing with one while excluding the other²⁰¹.

The most significant tool for the EU when dealing with Israel and the settlements in the OPT is the EU differentiation policy. The aim of this policy is to ensure that the EU's agreements with Israel are not applied in the OPT and that Israeli settlements do not enjoy the benefits of such agreements. In other words, the aim is to enforce compliance with international law and the EU's own legal framework. The differential treatment is intended to uphold the EU's non-recognition policy with respect to Israeli government claims about the West Bank, East Jerusalem and the Golan Heights, while allowing the EU to maintain good relations with the state of Israel within its recognized borders. The differentiation principle has a clear legal basis in international law and EU law, more specifically in the EU's international legal obligation, not to recognize breaches of international law. This principle is notably itemized in Article 21 of the Treaty on the European Union²⁰². Besides the EU, the ECJ has also reinforced this principle via key rulings. The ruling in *Brita GmbH v. Hauptzollamt Hamburg-Hafen* is particularly revealing²⁰³. At issue was whether products originating from Israeli settlements were entitled to privileged access to the EU market under the EU-Israel Association Agreement. The disagreement started when Brita GmbH, a German enterprise, imported items from an Israeli company, Soda-Club Ltd., that made the products in Mishor Adumim, a settlement in the West Bank. Brita sought preferential tariff treatment under the EUIAA, however German custom authorities questioned whether the preferential treatment should apply to products made in Israeli settlements in the West Bank. While

²⁰¹ Ibid., 10.

²⁰² Ibid., 19.

²⁰³ Case C-386/08 *Brita GmbH v Hauptzollamt Hamburg-Hafen* [2010] ECR I-1289.

the Israeli customs authorities confirmed that the goods were produced in an area under their jurisdiction, they did not clarify whether the goods in question were manufactured within the borders of internationally recognized Israel or in the West Bank. When the German customs authority pushed for clarification, it received none from the Israeli authorities, therefore the former demanded payment of custom duties. This decision was challenged by Brita in the Finanzgericht Hamburg, which referred the matter to the ECJ²⁰⁴. The ECJ ruled that items made in Israeli settlements in the West Bank do not qualify for the kind of preferential treatment that the EU-Israel Association Agreement provides, because that agreement applies only to the territory that Israel actually controls and that is internationally recognized, which does not include the West Bank. Moreover, the Association Agreement between the EU and the Palestine Liberation Organization, which applies to the West Bank and Gaza Strip, recognizes the Palestinian authorities as the competent entity to issue origin certificates for goods coming from those areas²⁰⁵. Additionally, the Court affirmed the principle of international law, namely, that treaties do not create obligations or rights for third parties without their consent, forbids Israel from unilaterally extending the trade benefits of its agreement with the EU to products from the West Bank²⁰⁶. The assertion made by Israeli customs that the goods are entitled to preferential treatment under the EU-Israel Agreement does not bind EU customs authorities when the origin of the goods is not clear²⁰⁷. This decision had political and economic implications, as it aligned with the EU's non-recognition of Israeli sovereignty over the West Bank and contributed to EU policies distinguishing between Israel and its settlements in occupied territories.

Since the EU does not acknowledge Israeli settlements in the occupied territories as lawful, it rejects the notion that agreements concluded with Israel also apply to Israeli settlements. However, in reality, this difference hasn't always been enforced. In addition to Israel's efforts to remove the Green Line, the EU viewed Israel's occupation as temporary as its cooperation with Israel grew in the 1990s, believing that further clarifications would be moot given the Oslo peace process's impending success. As a

²⁰⁴ Ibid., paras 30-36.

²⁰⁵ Ibid., paras 47-50.

²⁰⁶ Ibid., paras 43-46.

²⁰⁷ Ibid., para 73.

result, the EU refrained from enacting a legal regime of differentiation at this time, and as a result, there was no specific geographical element in its 1995 Association Agreement with Israel. However, the failure of the peace process and the mutually exclusive territorial scope of the EU's agreements with Israel and the PLO, has pushed the EU to develop and adopt a "differentiation" policy²⁰⁸. The differentiation policy in the EU-Israel accords is enforced mainly through trade restrictions, product labeling, and rules of origin provisions. The EU-Israel Association Agreement in its Fourth Protocol sets the rules of origin for the establishment of the free trade area, providing that a product must be "wholly obtained or produced²⁰⁹" in one state. Moreover, article 3 of the EUIAA states that if Israel uses materials from the EU to process their goods, these are still considered as originating in Israel. However, this bilateral cumulation does not cover goods originating from the West Bank and Gaza. Therefore, Israeli settlement goods do not enjoy tariff exemptions under the EUIAA. They are, however, covered by the EU-PLO Interim Association Agreement²¹⁰.

According to the 2012 policy, the settlements should not be eligible for any of the advantages of the bilateral ties between the EU and Israel or between the member states and Israel. Implementing labeling guidelines to allow consumers to distinguish between goods produced in the settlements, by Palestinians in the Occupied Palestinian Territory, and in Israel proper are some examples of differentiation measures. Other measures include: preventing research entities in settlements from participating in EU research and innovation programs; ensuring that the EU does not recognize product certification conducted in the West Bank, meaning that products certified in settlements cannot be freely placed onto EU markets and enforcing compliance with EU rules of origin, so that goods produced in the settlements do not benefit from preferential tariffs²¹¹. However, a discording element is the fact that Israeli goods that contain materials sourced from the

²⁰⁸ Hugh Lovatt and Mattia Toaldo, *EU Differentiation and Israeli settlements* (2015) European Council on Foreign Relations, 4.

²⁰⁹ Article 2(2)(a) of Protocol IV of the EUIAA.

²¹⁰ Christian Hauswaldt, *Problems under the EC-Israel Association Agreement: The Export of Goods Produced in the West Bank and the Gaza Strip under the EC-Israel Association Agreement* (2003) EJIL Vol.14 No.3, 596.

²¹¹ Beth Oppenheim (n 153) 12.

OPT are eligible for favorable tariffs as long as the materials have undergone adequate working or processing in Israel proper. For instance, even though they use grapes from West Bank settlements, Israeli wine producers that use a non-settlement postcode are nonetheless eligible for special tariff treatment²¹².

One important aspect of the differentiation policy is product labeling. In 2015, the European Commission issued its own interpretation of the requirement stating that EU legislation is clear and the label “made in Israel” for products originating from Israeli settlements would be misleading for the consumer. Moreover, the interpretative notice provides examples of how to correctly label products from the OPT, specifying on the label their origin, i.e. “Israeli settlement”²¹³. This measure, the EU insists, is all about ensuring transparency and complying with international law. However, it has faced very vigorous opposition from Israel, which insists that differentiation is discriminatory and politically motivated. Israeli officials have opposed the EU’s efforts, arguing that they constitute economic boycotts in disguise and unfairly single out Israel while ignoring other territorial disputes²¹⁴. Moreover, regarding “rules of origin”, the EU and Israel reached a technical agreement that mandates the postal code and name of the city where production has occurred to be included in all Israeli imports. Because Israel just needs to provide the city of production and can continue to assert that there is no legal difference between its territory and the settlements, the arrangement permits Israel to export ISGs to the EU without acknowledging that these commodities are made in settlements. In addition, Israeli businesses frequently conceal the true origins of goods made in settlements by using post codes from offices and PO boxes situated in cities inside the Green Line. The task of confirming which Israeli goods were manufactured in the settlements and which were created inside the Green Line falls to the customs agencies of EU member states, frequently having access to conflicting or false information²¹⁵.

²¹² Hugh Lovatt and Mattia Toaldo (n 208) 5.

²¹³ European Commission, *Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967* (November 11th 2015).

²¹⁴ Alexandre Veuthey (n 90) 148.

²¹⁵ Marco Guasti (n 99) 20.

Since the EUIAA is a mixed agreement, the implementation of differentiation across EU member states is anything but uniform. Countries in Western Europe, like France, Germany, and the Netherlands, require businesses to meet strict labeling and trade standards for goods made in Israeli settlements. Conversely, countries in Eastern Europe, like Hungary, the Czech Republic, and Austria, have taken clear stands against differentiation. They align with Israel's positions and prioritize economic and strategic ties with Israel over EU policy. This division among EU member states too often makes the enforcement of differentiation seem inconsistent and filled with political tension. Furthermore, at the EU institutional level, the EU has not updated the agreements with Israel already in force to include differentiation clauses. This would require Israel's approval which would be politically difficult. Furthermore, the European Council on Foreign Relations' Differentiation Tracker of 2018 found that only six of the EU's current 17 bilateral agreements with Israel are fully compliant with UNSCR 2334, five are partially compliant, and six are not at all²¹⁶.

The EU-Israel bilateral agreements, research collaborations, and funding mechanisms are also affected by the differentiation policy, as trade is. Since 2013, the EU has insisted on the inclusion of territorial clauses in all agreements with Israel, stating clearly that the settlements are not part of Israel's recognized territory, and hence, cannot be funded by the EU. This distinction has been especially notable in the EU's research initiatives, like Horizon 2020, which has prohibited any institutional affiliation with settlements from receiving grants. Likewise, Open Skies Agreement of 2013 only applies to Israeli airspace within the pre-1967 borders²¹⁷.

Moreover, the geopolitical environment may affect the differentiation policy. The US way of managing the Israeli-Palestinian conflict contradicts the EU's stance. Under the Trump administration, the US has progressively become partial to Israel, allowing Israeli efforts to expand settlements and deepening the de facto annexation of the West Bank. During Obama administration, the United States maintained a policy requiring products originating from the West Bank and Gaza Strip to be labeled as such, rather than as "made in Israel". However, it did not provide for specific labeling requirements such as the EU's

²¹⁶ Beth Oppenheim (n 153) 13.

²¹⁷ Hugh Lovatt and Mattia Toaldo (n 208) 6.

differentiation policy. Conversely, Trump administration's policy not only disregarded this previous requirement, but explicitly requires goods from the OPT to be marked as "made in Israel"²¹⁸. Additionally, the Abraham Accords, which saw Israel normalize relations with several Arab states, further weakened pressure on Israel to engage in peace negotiations, diminishing the effectiveness of differentiation as a diplomatic tool²¹⁹.

A basic question still exists: is differentiation a policy that is effective, or is it a legalistic exercise that has little real-world impact? Detractors maintain that differentiation has done little to stop Israel from expanding its settlements because the EU's economic relationship with Israel is still so robust. Although differentiation guarantees that the EU does not acknowledge Israeli sovereignty in the occupied territories, it does not carry any real consequences for Israel's settlement policy. This suggests that, as it stands, the policy is primarily declaratory since it is not contingent on effectiveness. However, the EU must uphold it, regardless of its practical outcome or lack thereof, in order to maintain its stance of non-recognition of Israeli settlements. Furthermore, the absence of a cohesive EU position diminishes the policy's respectability since EU Member States have been patchy in their implementation of the differentiation policy. This policy is one of the EU's most important but also most flawed foreign policy tools. It is aligned with both the EU's legal obligations and international law, yet its on-the-ground impact is limited. Why? Because enforcement is inconsistent, there are divisions within the EU and there are countermeasures from Israel. The EU can either take steps to strengthen the differentiation policy, or it can continue to allow it to remain as it is, a largely symbolic legal mechanism.

²¹⁸ United States Customs and Border Protection, *CBP Statement on Country of Origin Markings for Israeli and Palestinian Goods* (23 December 2020) <https://www.cbp.gov/newsroom/speeches-and-statements/cbp-statement-country-origin-markings-israeli-and-palestinian-goods>.

²¹⁹ Hugh Lovatt, *ECFR Differentiation Tracker Findings* (2020) European Council on Foreign Relations, <https://ecfr.eu/special/differentiation-tracker>.

3.2. The humanitarian clause: conditionality and applications

The idea of connecting human rights with trade liberalization is increasingly gaining consensus from international actors. More and more important trade partners such as the EU, the US, and Canada are embedding human and labor rights provisions in their new trade agreements. It permits states and supranational entities to make fundamental rights, democratic governance, and the rule of law preconditions for economic cooperation. This approach has seen a leader in the EU, which has systematically embedded human rights provisions into its bilateral and regional trade agreements. These clauses are set up to make sure that trade relations are driven by something more than just economic interests and also serve the kind of normative objectives that promote human dignity, democracy, and sustainable development. This is an inevitable consequence for the EU of the normative vision that underpins all of its external policy and is set forth in the Treaties. Thus, through its external activities, the EU has pledged to uphold and advance democracy and human rights²²⁰. This section will first look at the legal and institutional basis of human rights clauses and probe their function and legal enforceability in trade agreements. Then, it will focus on the specific application of the human rights clause in the EU-Israel Association Agreement.

All of the European Community's agreements with third nations have contained a human rights clause since 1992. According to this provision, respect for democracy and human rights are "essential elements" in the EU's ties with other nations. The EU's bilateral agreements are unique in that they contain a human rights clause. According to the essential element provision, the parties' internal and external policies must be based on respect for the fundamental human rights and democratic ideals outlined in the Universal Declaration on Human Rights (UNDHR), which is referred to as a "essential element" of the agreement. Moreover, the essential element clause is complemented by an additional provision, namely the "non-execution" clause. In contrast to the three-month notification period specified in Article 65(2) of the Vienna Convention on the Law of Treaties, the supplementary clause offers a response for non-execution. The clause may take the form

²²⁰ Ionel Zamfir, *Human rights in EU trade agreements. The human rights clause and its application* (2019) European Parliamentary Research Service, 2.

of an explicit suspension, known as “the Baltic clause” or a general non execution measure, namely “the Bulgarian clause”. The first type was used in the first generation of agreements, which were stipulated with countries on the road to accession and had more severe consequences, e.g. the immediate suspension of the agreement without consultation. For instance, article 21(3) of the Agreement between the European Economic Community and the Republic of Estonia on trade and commercial and economic cooperation states that: “The parties reserve the right to suspend this Agreement in whole or in part with immediate effect if a serious violation occurs of the essential provisions of the present Agreement”²²¹. The second type is more flexible, it provides for “appropriate measures” to be taken and a consultation process to hold, this makes it more appealing and agreeable for third countries²²².

The legal basis for human rights clauses in trade agreements is found in international law and EU treaties. According to the Lisbon Treaty, the EU must safeguard the human rights of people who are not on its territory when engaging in extraterritorial activities and when implementing policies that have an impact outside of its borders. The “respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights” are listed as the Union’s constitutive norms in Article 2 of the Treaty on European Union (TEU). The legal foundations of Article 3 TEU²²³ and Article 21 TEU²²⁴, which build

²²¹ Agreement between the European Economic Community and the Republic of Estonia on Trade and Commercial and Economic Cooperation [1992] OJ L403/1.

²²² Der-Chin Horng, *The Human Rights Clause in the European Union’s External Trade and Development Agreements* (2003) European Law Journal Vol. 9 No. 5, 678.

²²³ Article 3(5) TEU: In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

²²⁴ Article 21 TEU: 1. The Union’s action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

upon this normative ground and give the EU the authority to incorporate liberal economic values and social norms into its internal and exterior acts. Both these articles detail how the EU should act in its external policies towards third countries, pursuing its missionary objectives as listed both in articles 3(5) and 21(2) TUE²²⁵.

Moreover, the provision of human rights clauses is also in line with international law commitments. Protection of human rights is covered by a number of international

The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

- (a) safeguard its values, fundamental interests, security, independence and integrity;
- (b) consolidate and support democracy, the rule of law, human rights and the principles of international law;
- (c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;
- (d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;
- (e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
- (f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;
- (g) assist populations, countries and regions confronting natural or man-made disasters; and
- (h) promote an international system based on stronger multilateral cooperation and good global governance.

3. The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and by Part Five of the Treaty on the Functioning of the European Union, and of the external aspects of its other policies.

The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect.

²²⁵ Clair Gammage, *A critique of the extraterritorial obligations of the EU in relation to human rights clauses and social norms in EU free trade agreements* (2018) 2(1): 1. Europe and the World: A law review [20], 4.

agreements and laws that make up the framework of international law, such as the Universal Declaration of Human Rights, the United Nations Charter, the International Covenant on Civil and Political Rights, etc. Additionally, at the end of the 1993 Vienna Conference on Human Rights, the participating nations reiterated the commitments made in these instruments. Three generations of human rights are included by the broad definition of human rights used by the EU. Political and civil rights are comprised in the first generation. Cultural, social, and economic rights make up the second generation. Lastly, collective rights, e.g. development and environmental rights, are included in the third generation²²⁶.

Furthermore, the human rights clause's legality in EU trade agreements has been established through CJEU case law, particularly in *Opinion 2/94*²²⁷ and *Portugal v Council*²²⁸. These cases clarify the EU's competence to integrate human rights obligations into its external agreements and the legal foundations that support such provisions. *Opinion 2/94* examined if the European Community could join the European Convention on Human Rights (ECHR). The EC Commission argued that joining was permissible under Article 308 EC, which allows the EC to act where no explicit Treaty provision grants competence, provided such action is necessary to attain an EC objective. The Court ruled that the EC lacked the competence to join the ECHR, as joining would fundamentally alter the EC's legal order and require a Treaty amendment. However, the Court pointed out that the ruling did not prohibit the inclusion of human rights provisions in external agreements, as long as such provisions aligned with the objectives set out in the EC Treaty. The Court made the point several times that it was not ruling on the human rights aspects, only on the competence aspects. Additionally, the case of *Portugal v. Council* added clarity to the legal basis of human rights clauses. Portugal questioned the Council's approval of the EU-India Cooperation Agreement, saying the human rights clause in Article 1(1) of the agreement exceeded the development cooperation asset and should have been based on Article 308 EC. The Court rejected that claim and ruled instead that development cooperation agreements can indeed include provisions concerning the

²²⁶ Der-Chin Horng (n 222) 680.

²²⁷ *Opinion 2/94*, Opinion pursuant to Article 228(6) of the EU Treaty, [1996] ECR I-1759.

²²⁸ Case C-268/94 *Portugal v Council* (India Agreement) [1996] ECR I-6177.

respect for human rights and fundamental freedoms as a general objective. This means the EU can include human rights provisions in development agreements, and those provisions do not need to be based on a legal anchor if they're serving as a general objective of development cooperation. The Court's logic hinged on Article 60 of the Vienna Convention on the Law of Treaties. This permits the suspension of agreements when a human rights violation serious enough to question compliance with the treaty occurs. Moreover, the Court determined that the supremacy of human rights in EU external relations was entrenched in the Treaty on European Union and the EC Treaty, especially in Articles 6(2), 11, and 30 TEU and in Articles 11 and 13 of the EC Treaty. Not to include a human rights clause, in the opinion of the Advocate General, could endanger the legality of the actions the EU took in external relations. To sum up, the CJEU's case law shows that human rights clauses are legally sound, serve the EU's external purpose, and can be enforced under the EU's treaty system. The area of human rights has developed as a core part of EU law. Subsequently, trade and cooperation agreements can now be anchored in what is increasingly seen as the legally required internal "basis" part of the agreement²²⁹.

These clauses, provided as "essential elements" of the agreement configure respect for human rights and democratic principles, thus providing a suitable basis for denunciation, suspension, or non-execution of the agreement itself in case of violation. Consequently, the "human rights and democracy" provision is a clause of political conditionality that has acquired great prominence and is regarded as the most concrete expression of the central role that human rights and democratic principles should occupy in the EU's external relations. The "conditionality" of the human rights and democracy clause, however, is tempered by the standard wording with which it is included in the various international agreements, which has a tenor that often appeared generic, even to the point of leaving its scope undefined. In fact, clarification of the concepts to which the clause in question refers is one of the main points of negotiation between the Union and third states and is one of the most important elements of the EU Council's negotiating directives and

²²⁹ Der-Chin Horng (n 222) 688-689.

the European Parliament's instructions to the Commission, which is usually in charge of negotiations²³⁰.

The human rights clause is employed differently depending on whether the association agreement is stipulated as a means of pre-accession or to achieve a more general economic benefit through the creation of a free trade area. In the first instance, it serves as a political precondition for third countries seeking closer ties with the European Union. Under these circumstances, the clause operates as an instrument for enforcing political and institutional reforms. It guarantees that a candidate country brings its governance structures, human rights standards, and democratic institutions into line with EU norms before an agreement is concluded. The criteria for compliance are defined by the Council of the EU and the European Parliament. These two institutions evaluate the acts, policies, or violations that supposedly breach human rights and democratic principles. Their judgment then determines the scope and enforcement of the clause and casts the EU in the role of the “umpire”. In these kinds of agreement the EU can delay or even block the conclusion of an agreement if the other side does not meet human rights conditions²³¹. In the second instance, when the agreements mainly focus on trade, the human rights clause operates more like a guiding principle than a binding requirement. Moreover, it cannot be made a condition precedent to signing the trade agreement, this would in all likelihood provoke friction with prospective trade partners. Instead, human rights are linked to trade agreements in a less direct manner, through linking economic benefits such as financial aid or trade preferences. To prevent interruptions in the execution of association agreements, the EU has adopted a practice of provisional application. This permits third countries to commence the implementation of the agreements while they finish aligning with human rights requirements. The provision allows the countries to benefit, in the meantime, from the institutional framework of the agreements. Every year, the Association Council takes a look at compliance and uses political dialogue as the main tool to ensure that all the actors involved are “playing by the rules”. This strategy embodies the essence of “positive conditionality”. Compliance is the basis for the

²³⁰ Antonio Di Marco, *Le clausole di condizionalità politica degli accordi di associazione. Il recente caso siriano* (2011) Centro di documentazione europea - Università di Catania - *Online Working Paper* 2011/n. 31, 8.

²³¹ *Ibid.*, 11-12.

“progressive integration” of a country into the EU system. Integration proceeds with “financial support” to the transitioning state. Penalties for noncompliance are not part of the immediate scene²³². These agreements, which often have as their centerpiece free trade and economic cooperation, usually are not defined by clear compliance criteria. Enforcement of these agreements is left largely to political dialogue. This gives the partner states with which the EU signs these association agreements a fair amount of leeway. There is, however, a cost: this leeway creates uncertainty in enforcement and increases the risk that partner states may commit human rights violations without facing any consequence.

To make sure human rights clauses in EU agreements are complied with, the EU has established legal mechanisms that enable it to denounce or suspend the agreement when serious human rights violations occur. These mechanisms come into play when a third country fails to meet the human rights commitments it has made in the agreement, allowing one party to suspend its own obligations when the other party is not fulfilling its commitments. Over time, the EU has developed different models of these denunciation and suspension clauses. As previously mentioned, the Baltic clause was explicit and strict in describing how to accomplish this. However, the most common clause to find in new agreements is the Bulgarian clause, which is better at avoiding confrontation and provides for more consultations before the EU would consider suspension. These mechanisms notwithstanding, the EU has never completely suspended or terminated an association agreement due to human rights violations. Instead, it has largely chosen to respond in less severe ways, such as suspending financial aid, in order to reconcile its legal obligations with a necessary set of political and economic considerations. The EU risks adopting unclear and ambiguous positions that do not confront serious injustices when it postpones human rights definitions pending later negotiations. When the EU does manage to reach some kind of common position, it is almost always recommendatory rather than binding, which means that when the EU issues a warning in a position statement, there is currently no legally enforceable way for it to back it up. Moreover, taking a closer look at the human rights clause in conjunction with the EU’s other conditionality mechanisms, it seems reluctant to put any kind of stringent human rights conditions on its aid or relations with

²³² Ibid., 14-15.

third countries²³³. Furthermore, a principal distinction between pre-accession agreements and general association agreements resides in their timing and enforcement mechanisms. The EU can withhold or delay the finalization of pre-accession agreements until a country meets specific human rights standards. In contrast, general association agreements can be signed and come into force even if serious human rights concerns persist, with the rationale being that the EU's involvement will assist the country in resolving those concerns. This method has faced many repeated expressions of dissatisfaction. Yet, it is extremely rare for the European Parliament to make its approval of an association agreement conditional upon the correction of human rights violations, unless the state in question has committed some very serious breach involving UN Security Council resolutions. Since preliminary enforcement tools are lacking, the EU has very little leverage. Because these agreements do not require compliance in advance, the EU can't delay negotiations or suspend the process as a way to get the other side to do what it promised. The only alternative is to start up the consultation mechanisms that are built into the agreements. However, historical evidence suggests that these mechanisms are not used very often, and when they are, they do not usually yield any significant results²³⁴.

Shifting the focus to the specifics of the EU-Israel Association Agreement, this agreement falls into the category of the Euro-Mediterranean agreements, based on the Barcelona process and the ENP Neighbourhood Policy. Article 2 of the EUIAA states that "relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guides their internal and international policy and constitutes an essential element of this Agreement". This clause has the effect of including all of the fundamental human rights and democratic values mentioned in the Universal Declaration of Human Rights (UNDR) by reference. This version of the essential elements clause goes beyond simply restating the parties' duties under international law with regard to human rights. It creates new responsibilities. The complete range of civil, political, social, economic, and cultural rights outlined in that Declaration, including those that have not yet achieved the character of customary international law, are covered by the human rights standards mentioned in the Euro-

²³³ Clair Gammage (n 225) 13-14.

²³⁴ Antonio Di Marco (n 230) 10.

Mediterranean agreements, including the EUIAA²³⁵. In principle, this clause should allow the EU to take appropriate measures, including suspension of trade benefits, in response to serious human rights violations. However, the EU has, in practice, been quite reluctant to enforce this clause, even as concerns around ongoing Israeli policies in the OPT continue to raise serious human rights red flags. This is in contrast to other instances where the European Union has taken a more active stance. Only under the Cotonou Agreement has the EU responded to violations of the HRC thus far with “appropriate measures”. Among these have been the EU's suspension of collaboration and development assistance. There was no suspension of trade preferences. Research on the subject indicates that coups d'état followed by faulty elections have been the most common justifications for using the clause; these justifications are thus associated with democratic ideals. Less frequently, the clause has been activated for violations of the rule of law and human rights; when this has occurred, it has typically occurred in connection with the previous two reasons. According to the Council's 2009 policy document, this has led to the clause being characterized as political. The EU has frequently come under fire from civil society organizations for being overly hesitant to impose sanctions based on the human rights clause. According to some scholarly research, the EU has been ineffectual in its implementation of sanctions and has a tendency to be more confrontational with smaller partners, who also happen to be more reliant on EU trade and aid²³⁶.

Moreover, the EU has relied upon political dialogue rather than formal sanctions. The EU-Israel Association Council, the primary forum for discussing compliance with the agreement, has been largely ineffective, as political discussions have failed to translate into concrete policy changes. Engagement over enforcement has weakened the human rights clause's credibility and the seriousness of the EU as an actor. Article 79 (2) of the EUIAA states that “If either Party considers that the other Party has failed to fulfil an obligation under the Agreement, it may take appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Association Council with all relevant

²³⁵ Lorand Bartels, *A Legal Analysis of Human Rights Clauses in the European Union's Euro-Mediterranean Association Agreements* (2004) *Mediterranean Politics* Vol.9 No.3, 379.

²³⁶ Ionel Zamfir (n 220) 9.

information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties”. This clause allows the Council to take unilateral measures in cases of special urgency, however it does not specify the meaning of this wording, which causes the clause to be hardly actionable²³⁷.

Finally, a clarification has to be made about the nature of the essential element clause. There is a compelling argument that these clauses do not create any responsibilities in the traditional sense of requiring the parties to abide by human rights standards. Instead, these sections outline a number of requirements that form the basis of the agreements. The first of these requirements is that the agreement’s terms and the parties’ interactions be founded on respect for democratic values and human rights. The second need is that the parties’ policies be guided by respect for these rights and principles, the third is that respect for these rights and principles is a fundamental component of the agreement. The result would be that in the event that the standards outlined in the essential elements clause are broken, the non-execution clause would not apply. The essential element clause would not necessarily lose all of its legal importance as a result. If the clause lays forth certain requirements, then the agreement’s foundation would be destroyed if these requirements were not met. However, a different reading is supported by two contextual reasons. As previously said, the Barcelona Declaration may be regarded as a pertinent framework for interpreting the Euro-Mediterranean association agreements, which is the basis for the first of these reasons. It is argued that the basic elements clause itself should be interpreted as putting similar obligations on the parties because of the Declaration’s explicit commitments to uphold democratic and human rights ideals. The non-execution clause serves as the foundation for the second argument. Since only obligations can be breached, the essential elements clause must be interpreted as an obligation if the violation of one of the agreement’s fundamental elements might constitute a serious “breach”²³⁸.

Although the EU-Israel Association Agreement is a general trade agreement, not aimed at pre-accession, the human rights clause it contains, should be considered as legally binding in light of the previous considerations. This is a reflection of the EU’s legal and normative commitment to fundamental rights. The human rights situation in the Israel-

²³⁷ Clair Gammage (n 225) 13.

²³⁸ Lorand Bartels (n 235) 380.

Palestine conflict has highlighted a grave lack of protection of human rights standards, to which the EU has turned a blind eye. Moving forward, if the EU intends to uphold its human rights commitments, this should be reflected in its policies. The human rights clauses it includes in its agreements need to be used to foster compliance with human rights standards, making it actionable and enforceable, giving the words it uses a concrete meaning.

3.3. Applications of the humanitarian clause in association agreements with other third countries: a higher level of protection for the right to health

A clearer understanding of the interplay between human rights compliance and the trade agreement-derived economic benefits can be obtained by examining the European Union's experience with its trade agreements with other third countries, such as with Mexico, Ukraine and the EU's partners under the Cotonou Agreements. These agreements are instructive for illustrating how economic incentives and conditionality mechanisms can influence a state's commitment to human rights protection. They also serve as useful backdrops in assessing the beneficial impact of trade liberalization, regulatory cooperation, and compliance with human rights clauses that these agreements foster. Going back to the case study on the right to health introduced in section 1.3, to properly assess the relationship between beneficial trade and human rights standards compliance, the examination of the effects on the protection of the right to health may be explanatory.

To tackle the serious health problems in the OPT, the EU must give priority to legal frameworks that ensure health and human rights protections. This entails vigorous advocacy at the European level to secure universal health access for Palestinians in areas not just under the Palestinian Authority's jurisdiction but also in areas under Israeli occupation, as well as in Gaza, pressing for the enforcement of Article 12 of the ICESCR and relevant international provisions. Moreover, it means pushing to incorporate protective environmental health provisions into international legal instruments that have real-world effects. To construct a more effective legal umbrella for these health rights, the EU needs to get more ambitious in using the legal frameworks associated with its trade and development agreements, especially those in which it already partners with the OPT's

relevant authorities. These are, in essence, strategic partnerships that hold the countries involved to a set of legal standards. They cover an unspecified range of human rights which must include health services as well as health-related facility construction and operation. Indeed, the EU's association agreements with various countries not only promote human rights but also cover a lot of ground in the sustainable development domain. For instance, Article 9 of the Cotonou Agreement²³⁹ explicitly ties respect for human rights, democratic principles, and the rule of law to the partnership between the EU and African, Caribbean, and Pacific states. The wording of the article is comprehensive and includes rights spanning through political, social, economic and cultural rights. Moreover Article 10 contemplates other elements to foster political involvement such as sustainable development and civil society involvement²⁴⁰. These articles create a framework that gives a more practical working space to the countries involved where monitoring and compliance foster the achievement of higher standards of protections. Similar mechanisms could be applied in the EUIAA to address the violations occurring in the OPT, for example establishing benchmarks for compliance with health-related obligations and creating enforcement mechanisms for non-compliance. The effectiveness of these agreements in ensuring the protection of specific rights, including the right to health, varies significantly from one agreement to another. When comparing the EU-Mexico Association Agreement to the EU-Israel Association Agreement, one sees striking differences in the two agreements' conceptions of human rights protections. Particularly in the area of health rights, the EU-Mexico Association Agreement affords far more robust provisions purporting to protect human rights. One hopes that the EU-Israel Association Agreement might very well be updated to include similarly substantive protections. The EU-Mexico Association Agreement specifically incorporates human rights as an "essential element" of the partnership. Article 1 of the agreement establishes that respect for democratic principles and fundamental human rights forms the bedrock of the relationship. This clause links the possibility of suspending the agreement in cases of serious violations. In practice, the EU has actively engaged its monitoring mechanisms under this agreement, including the European Parliament's scrutiny and periodic reports

²³⁹ *Partnership Agreement Between the Members of the African, Caribbean and Pacific Group of States and the European Community and its Member States (Cotonou Agreement)* [2000] OJ L317/3, article 9.

²⁴⁰ *Partnership Agreement Between the Members of the African, Caribbean and Pacific Group of States and the European Community and its Member States (Cotonou Agreement)* [2000] OJ L317/3, article 10.

on the status of human rights in Mexico, to stimulate civil society engagement through bilateral forums and dialogues. Including health-related rights in a development cooperation framework under this agreement emphasizes the broad and equitable approach to health that the European Union seems to be advocating. For instance, the EU offers programmatic support for Mexico, in which it aims not only to assist with more direct healthcare access for marginalized populations but also to address a range of social determinants of health, including education, housing, and healthcare access itself. The EU-Mexico agreement is more proactive in integrating health into the cooperation framework. The EU's development aid to Mexico has been more targeted in addressing health. Firstly, it has focused on implementing universal healthcare. Secondly, it has intervened to address health inequality that particularly affects rural communities and indigenous populations. Moreover, health is influenced by many different factors, and an environment that is sustainable has been a priority for European Union funding in many health-related projects. Water quality and pollution were the two main issues addressed by this sets of projects. These initiatives are good examples of how the agreement aligns with international standards, such as Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which guarantees the highest attainable standard of health for everyone²⁴¹. In contrast, while the EU-Israel Association Agreement includes a human rights clause, its implementation and enforcement have been less robust. Article 2 of the association agreement states that the respect for human rights is an "essential element" of the agreement however, in regard to alleged violations of human rights, the EU's response has been quite restrained. Although the Occupied Palestinian Territories' systemic healthcare problems are well-documented, little has been done to ensure that the human rights clause in the agreement is honored. The potential effect of the agreement on the health-related rights of people living in the OPT is weakened by three specific issues. The first is a lack of civil society participation that allows more direct input into how the rights in the agreement are to be realized. The second is a lack of regular, transparent monitoring reports that allows those with direct interest in the health-related rights provisions and the right to health more generally to assess how well the provisions are being realized. The last issue is the sustainability of

²⁴¹European Union, *The EU-Mexico Global Agreement: Assessment of Its Human Rights and Environmental Impact* (European Commission, 2018).

the targeted health-related rights outcomes set forth in the agreement over the long haul. Moreover, the EU has frequently faced reproach for giving precedence to trade and political factors over human rights accountability in this arrangement²⁴². In addition, the OPT's current situation poses major obstacles to health equity that include movement restrictions, subpar infrastructure, and environmental degradation. Even though the EU has declared that it is concerned about the situation, it has taken very few tangible actions to address these issues through the Association Agreement. The provisions of the agreement have not been adequately used to promote health rights in the OPT. The EU's performance here illustrates a gap between its stated objectives and actual initiatives²⁴³. In addition, improving health outcomes is also linked with community-focused interventions. To be a coherent actor on the global stage and support its own stated fundamental values the EU could sponsor programs that aim at this because improving health, particularly maternal and child health, in the OPT is a pressing need. The EU can and should use its considerable leverage to do this. It can target funding to spread support more evenly across the health service spectrum. It can finance projects that actually fill gaps in health service delivery and invest in projects that make mental health, often overlooked, a priority. Improving health service delivery in the OPT can't reasonably be done, however, without also tackling the health of the health system, not just in one specific field but the overall trauma it is undergoing. Accountability cannot be understood as just a concept: it requires mechanisms, independent from the right-to-health violators, for documenting these violations and monitoring the performance of health service delivery systems over time. Additionally, the EU should utilize its trade agreements to include clauses that make economic cooperation dependent on adherence to human rights and health standards, consistent with the principles outlined in its external trade policy. To ensure long-term improvements, the EU needs to support the reconstruction and development of health infrastructure in the OPT with investments in clean water systems, waste management, and renewable energy solutions. This approach aligns with the EU's broader goals of promoting equitable and sustainable development globally²⁴⁴. The

²⁴² Civil Society Organizations, Open Letter to EU Officials Regarding the Upcoming EU-Israel Association Council Meeting (2024).

²⁴³ European Union, *The EU-Israel Association Agreement* (2000) European Union External Action Service.

²⁴⁴ Der-Chin Horng (n 222) 680-681.

picture becomes clearer when we also take a look at the EU's Eastern Association Agreements with Ukraine, Moldova, and Georgia. These treaties are replete with human rights guarantees that reference to international instruments such as the Universal Declaration of Human Rights and the European Convention on Human Rights. For instance, in the healthcare field, sustainable development is explicitly linked to health outcomes, addressing environmental determinants such as clean water and pollution and political and technical cooperation within the healthcare system is enhanced by reforms and grants equitable access to services, particularly in rural and underserved areas²⁴⁵. This approach demonstrates that agreements with the EU mean a lot more than just free trade. They incorporate lengthy and detailed commitments to enhance human rights, a strategy that could be replicated in its engagements with Israel and the OPT.

The health, human rights, and environmental sustainability of the population in the OPT intersect in ways that demand urgent and comprehensive remedies. The European Union, with its unique position as a global advocate for human rights, can and should take the lead in decisively addressing health inequities and environmental degradation that endanger the OPT's future health and security. By mediating and leveraging its capabilities, the EU can play a pivotal role in promoting health equity, safeguarding the rights of future generations, and advancing sustainable development in the OPT. In fact, the EU has invaluable experience with kinds of agreements that might harness the tools of accountability the OPT desperately needs if systemic reforms to end flagrant, long-standing violations of human rights, including the right to health, are ever going to be achieved. Although the situation in OPT is sterner and more aggravated by the ongoing conflict and its most recent escalation, violations of the right to health and human rights in general have been overlooked for a long time. Thus, the adoption of more impactful protection mechanisms is long overdue. The EU's strategies in fostering human rights protections demonstrate that substantial progress can be achieved even in complex circumstances. Therefore, even if the OPT fall short of the comprehensive protections achieved in non-occupied regions the EU and can still push for meaningful improvements in regard to the current situation. Similar principles could be adapted to the OPT, tailoring

²⁴⁵European Union, *EU-Ukraine Association Agreement: Enhancing Compliance with Human Rights Clauses* (2014) European External Action Service.

interventions to its specific challenges and promoting human rights within a framework of occupation. Furthermore, the EU's experience in promoting compliance with human rights clauses through association agreements in other parts of the world offers valuable lessons for its engagement with the OPT. For example, in countries like Ukraine, where war and uncertainty persist in unrecognized territories, the human rights clauses embedded in the EU-Ukraine Association Agreement have been pivotal in promoting the country towards greater adherence to international law and respect for systemic reforms. For example, since the entrance into force of the EU-Ukraine association agreement the healthcare sector has sustained significant reforms. The equal distribution of funding to private, municipal and public institutions helped building a more European-style healthcare system with the establishment in 2018 of the National Health Service of Ukraine and, in the period between 2018 and 2020, the establishment of 23 regional public health centers for the combined monitoring of health standards in the territory²⁴⁶. This illustrates the EU's ability to wield its agreements as instruments for ensuring accountability and driving progress, even in the middle of intricate geopolitical puzzles. This raises the question: why should the OPT not enjoy a similar enforced level of commitment from the EU? The EU can shift into a higher gear in promoting human rights, including the right to health, in the OPT by taking the agreements it has with Ukraine and the other Eastern Partnership countries as models. An approach like this would be consistent with the EU's stated values and would enhance its credibility as a principled actor on the global stage. However, it is important to note that the implementation and the reforms fostered by the EU-Ukraine Association Agreement are aimed at creating a framework of deeper integration with the final goal of accession to the EU. Therefore, Ukraine actively seeks to enact policies that comply with EU standards, the same cannot be said for Israel.

²⁴⁶ Government of Ukraine, *Review of the Achievement of the EU-Ukraine Association Agreement Objectives* (2021) European Integration Portal, 45.

3.4. The current role of the Council of Association and the EU Parliament: decision-making and accountability

The EU-Israel Association Agreement, much like other association agreements between the EU and other third countries, has its own governance mechanism, working primarily through the Association Council. The concept of "association bodies" like the Association Council is based on the more general political and academic discussions of "treaty bodies," "joint bodies," "joint organs," "joint institutions", and other similar phrases that are sometimes used interchangeably. Joint bodies that use the principal-agent approach primarily act based on the powers granted to them by their "principals," which in this case are the EU, already complex agent, its member states, and relevant institutions like the EU Council, on the one hand, and the national governments of third countries, on the other. Nonetheless, because of the leeway granted to these joint bodies, they can adapt to changes in their relevant environment. Moreover, joint bodies typically have broad discretionary ability as "agents". The likelihood of "legal emancipation", or the separation and self-solidification of the EU association mechanisms and, consequently, the association bodies, is also suggested by the changing practice in association agreements and the institutional exercise of authority by association bodies. The power and agency of joint and association bodies appear to be better explained by neofunctionalist approaches given the presumed possibility of the legal emancipation of "association bodies", the consolidation of the legal system in which they are enshrined, and the expanding practices of the extended authority of Association Bodies, including the powers to make laws and amend the agreements they are based on²⁴⁷.

The Association Council is in charge of overseeing the agreement's implementation. In accordance with the framework established by the agreement, it has decision-making authority to carry out the agreement and advance the association. Association councils are generally tasked with a variety of duties, including evaluating the association agreement's implementation and general operation. They are also essential to the legislative approximation process because they offer a platform for exchanging

²⁴⁷ Andriy Tyushka, *The Power and Performance of 'Association Bodies' under the EU's Association Agreements with Georgia, Moldova and Ukraine* (2022) JCMS 2022 Volume 60. Number 4, 2-3.

information about one another's legislative frameworks. In order to guarantee the dynamic evolution of the established association in light of new developments, association councils have the authority to modify pre-specified portions of the agreement and its annexes. Moreover, an Association Committee is also established. The Association Committee, bringing representatives of the parties at senior official level, is generally regarded as the “workhorse” of the association. It meets more frequently in comparison to the association council and assists the latter in the performance of its duties. To date, the Association Committee has also created 11 sub-committees to deal with the more technical aspects of the association²⁴⁸. Moreover, the Association Council is tasked with dispute settlement. Consequently, any disagreement should be resolved at the Association Council level. Each party shall designate an arbitrator, and the Association Council should select the third one in situations when the Council is unable to resolve the dispute. By majority vote, the three arbitrators reach a decision, and each side must abide by it²⁴⁹. Notably, the arbitration panels set up in accordance with the association agreements are not allowed to interpret EU law. The CJEU’s case law, which has repeatedly emphasized its exclusive competence in guaranteeing the consistent interpretation and application of EU legislation, is directly responsible for this. The arbitration panels are required to apply conventional standards of interpretation of public international law while interpreting the association agreements. The interpretation of an association agreement does not change only because a provision is “identical in substance” to a provision of EU law. Therefore, the CJEU must be involved in any issues pertaining to the interpretation of the EU acquis that may come up in relation to responsibilities pertaining to the legislative approximation process²⁵⁰.

According to article 67 of the EUIAA, the Association Council is supposed to meet “once a year and when circumstances require, at the initiative of its Chairman and in accordance with the conditions laid down in its rules of procedure”. However, Israel has canceled the Council in 2013 following the approval of EU Guidelines on the differentiation policy. Since then, some EU member states have vetoed the reconvening of the Association

²⁴⁸ Peter Van Elsuwege and Merijn Chamon (n 182) 43.

²⁴⁹ Alexandre Veuthey (n 90) 139.

²⁵⁰ Peter Van Elsuwege and Merijn Chamon (n 182) 46.

Council due to the lack of progress in the Middle East Peace Process. This is perceived as a form of protest by the EU against Israeli settlements and policies toward the Palestinians²⁵¹. The EU has called for a reconvening of the Association Council in more recent times and, indeed, a Council meeting was held in 2022, after 10 years of inactivity. During the meeting held on the 3rd of October 2022 the EU reaffirmed its commitment to strengthen the bilateral relationship with Israel: political dialogue, economic cooperation, and collaboration in the region are to be intensified. Moreover, the EU highlighted trade, investment, security, research, and energy cooperation as key pillars of their partnership, emphasizing Israel's full participation in Horizon Europe and its role in the natural gas export agreement with the EU and Egypt. The session dealt with worldwide and local problems, notably the invasion of Ukraine by Russia. In this case, the EU commended Israel for its backing while calling for further alignment in the enforcement of sanctions. The EU reaffirmed its stance on the Middle East peace process, emphasizing the necessity of a two-state solution while expressing concerns over Israeli settlement expansions, evictions, and demolitions in Palestinian territories. The EU also called for human rights monitoring to be made more robust, for Palestinian civil society and the Israeli government to engage more openly, and for the Israeli government to be more transparent in how it treats Palestinian NGOs. The meeting's main objective was to strengthen ties between the EU and Israel, and to deal with the ongoing political, humanitarian, and security concerns in a way that was both balanced and strategic²⁵². Not even one year later all the initiatives were derailed by the resurgence of the conflict in Gaza with Hamas' terrorist attack and Israel's harsh response. Since then, the EU has repeatedly tried to reach an agreement with Israeli officials to reconvene the Association Council, however, up to this day, although the conflict is deescalating no date has been set. This inconsistency goes to show how, irrespective of the institutional powers and responsibility set in the Association Agreement, the Association Council exerts very little influence on the actual development of the agreement and its application. The ability of Israel and EU member states to cancel meetings reveals a discontinuity that paralyzes the effective functioning of the institutional body, highlighting a power vacuum. Moreover, the lack of

²⁵¹ Alexandre Veuthey (n 90) 155.

²⁵² Council of the European Union, European Union's Position for the 12th EU-Israel Association Council Meeting (Brussels, 3 October 2022) 13103/22

an accountability mechanism both for the Council as a body and its members as individuals also hinders its effectiveness since no clear sanctioning method is provided in case of inability to fulfil its institutional task.

Another key actor in the EUIAA and, more broadly, in association agreements is the EU Parliament. The European Union's (EU) trade policy is significantly affected by the European Parliament (EP), especially when it comes to legislative and oversight matters. The EP has grown in stature since the Lisbon Treaty (2009), which endowed it with more authority and more high-profile functions, including that of being able to approve or reject trade agreements. The European Parliament wields considerable power over trade agreements thanks to its consent procedure, a power solidified by Article 218(6) of the Treaty on the Functioning of the European Union. This provision mandates that the European Parliament must approve international agreements negotiated by the European Commission. If the European Parliament refuses consent, the agreement cannot enter into force. The EP's role is especially significant when it comes to human rights in trade and investment agreements. Over the past few decades, the EP has insisted that high-quality human rights provisions be included in all trade agreements. For guidance, the EP looks to its long-standing practice of requiring trade partner compliance with human rights as a precondition for maintaining trade relations²⁵³.

The EP works through its Committee on Foreign Affairs, security and defense subcommittees, and human rights subcommittees to give oversight and perform due diligence on the EU's foreign policymaking. The engagement of the European Parliament in foreign policy is unique because it's not bound by the Common Foreign and Security Policy's rules for making decisions. This gives it a lot of room to maneuver when it comes to debating, establishing bilateral relations, and working with civil society. The EP can't make direct decisions that affect foreign policy, but it can and does use a number of tools to make its presence felt. These include resolutions, parliamentary questions, reports, delegations, and public debates. On the Israeli-Palestinian conflict, the European Parliament has consistently put forward its attempt to resolve it, in keeping with the EU's general position since 1973. Much like the EU, the EP terms the Palestinian Authority a

²⁵³ Lorand Bartels, *The European Parliament's Role in Relation to Human Rights in Trade and Investment Agreements* (2014) PE 433.751, 21.

partner for peace. It also acknowledges Israel's right to exist in peace and security. However, the EP tends to go much further than most EU member states, underscoring large-scale human rights abuses in the West Bank and Gaza Strip often distancing itself from the broader EU diplomatic approach. The EP's continued focus on the conflict has been reinforced by events such as the Arab Spring, Palestinian efforts for UN membership, Israeli settlement expansion, and stalled peace negotiations. To address these challenges, the EP has leveraged its available instruments, including resolutions, parliamentary questions, and diplomatic delegations, to advocate for peace and stability in the region²⁵⁴.

Moreover, the EP has constantly pushed for the human rights clauses in trade agreements to be enforced more robustly. These clauses, included in provisions about the essential elements of an agreement, allow the EU to suspend the agreement if the partner country is found to be in violation of human rights. The EP has been critical of the enforcement mechanisms, or lack thereof, that are built into these clauses. It argues that trade agreements should be used as leverage to promote not just human rights but also democratic values in the countries with which the EU signs agreements²⁵⁵.

Additionally, the EU-Israel Association Agreement has been under the microscope from the European Parliament for a long time. The association agreement was signed in 1995 and allows Israel to participate in many EU programs. However, the Parliament has expressed serious concerns about Israel's disregard for human rights obligations, most recently during the 2022 meeting of the Association Council it condemned Israel's settlement expansion, arguing that it violates international law and undermines the possibility of a two-state solution²⁵⁶. One of the main issues that the European Parliament (EP) has debated extensively is whether Israel's actions warrant the suspension of trade benefits under the agreement's human rights clause. While some Members of the European Parliament (MEPs) have been quite vocal in calling for a suspension, the European Commission and the Council have preferred to maintain the status quo and

²⁵⁴ Maria Gianniou, *The European Parliament and the Israeli–Palestinian conflict in The European Parliament and its International Relations* (2015) Routledge advances in European politics, 239.

²⁵⁵ Ionel Zamfir (n 220) 18.

²⁵⁶ Council of the European Union (n 252).

engage in “diplomatic effort” rather than take steps that might further strain relations with Israel²⁵⁷.

Although the EU Parliament is vocal about the protection of human rights in the EU’s external policies and has actively engaged in debates with other institutional actors and its member states about the violations occurring in the Israeli-Palestinian conflict, its role is very limited. Even if the EP maintains political dialogue with the Knesset and the Israeli government, as per the EUIAA, after its initial role of decision-maker in the stipulation of the agreement itself, the entrance into force of the piece of legislation causes the power to shift to other institutional actors which should be actively involved in the actual execution of the agreement itself, namely the Council and the Commission of the EU whose members make up half of the Association Council. The EP can still exert some influence through diplomacy, however it should find new mechanisms to enhance its role in monitoring compliance with human rights standards in trade agreements.

²⁵⁷ Lorand Bartels (n 235) 369.

Chapter 4: Remarks and recommendations

4.1. Comparing clauses: rendering the humanitarian clause more efficient

In recent years, there has been a growing movement to require human rights clauses in trade agreements. This interest for human rights clauses stems from worries that states are currently not doing enough to anticipate and resolve the human rights-related dangers associated with, or resulting from, their trade agreements with other nations. One of the fundamental principles of the European Union and its member states is respect for human rights, which is highlighted in the EU's "value catalogue" found in Article 2 of the Treaty on European Union²⁵⁸. The EU is committed to promoting human rights in its foreign relations in addition to making sure that they are protected within the EU itself. The purpose of including political clauses in agreements with third nations is to advance the EU's security interests as well as the political values and principles that form the cornerstone of its foreign relations. Furthermore, the EU can employ political clauses as a particular tool to carry out some of its most significant external policy goals, such as non-proliferation, democracy, respect for human rights, and the rule of law²⁵⁹. The drafting and scope of the human rights clauses, the legal foundations of EU policy and practice, the actual use and enforcement of human rights clauses, and the larger context of human rights conditionality are some of the issues that come up when discussing the EU's general policy of incorporating human rights clauses in its agreements and the EU's implementation of such clauses²⁶⁰. The human rights clause has not been effective in

²⁵⁸ Article 2 TEU: The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

²⁵⁹ Council of the European Union, *Common Approach on the Use of Political Clauses* (25 April 2013) 10491/1/09 REV 1 EXT 2.

²⁶⁰ Anne-Carlijn Prickartz and Isabel Staudinger, *Policy vs practice: The use, implementation and enforcement of human rights clauses in the European Union's international trade agreements* (2019) 3(1): 2. Europe and the World: A law review [23], 3.

changing policy, mostly because of weak enforcement mechanisms, political discretion, and a lack of a direct link to economic penalties. This section suggests possible enhancements to the current framework.

A major critical point for the application of the humanitarian clause in the EU-Israel agreement is that it is worded vaguely, which makes it hard to enforce. The phrase “shall be based on respect for human rights and democratic principles” is a broad, catch-all term. It does not define the particular legal obligations either party has. While obligations that relate to trade problems, like tariff reductions or competition policy, are well defined and enforceable, human rights obligations remain abstract and hardly applicable to concrete cases. This is not always true of humanitarian clauses, for instance, the Free Trade Agreement between the EU and South Korea contains a clause specifying in great detail the human rights obligations relevant to trade. Also, an even more relevant example is the Cotonou Agreement which contains several articles detailing respect for human rights. Moreover, in the event that a party to the agreement fails to fulfill their commitments, under article 96 of the Cotonou Agreement, a stringent procedure is applied, including political discourse and consultations, to reach a targeted suspension whenever there is an infraction of essential elements. Therefore, the Cotonou Agreement contains the most complex set of standards guaranteeing human rights conditionality²⁶¹.

Despite its being an “essential element”, the human rights clause is also hardly enforceable. The Association Council, which serves as the main forum for discussing bilateral issues between the EU and Israel, almost never takes up human rights violations in any substantial way. When the EU and Israel have a trade dispute, they can count on the formal mechanisms of the trade agreement to resolve the matter, however when the matter at hand concerns human rights, the subsequently activated mechanism is political dialogue rather than a clear enforcement procedure²⁶². This deficiency is highlighted when compared with the EU-Colombia Trade Agreement. The latter encompasses a structured monitoring framework which includes civil society organizations, these can

²⁶¹ Ibid., 10.

²⁶² Nicolas Hachez, *Essential Elements Clauses in EU Trade Agreements: Making Trade Work in a Way That Helps Human Rights?* (2015) Working Paper No. 158, Leuven Centre for Global Governance Studies, 22.

denounce human rights violations by making recommendations to the main decision-making bodies, namely the Association Council. Thus, these civil society groups ensure that continuous scrutiny is applied to human rights issues. The EU-Israel agreement, on the other hand, has no such review mechanism²⁶³.

Moreover, the application of the humanitarian clause in EU trade agreements is often subject to political discretion. The EU's strategy calls for the systematic insertion of human rights clauses in its trade agreements. However, the implementation of these articles has not been as methodical and has instead displayed selectivity and consistency problems. Human rights clauses have only been triggered or activated in a few instances over the past decades, which is quite few in comparison to the possible number of instances in which the clause may have been invoked. The EU launched formal talks in accordance with the human rights provision in 23 cases, all of which targeted nations that are members of the ACP Group of States²⁶⁴. Furthermore, a number of situations occurred in which the human rights provision was not activated, despite the fact that the circumstances were comparable to those in which it was. The European Parliament has also underlined that, in these situations, a general human rights policy can only be seen as legitimate if the human rights clauses are truly used in cases of infringement. Since the clauses have only been activated in a few countries and mostly in response to political upheaval, the selectivity of the activation has also been criticized, casting doubt on the fairness of the EU's activation procedure²⁶⁵. Moreover, while the EU would be much more hesitant to apply conditionality to stronger nations, it would be ready to do so against weaker countries, more dependent on the EU's support²⁶⁶. The EU-Cambodia trade relationship offers a sharp contrast. There, the EU temporarily revoked GSP+ status for Cambodia due to human rights abuses that occurred during Cambodia's civil war. This goes to show that the EU is willing to impose economic consequences in some contexts but not in others. This selective use of trade tools creates confusion and concerns about

²⁶³ Peter Van Elsuwege and Joyce De Coninck, *The Effectiveness of Human Rights Clauses in EU Trade Agreements: Challenges and Opportunities* (2022) Policy report, Ghent European Law Institute, 32.

²⁶⁴ African, Caribbean and Pacific countries under the Cotonou Agreement.

²⁶⁵ Anne-Carlijn Prickartz and Isabel Staudinger (n 260) 20.

²⁶⁶ Nicolas Hachez (n 262) 17.

double standards and seriously undermines the credibility of the EU as a human rights promoter in trade policy²⁶⁷.

This last example also highlights another major shortcoming of the humanitarian clause in the EU-Israel agreement. Indeed, the EUIAA does not establish a clear connection between human rights violations and trade preferences. By contrast, the aforementioned GSP+ does this quite well, explicitly tying market access benefits to compliance with core human rights conventions. This system involves gradual suspension of trade benefits in response to documented human rights violations, targeted restrictions on sectors linked to violations and automatic reinstatement of benefits upon verified improvement of the human rights situation. Countries such as Myanmar and Belarus have faced trade sanctions under the GSP+ framework for human rights violations. Due to severe and widespread violations of fundamental tenets of the International Covenant on Civil and Political Rights (ICCPR) pertaining to political participation, freedom of expression, and freedom of association, these nations were deprived of duty-free access for specific products, including clothing, footwear, and travel goods. However, no such mechanism exists within the EU-Israel agreement, rendering the humanitarian clause largely symbolic rather than an effective tool for human rights enforcement²⁶⁸. To improve its efficiency the EUIAA could use a tiered conditionality system, such as the one provided in the GSP+, where access to preferential trade benefits is contingent on human rights compliance.

A good example can also be drawn from the US-Mexico-Canada Agreement (USMCA) which incorporates an automatic review mechanism that checks human rights compliance and provides for immediate sanctions if countries are found to be in violation. A mechanism like this could give added strength to the humanitarian clause in the EU-Israel trade agreement by ensuring that human rights violations are reflected in real economic consequences rather than just political dialogue²⁶⁹.

It is vital for the European Union to address these problems and inconsistencies with the humanitarian clause to advance its role as a neutral actor in the global scene. Also, the

²⁶⁷ Peter Van Elsuwege and Joyce De Coninck (n 263) 27.

²⁶⁸ *Ibid.*, 27.

²⁶⁹ Peter Van Elsuwege and Joyce De Coninck (n 263) 40.

humanitarian clause in the EU-Israel Association Agreement needs to be reformed to enhance its credibility and effectiveness. Firstly, the variable wording of the clause causes uncertainties in its application. The European Commission established specific criteria to draft human rights clauses, namely including in the preamble “general references to human rights and democratic values”, “references to universal and regional instruments common to both parties” and in the body of the agreement “insertion of an Article X defining the essential elements to be adapted according to circumstances (e.g. OSCE membership, market economic principles, etc.)”²⁷⁰. However, this communication from the EU Commission was announced in 1995 and since then multiple clauses have been drafted with different wording. The EU “seeks to have such a clause in all its political framework agreements, such as Association Agreements and Partnership and Cooperation Agreements, with third countries”, according to the EU Strategic Framework and Action Plan on Human Rights and Democracy, which was published in 2012²⁷¹. Moreover, the 2015-2019 Action Plan stated that human rights provisions “are systematically included in all new EU international agreements”²⁷². Although establishing the criteria, the 1995 communication did not impose the obligation of a standardized human rights clause, therefore the subsequent clauses drafted have had different wording while at the same time satisfying the communication’s criteria. Thus, different essential elements clauses contain a variety of references to human rights. Regardless of the international agreement reached with the EU, states are already bound by the duties included in the Universal Declaration of Human Rights, which is cited explicitly in most human rights clauses. Also, certain human rights catalogs such as the Helsinki Final Act are specifically referenced in other clauses. Furthermore, depending on the EU’s economic clout relative to another nation, the non-execution clause’s degree of conditionality fluctuates. The EU-Israel association agreement’s humanitarian clause, together with the humanitarian clause contained in the AA with Tunisia, are the only clauses not explicitly referring to the

²⁷⁰ European Commission, *Inclusion of Respect for Democratic Principles and Human Rights in Agreements Between the Community and Third Countries* (1995) (Communication) COM (95) 216 final.

²⁷¹ Council of the European Union, *EU Strategic Framework and Action Plan on Human Rights and Democracy* 2012 (2012) 11855/12.

²⁷² Council of the European Union, *Conclusions of 20 July 2015 on the Action Plan on Human Rights and Democracy* 2015–2019 (2015)108975/15.

UNDHR. Also, the wording of the non-execution clause in the EUIAA also appears to be weaker than the one expressed in other association agreements²⁷³. These inconsistencies lead to ambiguity and additional discrepancies in the application of human rights clauses²⁷⁴. More precise legal language, a comprehensive list of protected rights, and a clearly defined mechanism for activating the clause would yield a standardized framework. Such a framework would enhance legal certainty and ensure the uniform application of the human rights clause across different contexts whenever similar situations arise.

Additionally, at present, political discretion is the main mean of enforcement for the humanitarian clause in the EUIAA. In practice, this seems to mean that when the EU deems it appropriate, it engages in political dialogue with Israel to address human rights-related concerns. However, political dialogue is often hard to establish, and the lack of a precise enforcement procedure hinders the concrete applicability of the clause. A clear roadmap for enforcement should be established, setting benchmarks for compliance and a clear margin of appreciation. Moreover, the violation of human rights should trigger an automatic review mechanism to quickly assess the violation under consideration and the proportionate measure to adopt to contrast it²⁷⁵. This view was adopted by the European Parliament in its 2021 Report about the EU's Generalized Scheme of Preferences which fosters the adoption of automatic safeguards in its GSP²⁷⁶ and GSP+ agreements²⁷⁷.

Moreover, a complementary measure to adopt in order to enhance compliance could be the establishment of a monitoring body with the involvement of civil society

²⁷³ The specific wording of the non-execution clause of the EUIAA was already examined in chapter 4.2; instead of outlining the process to follow in case of violations of the essential elements clause, article 79(2) of the EUIAA only considers cases of “special urgency”.

²⁷⁴ Anne-Carlijn Prickartz and Isabel Staudinger (n 260) 10.

²⁷⁵ Peter Van Elsuwege and Joyce De Coninck (n 263) 52.

²⁷⁶ GSP agreements reduce or remove EU import duties payable on approximately two-thirds of all EU tariff lines. All countries classified as developing countries under the relevant EU regulation stand to benefit from standard GSP.

²⁷⁷ *Report on the proposal for a regulation of the European Parliament and of the Council on applying a generalized scheme of tariff preferences and repealing Regulation (EU) No 978/2012 of the European Parliament and the Council*, A9-0147/2022.

organizations. Certain agreements, like the one with the EU's eastern neighbors, have a distinct heading on “civil society cooperation”, which includes the creation of a Civil Society Platform and broadly stated goals. Other recent agreements, including the post-Cotonou agreement with the ACP countries, also provide for the participation of civil society stakeholders. A notable advance in this regard is the ability for EU-based stakeholders to file a complaint about infringements of the labor and environmental rights covered by the trade and sustainable development (TSD) chapters at the newly created Single Entry Point (SEP). The European Commission’s attempts to enhance the oversight, enforcement, and execution of the TSD commitments in trade agreements are reflected in the establishment of the SEP. Furthermore, in July 2020 a Chief Trade Enforcement Officer (CTEO) was appointed to oversee the execution and enforcement of EU trade and investment agreements. Both these initiatives are important developments for a right-based approach in the EU’s extraterritorial trade policy²⁷⁸. Furthermore, the EU’s GSP scheme also allows for engagement with civil society organizations and provides a annual review to ensure compliance of the partner countries with the human rights obligations assumed under the agreement. A similar mechanism with the establishment of a specific monitoring body that reports on the compliance with human rights standards under the EUIAA would foster compliance. Although under the EUIAA monitoring compliance is one of the duties of the Association Council, the fact that its meetings can be postponed or cancelled by the parties involved evidently underscores the need for a separate body with this specific aim that can at least keep the data to consider up to date and that, in case of violations, can communicate directly with the stakeholders to activate a review process. This body could be lodged with the European External Action Service (EEAS) and involve specialists from the European Parliament, civil society organizations, and international human rights bodies²⁷⁹. It would be responsible for carrying out regular, on-the-ground evaluations of human rights, issuing documents that contain findings and suggestions for EU policymakers and issuing advisory opinions on whether particular violations call for trade sanctions as consequences.

²⁷⁸ Peter Van Elsuwege and Joyce De Coninck (n 263) 32.

²⁷⁹ Nicolas Hachez (n 262) 20.

Overall, these measures would not only adjust the EU IAA to best practices in other EU trade agreements but also underpin a broader commitment to make human rights a central pillar of EU external trade policy. By adopting these measures, the EU can ensure that its trade policies genuinely contribute to human rights protection, rather than remaining symbolic commitments without tangible consequences.

4.2. New possibilities: empowering the Council of Association and involving EU stakeholders

The enforcement of the human rights clause in EU agreements suffers from a clarity problem. The various institutional actors involved, such as the Council of the European Union, the European Commission, the European Parliament, and the Association Council, have varying degrees of authority that tend to blur the line of authority and responsibility. As a result, it is often unclear who is supposed to do what when it comes to enforcing compliance, and consequently, if those who are supposed to do something about compliance are not doing it, they can hardly be held accountable. In addition, because there is no specific enforcement mechanism in place, resolutions about violations or sanctions are subject to political consideration rather than legal obligations. This fragmented structure allows for limited interventions by the many actors involved to be credible, weakening the EU's commitment to protection of human rights as a result.

The EU-Israel Association Council works mainly as a diplomatic entity and not as a mechanism that enforces compliance with human rights during the association's operation. At best, European Union officials diplomatically foster a dialogue on potential Israeli human rights abuses. The EU has no structured way to enforce compliance with the human rights clauses in the EU IAA, which leaves the Council with little in the way of preventive or corrective authority, although its role is supposed to be that of monitoring and enforcing the agreement²⁸⁰.

The integration of human rights and democratic values in trade agreements is a growing priority for the European Commission. Moreover, as the principal executive body

²⁸⁰ Anne-Carlijn Prickartz and Isabel Staudinger (n 260) 10.

responsible for putting into effect EU external agreements, the European Commission plays a key role in executing the EU-Israel Association Agreement, its members being part of the Association Council too. Nevertheless, its mandate in human rights is largely confined to reporting. The Commission uses human rights concerns as a basis for recommending that the Council take certain actions. It is certainly useful to have the Commission's human rights reports as a monitor and warning system. However, the human rights concerns raised by the Commission would carry more weight if there existed a universally accepted Commission mandate that allowed it to act on human rights problems without always having to ask the Council for permission to do so²⁸¹.

Also, the Council of the EU, made up of representatives from the member states, is the central decision-making authority in external EU relations. Even though it can impose restrictive measures and sanctions on third countries, the Council's actions related to human rights violations remain inconsistent and largely subject to the political dynamics of the member states. When it comes to human rights, individual member states often prioritize bilateral interests over collective commitments, and the result of this is fragmentation and weak enforcement of the relevant clauses in treaties and agreements²⁸². Moreover, the decision-making process of the Council lacks transparency, which makes it hard to develop an accountability mechanism.

The main institutional body of the EUIAA is the Association Council. All the EU's bilateral agreements provide a joint body, however these may come in different forms, with various ranges of powers, distinct functions and different names. They are the decision-making bodies of the agreements, exercising the executive power²⁸³. According to the EUIAA, the Association Council is entitled to take decisions, which are binding on

²⁸¹ Markus Gastinger and Andreas Dür, *Joint bodies in the European Union's international agreements: Delegating powers to the European Commission in EU external relations* (2021) European Union Politics Vol. 22(4), 612.

²⁸² Anne-Carlijn Prickartz and Isabel Staudinger (n 260) 22.

²⁸³ Andriy Tyushka, David Phinnemore and Wolfgang Weiß, *Joint Institutional Frameworks in EU Bilateral Agreements: Joint Bodies, Rules and Principles, and Special Procedures* (2022) Journal of Common Market Studies Vol.60(4), 1130.

the involved parties, and make recommendations²⁸⁴. Moreover, ex article 69(2) of the EUIAA it can establish an Association Committee, this body can take binding decisions for the management of the Agreement as per article 72 of the EUIAA. Also, the Association Council deals with interpretation, implementation and dispute settlement. All EU agreements are legally binding on the EU's institutions and member states, which are required to implement them. This gives also joint bodies decisions internal legal effect, as stated in Article 216(2) TFEU²⁸⁵. The delegation of public powers is established by the agreement between the parties to the agreements and constitutes the foundation for the legitimacy of this use of such powers. Therefore, joint bodies function as representatives of the governments and parliaments of the Parties from an institutional and democratic standpoint. However, the EU is not equipped with a system of accountability. Some of the accountability gap can be filled by domestic control mechanisms, but once more, these are mostly ex post arrangements, meaning their impact is limited. Also, the EU's AAs do not give domestic institutions the authority to request or provide precise procedures for rescinding decisions made by joint bodies²⁸⁶. The Association Council is made up of members of the Israeli government, members of the EU Commission and members of the EU Council, however there are no accountability mechanisms in place neither for individual members of the Association Council nor for the body as a governance institution. The lack of legal obligations holding the Council accountable for human rights violations has meant inconsistent decision-making, often arising, it seems, from political rather than objective considerations. Also, the pursuit of different and often diverging interest within members of the Association Council can weaken its ability to take action when needed and lead to fragmented response. The Association Council must function as an effective enforcement body that ensures compliance with the terms of the association.

²⁸⁴ Article 69 EUIAA: 1. The Association Council shall, for the purpose of attaining the objectives of the Agreement, have the power to take decisions in the cases provided for therein. These decisions shall be binding on the Parties which shall take the measures necessary to implement the decisions taken. The Association Council may also make appropriate recommendations.

2. The Association Council shall draw up its decisions and recommendations by agreement between the Parties.

²⁸⁵ Article 216(2) TFEU: Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States.

²⁸⁶ Andriy Tyushka, David Phinnemore and Wolfgang Weiß (n 283) 1132.

It should not serve primarily as a forum for soft diplomacy, where discussions have little consequence for entities that fail to follow through on their commitments. Moreover, if it fails in its duties it should be in turn subject to accountability measures. To achieve that it is essential to strengthen the ability of the Association Council to take binding decisions on human rights, mandating regular compliance reviews and establishing an accountability mechanism.

Although Council decisions are supposed to be binding on the parties signatories to the EUIAA, its intervention has been very limited. Establishing legally binding decisions that mandate corrective measures in the event of human rights violations is not only coherent with the provisions of the agreement and international commitments but also essential for the credibility of the governing body and the agreement itself. This should align the Association Agreement with the GSP+ conditionality mechanisms, where trade preferences hinge upon compliance, setting up a sanctioning mechanism that allows for the gradual suspension of trade benefits in response to severe or systematic human rights violations²⁸⁷. Moreover, broadening civil society participation in the decision-making process could also be beneficial to achieve compliance with the decisions since they would be already socially accepted and fostered. This is already being accomplished in the EU-Ukraine and EU-Moldova agreements, where organizations like ours help monitor implementation of the agreement and make policy recommendations²⁸⁸.

Furthermore, since the Association Council, per its mandate, should meet every year, part of the meeting should be dedicated to the review of adherence to human rights commitments under the agreement. To obtain clear, reliable and up to date data about human rights violations, a possible solution could be creating a lasting subcommittee focused on human rights monitoring that closely resembles existing mechanisms in the EU-Colombia Trade Agreement, where compliance is checked regularly²⁸⁹. A more direct approach involving the parties themselves instead of looking for an external intervention could be achieved through formal reporting from Israeli authorities on the measures they have taken to address human rights concerns. These reports should be complemented by

²⁸⁷ Peter Van Elsuwege and Joyce De Coninck (n 263) 26.

²⁸⁸ Andriy Tyushka (n 247) 1173.

²⁸⁹ Lorand Bartels (n 253) 23.

independent assessments from EU institutions and representatives of civil society. Lastly, publicly publishing review findings would ensure greater transparency and accountability. A similar approach has already been envisioned for the GSP+ agreement²⁹⁰.

Additionally, in order to guarantee formal implementation of human rights obligations, the EU-Israel Association Council must incorporate a sturdier accountability mechanism. Firstly, this should comprise an independent oversight body within the European External Action Service to systematically monitor human rights and report publicly to ensure greater transparency and accountability for human rights within the EEAS²⁹¹. Moreover, the Association Council should be required to deal with human rights violations formally and in a timely manner. This would also mean a move to a tiered system of consequences, starting with warnings and moving up to trade suspensions when necessary, to get the message across that human rights really do matter, and that the EU isn't just "talking the talk" when it comes to fundamental values. The apparatus should allow for a step-by-step formal complaint procedure to be initiated by the European Parliament and civil society organizations when human rights clauses are violated²⁹². Also, incorporating a legal review step, whether via the European Court of Justice or an external tribunal, could furnish another avenue for assessing compliance failures.

Also, civil society and human rights organizations should be able to submit evidence directly to the Association Council so that voices other than those of the executive and legislative branches are considered in enforcement decisions. In addition, Parliamentary involvement should be enhanced²⁹³. The involvement of such actors would foster institutional accountability and enhance democratic oversight²⁹⁴.

Strictly on the European side, its external policy is shaped by the concerted efforts of its institutional actors, particularly the EU Commission and the Council of the EU occupy key positions. The European Commission handles the trade agreement negotiations for

²⁹⁰ European Parliament and Council (n 20).

²⁹¹ Peter Van Elsuwege and Joyce De Coninck (n 263) 56.

²⁹² Lorand Bartels (n 253) 21.

²⁹³ More on this subject in 4.3.

²⁹⁴ Lorand Bartels (n 253) 10.

the entire EU, while the Council of the EU holds the reins when it comes to approving and implementing these agreements. Both institutions contribute to the governance of the EU-Israel Association Agreement, since members from the Council and the Commission form part of the Association Council. However, neither is fully equipped to serve as a strong governing agent.

The EU executive is the European Commission, it is in charge of negotiating trade accords under the Common Commercial Policy (CCP). This policy area is governed by Article 207 of the Treaty on the Functioning of the European Union, which sets up the unitary external trade policy. The Commission main tasks when it comes to trade agreements includes negotiating free trade agreements and association agreements with third countries, following a mandate from the Council of the EU²⁹⁵, providing reports to the EU Parliament assessing compliance with trade-related human rights obligations and supervising adherence to trade agreements, however it lacks an independent enforcement mechanism²⁹⁶. In the context of the EU-Israel Association Agreement, the European Commission absolves these functions. However, the Commission has limited enforcement powers, which hampers its ability to act against human rights violations. This makes it dependent on the Council of the EU and on political consensus among the member states²⁹⁷. The EU-Israel Association Council also involves the European Commission, which plays a direct role in this body. As part of the Association Council, the Commission and its representatives discuss with Israel's authorities a range of subjects, including trade and political cooperation²⁹⁸. The Commission officials do not, however, have the influence one might expect, because the Association Council itself must reach unanimous or majority agreement in order to act. In many instances, this leads to negotiations that achieve a diplomatic outcome instead of resulting in a direct enforcement of human rights commitments that the Association Council itself has made.

The Council of the EU complements the Commission's role. When it comes to drafting new trade deals, the Council is essential. The European Commission is given permission

²⁹⁵ Der-Chin Horng (n 222) 691.

²⁹⁶ Lorand Bartels (n 253) 17.

²⁹⁷ Markus Gastinger and Andreas Dür (n 281) 617.

²⁹⁸ As per Article 68 of the EUIAA.

by the Council to negotiate a new trade deal on behalf of the EU during the initial phases. This is accomplished by use of a “negotiating mandate”. The Council issues negotiating directions with this authorization, outlining the goals, parameters, and potential deadlines of the talks. The Commission presents a formal recommendation for approval to the Council following partner agreement on the deal's wording. The Council makes a decision to sign the agreement on behalf of the EU after deliberations. The signed agreement is thereafter forwarded to the European Parliament for approval. After the Parliament’s consent, the Council decides to finalize the agreement²⁹⁹. In addition to its role in approving and overseeing the agreement, the Council of the EU is also represented within the EU-Israel Association Council. Its members, along with Commission officials, engage in bilateral discussions and monitor compliance with the agreement’s provisions. Both the Commission and the Council have significant limitations that preclude them from ensuring compliance with human rights obligations in the EU-Israel Association Agreement. Both the Commission and the Council have significant limitations that preclude them from ensuring compliance with human rights obligations in the EU-Israel Association Agreement in spite of their respective role in the establishment of the agreement and its subsequent functioning. To strengthen enforcement of human rights provisions the Council decision-making process should restructure its review system, requiring re-evaluation in agreements when violations of human rights occur and adopting qualified majority voting to prevent individual states from blocking enforcement.

4.3. Monitoring human rights compliance: enhancing the European Parliament’s role and civil society participation

The European Parliament has played an increasingly important role in ensuring compliance with human rights commitments, especially since the Treaty of Lisbon

²⁹⁹ Council of the European Union, *Draft Council Conclusions on the Negotiation and Conclusion of EU Trade Agreements* (8 May 2018).

strengthened its hand in trade policy³⁰⁰. At the same time, civil society organizations have pursued an influence strategy of their own, seeking to make trade policy more compatible with civil society's agenda. They have done this by pushing for stronger enforcement mechanisms and greater accountability for human rights violations³⁰¹.

The European Parliament must give its consent to the conclusion of association agreements in accordance with Article 218 (6)(a)(i) TFEU³⁰². It is far from certain that the European Parliament could withhold approval without running the danger of harming the EU's reputation as an international actor, even though it is not just a theoretical possibility. However, the ability to refuse approval after discussions are over is not the only way the European Parliament can affect the process for reaching foreign accords. The obligation to keep the European Parliament "immediately and fully informed at all stages of the procedure", as stated in Article 218(10) TFEU, is very important. All forms of international agreements, including those that only pertain to the CFSP, must adhere to this fundamental procedural criterion³⁰³. "The information requirement arising under Article 218(10) TFEU is prescribed in order to ensure that the Parliament is in a position to exercise democratic scrutiny of the European Union's external action and, more particularly, to verify that its powers are respected specifically as a result of the choice of legal basis for a decision on the conclusion of an agreement", the Court of Justice noted³⁰⁴. Although the Parliament has been able to expand its supervisory functions since the entry into force of the Lisbon Treaty, it still enjoys little, if any, influence over the decision-making process when it comes to enforcing trade and human rights provisions in

³⁰⁰ Peter Van Elsuwege and Joyce De Coninck (n 263) 7.

³⁰¹ Jennifer Zerk, *Human Rights Impact Assessment of Trade Agreements* (2019) Chatham House, The Royal Institute of International Affairs, 9.

³⁰² Article 218 (6)(a)(i) TFEU: The Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement.

Except where agreements relate exclusively to the common foreign and security policy, the Council shall adopt the decision concluding the agreement:

(a) after obtaining the consent of the European Parliament in the following cases:

(i) association agreements;

³⁰³ Peter Van Elsuwege and Merijn Chamon (n 182)17.

³⁰⁴ Case C-658/11, *European Parliament v. Council*, EU:C:2014:2025, para 79 and Case C-263/14, *European Parliament v. Council*, EU:C:2016:435.

association agreements³⁰⁵. Furthermore, the effectiveness of enforcement mechanisms is weakened by the absence of a common EU front, given that the individual member states have divergent policies³⁰⁶. One of the most effective instruments available to the European Parliament is its authority to withhold consent for trade agreements that do not satisfy adequate human rights standards. Using this authority, the Parliament can insist on stronger, more compelling human rights clause language and coverage in its negotiations. The EP has used this potent tool to deny consent to agreements it found inadequate, like the SWIFT agreement and some provisions of the EU-Turkmenistan Partnership and Cooperation Agreement. Also, a vital aspect where the EP can bolster human rights enforcement is through its legislative work, especially concerning the participation of civil society. Together with the Council, the Parliament has the power to introduce rules that toughen up mechanisms for ensuring human rights are respected in the trade agreements negotiated with third countries. Nonetheless a major roadblock exists. The potential pushback from the Council and the Commission, which may not want to dilute their authority. A successful precedent for overcoming such institutional resistance comes from the amendments the EP demanded in the EU-Korea trade agreement. There, the EP insisted on safeguards before granting its consent³⁰⁷. When the EP grants its consent to a trade agreement, the Parliament diminishes the leverage it has over third countries. Although the EP can issue resolutions that condemn human rights violations in third countries, these resolutions are not legally binding. It is vital for the EP to reclaim its power by conducting ex-post assessments to veto new agreements in case of certified violations and to establish a procedure that allows individuals and civil society organizations to exercise the right of petition, therefore making the essential elements clause justiciable. A bolder approach is needed in order to achieve better standards of protection of human rights.

Although the EP has repeatedly upheld the need for a stronger applicability of the human rights clause, its stance has not been echoed by other institutional actors. In the context of the EUIAA, already in 2012 the Parliament submitted a question to the Commission about whether the failure to safeguard human rights under article 2 of the Association

³⁰⁵ Lorand Bartels (n 253) 21.

³⁰⁶ Beth Oppenheim (n 153) 15.

³⁰⁷ Lorand Bartels (n 253) 21-22.

Agreement would bring about any consequences to the EU. The parliamentary question assessed the binding nature of article 2 of the EUIAA under the Vienna Convention³⁰⁸ and the ECJ's ruling in the *Portuguese Republic v Council* case³⁰⁹. Consequently, it asked if the the EU may be considered as failing its legal obligations if it does not sanction Israel in the event of breaches of human rights³¹⁰. The Commission answered by denying that the EU could carry any responsibility in case of violations of article 2 of the EUIAA. Moreover, the Commission assessed that Article 2 is a standard clause that may be found in all EU framework agreements with third countries since the 1990s. Also, it highlighted that enforcement mechanisms are provided in Article 79, which allows either party to take appropriate measures if it believes the other is not living up to the agreement. Any party taking such measures would presumably hope to find a solution that is mutually acceptable and that minimizes disruption to the functioning of the agreement. Furthermore, the Commission added that diplomatic engagement rather than punitive actions is favored by the EU. The legal basis for the dialogue with the Israeli authorities on political and human rights matters is provided by the agreement itself. In addition to that, the EU consistently raises human rights issues through structured dialogues at various levels, including informal working groups, sub-committees, and the EU-Israel Association Council³¹¹. Notwithstanding the Commission's answer merely reiterated the status quo, this demonstrates how questions about enforcement and accountability have been raised for a long time and still lack a strongly motivated and satisfactory answer. The commixture of roles, duties and powers of the EU's stakeholders in this matter makes it difficult to achieve a structured and reliable approach to strengthen enforcement and accountability mechanisms. The interinstitutional balance between the European

³⁰⁸ Article 31(1)(2) of the Vienna Convention: 1.A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2.The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes.

³⁰⁹ Case C-268/94 *Portuguese Republic v Council* [1996] ECR I-6177.

³¹⁰ European Parliament, Question for Written Answer E-010294/2011 to the Commission (Sir Graham Watson, 2011) PE 476.537.

³¹¹ European Commission, *Answer Given by High Representative/Vice President Ashton on Behalf of the Commission* (17 February 2012) E-010294/2011.

Parliament, the Council and the Commission should be revisited in order to establish specific roles and clearer guidelines and procedures with respect to these issues.

Moreover, civil society organizations (CSO) are getting more and more involved in their advocacy efforts, submitting reports and petitions to the EU Parliament and Commission, urging them to take action against human rights abuses by trading partners. Most recently, ahead of the latest meeting of the Association Council, set for the 24th February 2025, numerous civil CSOs have undersigned a letter addressed to EU officials expresses profound concerns about Israel's purported breaches of international law. The CSOs, together with numerous NGOs, human rights organizations and trade unions, urged the EU to adopt measures that would prompt Israel to comply with the human rights obligations that pertain to it under the Association Agreement. The signatories commend the reach of the ceasefire agreement but caution that it should not lead back to the resumption of EU-Israel relations characterized by "business as usual". Moreover, they make clear that any next steps in the EU-Israel relationship must be conditioned on profound and meaningful political dialogue that addresses serious concerns about alleged human rights abuses. The documented violations of human rights that the letter brings to light are extremely serious. Reports from the United Nations, Amnesty International, and Human Rights Watch describe unlawful detention practices, including the torture and inhumane treatment of Palestinian detainees, particularly children. The letter charges Israel with depriving Palestinians of basic necessities, like food and water, and accuses it of using starvation as a weapon. It condemns the Israeli military's attacks on civilian infrastructure and aid delivery. Also, it condemns the targeting of journalists and aid workers, which it says is part of an effort to stifle the truth. Additionally, the letter recounts the rising violence in the West Bank, with settler attacks getting more severe, mass arrests of Palestinians, and the expansion of illegal settlements. The signatories also reference the July 2024 advisory opinion from the ICJ, which declared Israel's occupation in the OPT illegal under international law, and that the international community is under an obligation to act and to bring that occupation to an end. These findings notwithstanding, the letter takes issue with the EU for not condemning Israel's actions. In fact, it alleges that Israel's violations of human rights directly and seriously contradict the EU-Israel Association Agreement. This is a rather unprecedented step for the CSOs that signed the letter. The organizations argue that invoking Article 2 is essential for the EU to uphold its

legal and moral obligations. The letter lays out four principal demands to guarantee accountability: make Israel's human rights violations a priority for discussion in the next Association Council meeting; if Israel does not take corrective actions, then suspend the EU-Israel Association Agreement; prepare a draft proposal for suspension for the Commission, to be voted on by EU member states, in case of continued non-compliance; examine all trade and diplomatic relations with Israel to ensure that they are consistent with the ICJ's advisory opinion and UN resolutions. The letter highlights the rising impetus for suspension, pointing out that already over 250 members of the European Parliament and more than 200 NGOs and trade unions have called for this action. The signatories urge that the very same EU leadership steps up, takes responsibility, and makes some bold moves to maintain its credibility and commitment to human rights. They warn that failure to act would signal tacit approval of Israel's actions, further undermining the EU's global standing³¹². Although CSOs have been vocal about protecting human rights in the OPT under the EUJAA, they have no institutional role to exert any real influence on the application of the agreement's provisions. However, this is not to say they are irrelevant. Indeed, they raise awareness on important human rights matters and influence the EU's institutional actors response. A key change to strengthen monitoring and accountability could be enhancing the role that civil society organizations play in keeping an eye on and maintaining human rights standards within trade agreements. It is important to highlight that the labor and environmental requirements found in the trade and sustainable development (TSD) chapters and the conventional human rights sections differ in terms of monitoring. The TSD chapters typically call for the formation of a specialized committee comprising senior officials from the parties involved, as well as an annual transnational civil society gathering and a civil society mechanism that may consist of a Domestic Advisory Group (DAG) for each party. On the other hand, although ad hoc subcommittees on democratic principles and human rights may be formed, there is typically no specific organ tasked with overseeing the fundamental elements clause³¹³. The EU could create a similar procedure to foster civil society organizations involvement in monitoring and reporting violations of human rights. Moreover, the EU could establish an independent oversight body to ensure that all parties to the agreement

³¹² Civil Society Organizations (n 242).

³¹³ Peter Van Elsuwege and Joyce De Coninck (n 263) 30.

are complying with its provisions, particularly those related to human rights. This body could then make recommendations to the EU, which might include recommendations to suspend an agreement, to renegotiate parts of it, or to take other actions where necessary to ensure human rights are respected. A similar resolution was already adopted with the establishment of the Civil Society Platform in the EU's agreements with its eastern neighbours³¹⁴.

Overall, the ineffectiveness of the human rights clause in the EU-Israel Association Agreement points to broader structural problems in EU trade agreements where human rights are concerned. The humanitarian clause faces many limitations, e.g. language in the agreements is often vague, the enforcement mechanisms are weak and the EU seems to apply human rights conditionality in a very selective manner. These factors undermine the credibility of the EU's external human rights policy. By adopting a more standardized framework, incorporating a structured enforcement mechanism, and ensuring greater involvement of civil society organizations and parliamentary oversight, the EU can move beyond symbolic commitments and establish meaningful accountability for human rights violations. Bolstering the Association Council's role, putting in place an automatic review mechanism, and tying trade benefits to compliance would not just enhance the EU's credibility as a global proponent of human rights, it would also set a precedent for applying conditionality in a more principled and consistent manner across the board. To keep its status as an internationally influential actor that promotes fundamental values, the European Union must address the inconsistencies in its trade policy and the protection of human rights.

³¹⁴ Ibid., 32.

Conclusion

The European Union's involvement in the Israeli-Palestinian conflict shows not only its deep commitment to human rights but also the huge difficulties it has in trying to exert real influence over a long-drawn geopolitical crisis. As a major donor and diplomatic actor, the EU has invested substantial political and economic capital in advocating for a two-state solution, promoting stability and addressing human rights violations in the Occupied Palestinian Territories. Still, as this thesis has demonstrated, a legal vacuum in the EU's policy framework strongly limits its ability to enforce human rights protections under Article 2 of the EU-Israel Association Agreement.

This study reaches one primary conclusion: that the EU's human rights commitments in external policies are often unenforced and, thus, largely declarative rather than impactful. The EU has opposed Israeli settlement expansion policies, has condemned restrictions on movement imposed on Palestinians, and has called for an end to human rights abuses. However, when the EU stops short of enacting concrete measures that would create compelling political or economic consequences for the Israeli authorities, those commendable statements of concern become nearly meaningless.

In addition, this thesis has delved into how the EU's existing trade and diplomatic instruments could be utilized more effectively to ensure that the EU IAA provides a greater level of protection for human rights. Even though the agreement has explicit provisions that require both parties to respect fundamental freedoms and international law, the EU has never activated the mechanisms that are built into the agreement to allow the EU to suspend or condition the trade benefits that are provided to Israel based on Israel's human rights record. When compared with other trade agreements that the EU has negotiated with various partners, the EU IAA seems to represent a largely overlooked double standard in the EU's external policies.

The research has also pinpointed the geopolitical and institutional constraints that make the EU relatively ineffective. It has found that the EU faces internal divisions among Member States, economic interests, and the influence of external actors, particularly the United States. These contradictions have long made it difficult for the EU to speak with

one voice or to exert any real pressure. Moreover, the EU's large-scale deployment of humanitarian aid and the engagement both with Israeli and Palestinian authorities has, so far, yielded no significant political leverage, leaving the broader structural issues of occupation, territorial expansion, and human rights violations largely unaddressed.

The inconsistency of EU policy enforcement goes beyond the Israeli-Palestinian conflict and extends to the EU's economic relations with multiple other actors. The conflict between the EU's economic objectives and human rights commitments is evident in trade agreements. Many of the trade agreements include clauses regarding human rights. Those clauses, however, are hardly ever enforced. Amid these disputable policies, the resurgence of the Israeli-Palestinian conflict in 2023 has rendered the situation in Palestine intolerable. The EU finds itself at a key moment in its foreign policy. If it wants to remain a relevant actor pushing for respect of human rights and a just resolution to the decades-long conflict, it has to shift into a more proactive role in its external policies, strengthening conditionality mechanisms in its agreements with Israel to implement better enforcement and accountability measures and get it to comply with international law, particularly human rights commitments. Avoiding the issue of sanctions and delegating key policy decisions to the other international actors, such as the US, diminishes the EU's role as an independent mediator and reinforces the perception of its inaction.

In conclusion, the EU must move beyond rhetoric and adopt tangible measures to uphold the principles of human rights and international law that it claims to champion. Failure to do so risks further diminishing its credibility and influence in the region while enabling continued violations of Palestinian rights. By addressing the legal vacuum in its policy and aligning its actions with its stated commitments, the EU can take a more decisive role in promoting justice, accountability, and a sustainable resolution to the Israeli-Palestinian conflict. To maintain its reputation as a global advocate for human rights, the EU must resolve the contradictions in its external policies and ensure that human rights clauses in trade agreements are enforced rather than ignored.

List of Abbreviations

AA Association Agreement

BDS Boycott, Divestment, Sanctions

CAS Conflict Analysis Screenings

CERD Convention on the Elimination of Racial Discrimination

CSO civil society organisations

DAG Domestic Advisory Group

DCFTA Deep and Comprehensive Free Trade Area

ECFR European Union Charter of Fundamental Rights

ECHO European Civil Protection and Humanitarian Aid Operations

ECJ European Court of Justice

EEAS European External Action Service

EEC European Economic Community

EFTA European Free Trade Area

EIDHR European Instrument for Democracy and Human Rights

EMP Euro-Mediterranean Partnership

ENP European Neighbourhood Policy

EPA Economic Partnership Agreement

EU European Union

EUBAM European Union Border Assistance Mission

EUIAA European Union-Israel Association Agreement

EUSR European Union Special Representative

EWASH Emergency Water Sanitation and Hygiene Group

FTA Free Trade Agreement

GATT General Agreement on Tariffs and Trade

GC Geneva Convention

GSP+ Generalized Scheme of Preferences Plus

ICC International Criminal Court

ICCPR International Covenant on Civil and Political Rights

ICESCR International Covenant on Economic, Social, and Cultural Rights

ICJ International Court of Justice

IHL International Humanitarian Law

IHRL International Human Rights Law

LRRD Linking Relief, Rehabilitation, and Development

MEPP Middle East Peace Process

NDICI Neighbourhood, Development and Cooperation Instrument

NGO Non governmental organisations

OHCHR Office of the High Commissioner for Human Rights

OPT Occupied Palestinian territories

PA Palestinian Authority

R2P Responsibility to Protect

REDWG Regional Economic Development Working Group

TFUE Treaty on the Functioning of the European Union

TSD Trade and Sustainable Development

TUE Treaty on the European Union

UDHR Universal Declaration of Human Rights

UN FAO Food and Agricultural Organisation of the United Nations

UN OCHA United Nations Office for the Coordination of Humanitarian Affairs

UN United Nations

UNHRC United Nations Human Rights Council

UNRWA United Nations Relief and Works Agency

US United States

WFP World Food Program

WTO World Trade Organization

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