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ESTUDIOS

Preaching norms, perverting law, and trading arms: Palestine as a litmus test for "normative power Europe"

Predicando normas, pervirtiendo el derecho y comerciando armas: Palestina como prueba del poder normativo europeo

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Preaching norms, perverting law, and trading arms: Palestine as a litmus test for "normative power Europe"

Predicando normas, pervirtiendo el derecho y comerciando armas: Palestina como prueba del poder normativo europeo

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Summary: I. Introduction.—II. Is the EU a Normative Power? 1. NPE: A brief history of the term. 2. The EU as a "unique normative actor", multiple criticisms and the case of Palestine.—III. Normative power and legal subalternity. 1. Arms sales: from failure to prevent to complicity? 2. Business as usual: the duty not to recognize, not to aid or assist.—IV. Conclusions.

Abstract: "Europe lost its soul in Gaza," Josep Borrell remarked, capturing a profound moral and normative crisis in the EU's self-image as "Normative Power Europe". This article argues that Gaza operates as a revealer: it exposes the collision between the EU's proclaimed commitments to human rights, democracy, and the rule of law, and its external practices that sustain a partner implicated in mass atrocities. Focusing on arms transfers and EU —Israel economic relations, the article demonstrates how legal obligations— triggered by the International Court of Justice's 2024 finding of a plausible and imminent risk of genocide in Gaza and its advisory opinion declaring Israel's presence in the OPT a violation of peremptory norms, particularly the right to self-determination—are not merely ignored. Rather, they are narrowed, reinterpreted, and redeployed through discursive and institutional practices that reproduce what Imseis terms "legal subalternity": Palestinians are formally recognized as rights-holders while structurally denied the protections those rights entail. This widening gap between norms and action erodes EU credibility, particularly across the Global South/Global majority, and reframes the EU from a toothless bystander into a complicit actor.

Keywords: Palestine/Israel, EU, Normative Power, Genocide, Legal Subalternity.

Resumen: *«Europa ha perdido su alma en Gaza», señaló Josep Borrell, señalando una profunda crisis moral y normativa en la autoimagen de la UE como «Potencia Normativa Europa». Este artículo sostiene que Gaza funciona como un revelador: expone la colisión entre los compromisos proclamados por la UE con los derechos humanos, la democracia y el Estado de derecho, y sus prácticas externas que sostienen a un socio implicado en atrocidades masivas. Al centrarse en las transferencias de armas y en las relaciones económicas UE —Israel, el artículo muestra cómo las obligaciones jurídicas— activadas por la constatación de la Corte Internacional de Justicia en 2024 de un riesgo plausible e inminente de genocidio en Gaza y por su opinión consultiva que declara que la presencia de Israel en el TPO vulnera normas imperativas, en particular el derecho a la autodeterminación —no son simplemente ignoradas. Más bien, son restringidas, reinterpretadas y reutilizadas mediante prácticas discursivas e institucionales que reproducen lo que Imseis denomina «subalternidad jurídica»: los palestinos son reconocidos formalmente como titulares de derechos mientras se les niegan estructuralmente las protecciones que esos derechos conllevan. Esta brecha creciente entre normas y acción erosiona la credibilidad de la UE, especialmente en el Sur Global/mayoría global, y reconfigura a la Unión de un espectador desdentado a un actor cómplice.*

Palabras claves: *Palestina/Israel, UE, Poder Normativo, Genocidio, Subalternidad Jurídica.*

I. **Introduction**

"Europe lost its soul in Gaza", exclaimed Josep Borrell, the former High Representative of the Union for Foreign Affairs and Security Policy.[1] The Europe he was referring to is the European Union (EU), which also lost "the ability to embody the values we proclaim".[2] The conceptualization of Europe as a *sui generis* regional organization— distinguished by its unparalleled commitment to norms and values both internally and in its external action— has shaped not only the discourse of European elites, or, in the word of Diez constructed "an identity of the EU against an image of others in the 'outside world'",[3] but has played a pivotal role in shaping the field of EU foreign policy studies.[4] The concept of "Normative Power Europe" (NPE), first coined by Ian Manners in 2002, portrays the EU as "a normative power of an ideational nature characterized by common principles".[5] Those core values include democracy, human rights and the rule of law.

NPE and the conceptualization of the EU as unique normative actor have faced sustained critique, emphasizing the Union's inconsistency in upholding these values and, at times, their marginalization in favor of economic or geopolitical interests. No case illustrates the limits of this theoretical framework more starkly than Palestine. If the close relationship built between the EU and Israel over decades served as an example on the limits of the theoretical conceptualization of the EU as a unique normative actor, the ongoing genocide in Gaza has shattered this narrative by exposing how legal commitments can be reconstructed, narrowed, and selectively redeployed to justify political inaction or even complicity in mass atrocities.

Even with mounting evidence that Israel's conduct in Gaza meets the legal definition of Genocide[6] —as would be detailed in this article— the

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[1] RTVE.es, "Borrell, sobre el asesinato de seis periodistas en Gaza: 'No es un accidente. Sabían dónde estaban y fueron a por ellos,'" RTVE, August 26, 2025 (accessed 11 December 2025), https://www.rtve.es/noticias/20250826/borrell-asesinato-seis-periodistas-gaza-no-accidente-fueron-por-ellos/16707143.shtm

[2] RTVE.es, *op. cit*.

[3] Thomas Diez, "Constructing the Self and Changing Others: Reconsidering 'Normative Power Europe,'" *Millennium: Journal of International Studies* 33, no. 3 (2005): 613-636.

[4] Thomas Diez and Michelle Pace, "Normative Power Europe and Conflict Transformation", in *Normative Power Europe*, ed. Richard Whitman (London: Palgrave Macmillan, 2011), 210–225; Victoria Rodríguez-Prieto, "La noción de potencia normativa europea y su incidencia en la doctrina española," *Comillas Journal of International Relations* 16 (2019): 75-86.

[5] Ian Manners, "Normative Power Europe: A Contradiction in Terms?" *Journal of Common Market Studies* 40, no. 2 (2002): 235-258, p. 239.

[6] For a partial review of authoritative reports on genocide in Gaza see Sonia Boulos, "Smokescreen Recognition: How 'Statehood' Can Mask Complicity and Contain Decolonization," *Security in Context*, September 26, 2025, https://www.securityincontext.com/posts/

EU and EU Member States (EUMS) have continued to export weapons to Israel and provide funding for Israeli entities. However, as Michelle Pace has argued, the EU's complicity in Israel's flagrant violation of human rights, and most recently genocide, is not new. In Pace's words, for the EU to "regain its moral responsibility", it must go beyond halting weapons exports, and "call out Israel for its gross and systematic violations of Palestinian rights since its illegal occupation of the West Bank, including East Jerusalem, and the Gaza Strip".[7] In analyzing the broader implications of Israel's violations of international norms for the EU, Daniela Huber criticizes the EU's shifting stance—from initially affirming the fundamental principle of international law prohibiting the acquisition of territory by force, which required Israel's immediate withdrawal from the Arab lands occupied in 1967, to endorsing the "land for peace" paradigm. This shift marks a clear retreat from international law, further compounded by the absence of accountability for Israel's ongoing violations of core legal norms.[8] As Raffaella Del Sarto has argued, the EU's harsh critique of Israel's settlement project did not prevent the EU–Israel economic relations from improving steadily.[9] The language of "constructive engagement with Israel" has been used to downplay the EU's failure to apply *ex post* conditionality, such as suspending commercial agreements with Israel due to human rights violations. As Del Sarto's critique goes "[c]arrots have rarely been dangled, but rather are normally simply given to Israel".[10] According to official data published by the European Commission, currently, Israel is the EU's third-biggest trading partner in the Mediterranean region, after Morocco and Algeria. The EU is Israel's biggest trading partner, accounting for 32% of Israel's total trade in goods with the world in 2024. 34.2% of Israel's imports came from the EU while, and 28.8% of the country's exports went to

smokescreen-recognition-how-statehood-can-mask-complicity-and-contain-decolonization; see also section III (a) of this article.

[7] Michele Pace, "The EU Must Regain Its Moral Responsibility," *Qantara.de*, September 12, 2024, accessed December 17, 2025, https://qantara.de/en/article/europe-and-gaza-eu-must-regain-its-moral-responsibility

[8] Daniela Huber, "Israel/Palestine and the Normative Power of the 'Global South'", *IAI Commentaries* (Istituto Affari Internazionali), March 22, 2024, accessed December 17, 2025, https://www.iai.it/en/pubblicazioni/c05/israelpalestine-and-normative-power-global-south

[9] Raffaella A. Del Sarto, "Defining Borders and People in the Borderlands: EU Policies, Israeli Prerogatives and the Palestinians," *Journal of Common Market Studies* 52, no. 2 (2014): 200-216.

[10] Nathalie Tocci, "Firm in Rhetoric, Compromising in Reality: The EU in the Israeli–Palestinian Conflict," *Ethnopolitics* (formerly *Global Review of Ethnopolitics*) 8, nos. 3-4 (2009): 387-401, 395.

the EU. Total trade in goods between the EU and Israel in 2024 amounted to €42.6 billion.[11]

In this sense, the genocide in Gaza has functioned as a "revealer", not only of EU inconsistency or what is often described as "double standards", but of a deeper juridical pattern: the production of a Palestinian exception sustained through what Imseis terms "international legal subalternity". The term subaltern, in its modern critical-theoretical sense, is most often traced to Antonio Gramsci's work. Gramsci developed a nuanced conception of subalternity to interrogate the relations between dominant and subordinate groups and the historically contingent processes through which political power is constituted, articulated, institutionalized, reproduced, and transformed within hegemonic formations. As Green notes, "the intricacies of subalternity can be understood in dialectical relation to the complexity of hegemony".[12] Applied to international law, subalternity entails that subaltern subjects —here, Palestinians— may be formally recognized as rights-holders while being structurally denied the protections those rights are meant to secure.[13] To understand how this form of legal subalternity is constituted, we must adopt "an approach that critically interrogates how and at what points in Palestine's modern history its position in the international system was superseded and compromised in legal terms."[14]

Focusing on arms trade and EU–Israel economic relations, this article attempts to illustrate how legal obligations triggered by the 2024 findings of the International Court of Justice (ICJ) of plausible and imminent risk of genocide in Gaza in the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip*[15] and by the ICJ's 2024 Advisory Opinion on "The Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jeru-

[11] European Commission, "EU Trade Relations with Israel: Facts, Figures and Latest Developments," *EU Trade Relationships by Country/Region*, accessed December 18, 2025, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/israel_en

[12] Marcus E. Green, "Race, Class, and Religion: Gramsci's Conception of Subalternity", in *The Political Philosophies of Antonio Gramsci and B. R. Ambedkar: Itineraries of Dalits and Subalterns*, ed. by Cosimo Zene (New York: Routledge, 2013), 116-17.

[13] Ardi Imseis, *The United Nations and the Question of Palestine: Rule by Law and the Structure of International Legal Subalternity* (Cambridge: Cambridge University Press, 2023).

[14] Ardi Imseis, *The United Nations and the Question of Palestine,* 5.

[15] Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the Indication of Provisional Measures: Order of 26 January 2024. https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf

salem" (2024 Advisory Opinion),[16] are not simply ignored or violated. Rather, the Palestine exception shows how EU institutions and member states reconstruct the law through discursive manipulations to excuse inaction, deny protection, and ultimately enable genocidal violence. The article contains two main Parts. In the first part we critically explore the conceptualization of the EU as a unique normative actor, highlighting the critique of notions such as NPE and their applicability to the Palestine question. In the second part we focus on arm exports and EU–Israel economic relations to demonstrate how the law itself is used discursively to create a Palestinian exception, a paradigmatic space, where legal principles are cited rhetorically and reconstructed with one aim, to suspend their applicability.

II. **Is the EU a Normative Power?**

1. *NPE: A brief history of the term*

Efforts to conceptualize and evaluate the identity and the nature of the EU and, above all, the role it plays in international relations have dominated the research agenda on the EU's foreign policy. One of the most widely used and, to a large extent, most applauded approaches —often becoming a recurring discursive mantra— is *Normative Power Europe*, introduced by Manners in 2002. Indeed, some innovative academic concepts emerged in the post-Cold War period, particularly after the approval of the Maastricht Treaty, which fostered the debate on the new role that the EU was expected to play in the global context.[17] An important antecedent to NPE emerged in the 1970s with François Duchêne's concept of Europe as a "civilian power." Duchêne, a key adviser to Jean Monnet, drew inspiration from foreign policies of Scandinavian countries.[18] Lacking hard instruments of foreign policy, these countries projected a values-based model of governance, thereby acquiring a capacity for influence. In its European application, the concept emphasized the EU's ability to leverage economic instruments to achieve political objectives, particularly through democratic conditionality in its relations with authoritarian regimes —most notably with the Greek dictatorship. In contrast, scholars such as Hedley Bull ar-

[16] *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (AO), No. 186, International Court of Justice, July 19, 2024.

[17] Richard G. Whitman, *From civilian power to superpower? The international identity of the European Union* (Basingstoke: MacMillan, 1998).

[18] François Duchêne, "Europe's role in world peace" in *Europe tomorrow sixteen European look ahead*, : ed Red Mayne (London: Fontana, 1972), 32-47.

gued that in the absence of military capabilities, a power could not truly be considered as such, not even as a *sui generis* or civilian power, as was often claimed in relation to the EU.[19]

To overcome these diatribes, Ian Manners coined a new concept in 2002, the "Normative Power Europe" in his seminal article "*Normative Power Europe: A Contradiction in Terms*?. In it, Manners argued that the EU is "a normative power of an ideational nature characterized by common principles".[20] Among these principles are freedom, democracy, human rights and the rule of law.[21] Furthermore, four additional norms embedded in the EU's constitutional framework and practices can be identified: social solidarity, anti-discrimination and minority protection, sustainable development, and good governance. These normative elements are not only foundational internally but are also projected externally, shaping international relations and influencing the architecture of the international system. In this way, the EU seeks to contribute, in the words of former High Representative Javier Solana, "to the global common good."[22]

Indeed, human rights and international law norms are formally embedded in the Union's constitutional framework. The Treaty on European Union (TEU) incorporates a clear commitment to respect international law and the fundamental norms of the global order.[23] Article 3(5) TEU mandates that, in its relations with the world, the Union "shall contribute to … the strict observance and the development of international law". Article 21(1) TEU goes further, stating that the EU's external action "shall be guided by the principles which have inspired its own creation … 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 … and respect for the principles of the United Nations Charter and international law". Article 21(2)(b) reinforces this normative posture, pledging that the Union will "consolidate and support … the principles of international law" in its external policies.

According to Manners, this projection occurs through a range of strategies: contagion, or unintended diffusion; informational diffusion, resulting

[19] Hedley Bull, "Civilian Power Europe: A contradiction in terms", *Journal of Common Market Studies* 21, n.º 2, (1982):149-170.

[20] Ian Manners, "Normative Power Europe: a contradiction in terms?", *Journal of Common Market Studies* 40, n.º 2 (2002): 235-258, 239.

[21] Manners, "Normative Power Europe: A Contradiction in Terms?", 242.

[22] Daniel Hardwick, "Is the EU a Normative Power?", *E-International Relations*, 3/12/2011, accessed 11/12/2025. https://www.e-ir.info/2011/09/03/is-the-eu-a-normative-power/

[23] Consolidated version of the Treaty on European Union — TITLE V: GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION AND SPECIFIC PROVISIONS ON THE COMMON FOREIGN AND SECURITY POLICY — Chapter 1: General provisions on the Union's external action — Article 21 *Official Journal* 115, 09/05/2008 P. 0028-0029 https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008M021

from deliberate communication through declarations and initiatives, primarily by the European Commission; procedural diffusion via the institutionalization of relations with third parties; transfer based on incentives and sanctions to ensure compliance with desired standards; overt diffusion, stemming from the EU's physical presence in relevant contexts; and the cultural filter, which involves the learning and adaptation of norms by third parties.[24] These strategies ultimately rely on "persuasion, argumentation and the acquisition of prestige or embarrassment"[25]. Arguably, these norms are constitutive of the EU as "a hybrid polity and as part of its international identity in world politics".[26] The notion of the EU as a "normative power" moves beyond traditional approaches that seek to understand the Union in terms of what is does, focusing instead on what is it, mainly a norm changer[27] that "seeks to promote a different regulation in accordance with its own regulatory model".[28]

Manners identified three principles that ought to guide the EU's promotion of its substantive values: "living by example," "being reasonable," and "doing least harm." [29] Years later, Manners emphasized the importance of consistency and coherence in advancing these norms. If actions taken to promote certain values contradict those very principles, the effectiveness of the EU's normative projection is diminished, and its capacity to act as a normative power is correspondingly weakened.[30] Likewise, if the EU fails to uphold these principles domestically,[31]or because sovereignty or self-interest takes precedence over normative commitments,[32] or because some EUMS call these values into question,[33] the Union's ability to project its norms beyond its borders is significantly reduced.

[24] Manners, "Normative Power Europe: A Contradiction in Terms?", 244.

[25] Ian Manners. "The European Union's normative power: critical perspectives and perspectives on the critical", in *Normative power Europe*, ed Richard G. Whitman (Basingstoke: MacMillan, 2011), 226-247, 235.

[26] Ian Manners, "The Constitutive Nature of Values, Images and Principles in the European Union," in *Values and Principles in European Union Foreign Policy*, ed. Sonia Lucarelli and Ian Manners (London: Routledge, 2006), 19-41, 32.

[27] Manners, "Normative Power Europe: A Contradiction in Terms?".

[28] Rodríguez-Prieto, "La noción de potencia normativa europea y su incidencia en la doctrina española", 76 (traducción nuestra).

[29] Ian Manners. "The normative ethics of the European Union", *International Affairs* 84, n.º. 1, (2008): 45-60, 46.

[30] Manners "The European Union's normative power: critical perspectives…", 233.

[31] Laurent Cohen-Tanugi, "Europe as an international normative power: State of play and future perspectives". *Revue Européenne du Droit*, vol.3, n.º2 (2021): 91-97.

[32] Hardwick, "Is the EU a Normative Power?".

[33] David Cadier, "European structural power on the wane? EU foreign policy between external and internal challenges", *IE Mediterranean yearbook* (2019): 32-37, 37.

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NPE has become a central theoretical framework in the field of European studies, and it is often used as a main catalyst of academic debates on the international role of the EU[34]. Traditionally, academic works on NPE have focused on the EU's international role and how it diffuses its norms to other political actors outside the Union[35]. Most recently, NPE is being invoked to study how EUMS themselves are challenging the core values of the EU, as identified by NPE[36].

2. *The EU as a "unique normative actor", multiple criticisms and the case of Palestine*

NPE and the conceptualization of the EU as unique normative actor have faced sustained critique, emphasizing its Eurocentric exceptionality and the Union's inconsistency in upholding these values and, at times, their marginalization in favor of economic or geopolitical interests.[37] Others, like Diez and Pace argue that NPE "is a discursive construction rather than an

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[34] Rodríguez-Prieto, "La noción de potencia normativa europea y su incidencia en la doctrina española".

[35] Manners, "Normative Power Europe: A Contradiction in Terms?"; Manners, "The European Union's normative power: critical perspectives…"; Rodríguez-Prieto, "La noción de potencia normativa europea y su incidencia en la doctrina española,"; Anne Jenichen, "The politics of normative power Europe: norm entrepreneurs and contestation in the making of EU external human rights policy", *Journal of Common Market Studies*, v. 60, n. 5, (2022): 1299-1315.

[36] See, for example, Martijn Mos, "Conflicted Normative Power Europe: The European Union and Sexual Minority Rights," Journal of Contemporary European Research 9, n.º 1 (2013): 78-93, https://doi.org/10.30950/jcer.v9i1.410; Dominik Heidrich y Karolina Choina, "The Impact of the Dispute over the Rule of Law in Poland on the Status of Normative Power Europe," Athenaeum. Polskie Studia Politologiczne 84, n.º 4 (2024): 190-210, https://doi.org/10.15804/athena.2024.84.11; Sonia Boulos, Gracia Abad-Quintanal, María Mayo-Cubero y Susana de Sousa Ferreira, "Constructing 'Normative Power Europe': A Critical Analysis of the Human Rights Narratives in Spanish Media Discourses on the European Union," Profesional de la información 32, n.º 4 (2023): e320407, https://doi.org/10.3145/epi.2023.jul.07.

[37] Hubert Zimmermann, "Realist Power Europe? The EU in the Negotiations about China's and Russia's WTO Accession," *Journal of Common Market Studies* 45, no. 4 (2007): 813-832. Jennifer L. Erickson, "Market Imperative Meets Normative Power: Human Rights and European Arms Transfer Policy," *European Journal of International Relations* 19, no. 2 (2013): 209-234. Hiski Haukkala, "The European Union as a Regional Normative Hegemon: The Case of European Neighbourhood Policy," *Europe-Asia Studies* 60, no. 9 (2008): 1601–1622. R. Daniel Kelemen and David Vogel, "Trading Places: The Role of the United States and the European Union in International Environmental Politics," *Comparative Political Stu*dies 43, no. 4 (2010): 427-456. Mark A. Pollack, "Living in a Material World: A Critique of 'Normative Power Europe'" (SSRN Scholarly Paper No. 1623002, 2020), https://ssrn.com/abstract=1623002 EEAS. *Critically assess and analyze the notion that the EU is a normative power*, 24 November 2016. https://www.eeas.europa.eu/node/15687_en

objective fact".[38] Put differently, the power of NPE "rests in the identity it provides for the EU and the changes it imposes on others, partly through its hegemonic status".[39] It is "first and foremost a discourse in which EU actors themselves construct themselves as 'model citizens'".[40] Diez contends that "the narrative of 'normative power Europe' constructs the EU's identity as well as the identity of the EU's others in ways which allow EU actors to disregard their own shortcomings unless a degree of self-reflexivity is inserted".[41] He further emphasizes that the articulation of identities is always infused with power. Whether the construction of a particular identity is problematic depends on the context in which it is viewed. In the case of NPE, the content of the norms is, in principle, positive, as it envisions a more peaceful and cosmopolitan world. Nevertheless, if these norms are projected without self-reflection, "the identity construction that they entail allows the continued violation of the norms within the EU".[42]

Some scholars argue that the EU's tendency to ignore or downplay human rights violations in certain countries while emphasizing violations in others suggests that its actions are not driven exclusively, or even primarily, by a commitment to universal norms. Instead, they may be influenced by strategic interests. Others contend that the EU's material interests often underpin its normative policies. For instance, Kelemen and Vogel argue that the EU's environmental leadership is motivated not only by genuine concern for the environment but also by economic considerations.[43]

In analyzing the enlargement of the Union, its neighborhood policies or inter-regionalism, critical scholarship has increasingly scrutinized the EU as a neo-imperial force, challenging conventional narratives of its global role. Zielonka's "neomedieval empire", Hettne and Söderbaum's "soft imperialism", Del Sarto's "normative empire," Hansen's "colonial geopolitical turn" and Pace and Roccu's work highlight how the EU sustains empire-like governance while presenting itself as a distinctive and normative actor[44]. In his analysis of the EU's European Neighbourhood and Eastern

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[38] Diez and Pace, "Normative Power Europe and Conflict Transformation", 210.

[39] Diez and Pace, "Normative Power Europe and Conflict Transformation", 210.

[40] Diez and Pace, "Normative Power Europe and Conflict Transformation", 211.

[41] Diez, "Constructing the Self and Changing Others…", 627.

[42] Diez, "Constructing the Self and Changing Others…", 632.

[43] Kelemen and Vogel, "Trading Places: The Role of the United States and the European Union in International Environmental Politics".

[44] Jan Zielonka, *Europe as Empire: The Nature of the Enlarged European Union* (Oxford: Oxford University Press 2006). Jan Zielonka, "Europe's new civilizing missions: The EU's normative power discourse", *Journal of Political Ideologies* 18, n.º 1 (2013): 35-55. Raffaella Del Sarto, "Normative empire Europe: The European Union, its borderlands, and the 'arab spring'", *Journal of Common Market Studies* 54(2), (2016): 215-232. Michelle Pace

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Partnership policies, Browning demonstrates why portraying the EU's post-cold war foreign policy as idealistic does not withstand scrutiny, arguing instead that it has reconfigured colonial logics under the language of reform, resilience, and partnership.[45]

With the failure of the Oslo process and the EU's marginal and often contradictory role, an important portion of critical analyses of NPE has focused on its relations with Israel, the Palestinians, and the peace process.[46] These analyses range from debates over whether the EU possesses any real capacity to influence the parties,[47] or whether its influence is inherently limited,[48] to critiques of the discourse surrounding shared values and observations that the EU has failed as a peacebuilder in the conflict.[49] Indeed,

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and Roberto Roccu, "Imperial Pasts in the EU's Approach to the Mediterranean", *Interventions, International Journal of Postcolonial Studies* 22, n.º 6 (2020): 671-685. Bjorn Hettne and Fredrik Söderbaum, "Civilian Power or soft imperialism? The EU as a global actor and the role of Interregionalism", *European Foreign Affairs Review,* 10 (4), (2005): 535-552. Peo Hansen, "The Return of the Repressed: The Colonial History of the EU's Geopolitical Turn", *Journal of Common Market Studies,* Vol. 63. n.º 5 (2025): 1420-1437.

[45] Christopher S. Browning, "Geostrategies, Geopolitics and Ontological Security in the Eastern Neigbourhood", *Political Geography* 62, (2018): 106–115. Julian Pänke, "The Fallout of the EU's Normative Imperialism in the Eastern Neighborhood", *Problems of Post-Communism*, 62(6), (2015): 350-363. Itxaso Domínguez de Olazábal, "The European Union's Neighbourhood Policy and the Unacknowledged Mediterranean Color Line", *The Journal of Race, Ethnicity, and Politics* (2025): 1-22. Yannis A. Stivachtis. "The 'Civilizing' Empire: The European Union and the MENA Neighborhood", *Athens Journal of Mediterranean Studies*, Vol. 4, No. 2 (2018): 91-106.

[46] Guy Harpaz and Asaf Shamis, "Normative Power Europe and the State of Israel: An illegitimate EUtopia?", *Journal of Common Market Studies*, 48(3), (2010): 579-616. Sharon Pardo, *Normative power Europe meets Israel: Perceptions and realities* (Lanham, MD: Lexington Books, 2015).

[47] Dimitris Bouris, "The Limits of Normative Power Europe: Evaluating the Third Pillar of the Euro-Mediterranean Partnership", *Political Perspectives*, Vol. 5, No. 2, (2011): 80–106. Raffaella Del Sarto, "Defining Borders and People in the Borderlands: EU Policies, Israeli Prerogatives and the Palestinians", *Journal of Common Market Studies,* Vol. 52, No. 2, (2014) 200–216. Thomas Diez and Michelle Pace, op.cit, 2011. Neve Gordon and Sharon Pardo, "Normative Power Europe Meets the Israeli-Palestinian Conflict", *Asia-Europe Journal*, Vol. 13, No. 3, (2015) 265–274. Neve Gordon and Sharon Pardo, "Normative Power Europe and the Power of the Local", *Journal of Common Market Studies*, Vol. 53, No. 2 (2015): 416-427.

[48] Anders Persson, "Shaping discourse and setting examples: Normative power Europe can work in the Israeli-Palestinian conflict", *Journal of Common Market Studies*, 55(6), (2017): 1415-1431. Andres Persson, "EU differentiation" as a case of "normative power Europe" (NPE) in the Israeli-Palestinian conflict", *Journal of European Integration*, 40(2), (2018): 193-208.

[49] Dimitris Bouris, *The European Union and Occupied Palestinian Territories: State-building without a state* (Abingdon: Routledge, 2014). Rory Miller, *Inglorious Disarray: Europe, Israel and the Palestinians since 1967* (New York: Columbia University Press, 2011). Michelle Pace, "The Construction of EU Normative Power and the Middle East 'Conflict' … 16 Years on", *Journal of Common Market Studies*, 62(3), (2024): 868-884. Ian Manners, "Theorizing normative power in European Union-Israeli/Palestinian relations: Focus of this special issue", *Middle East Critique*, 27(4) (2018): 321-334.

Palestine has become a touchstone for NPE, exposing double standards and racial and civilizational biases. Comparing the EU's unequal actions in Ukraine and Palestine, Huber characterizes this dynamic as "organized hypocrisy and a logic of coloniality."[50] The EU's retreat from international law continues to manifest itself in various aspects of its policy toward Palestine and Israel.

The complex division of competences between the EU and EUMS is important when distinguishing the EU's responsibility from that of individual Member States. In particular, the EU's "normative control" over EUMS' actions in specific contexts often plays a decisive role. [51] However, the formal division of competences does not always correspond to how EUMS implement EU rules in their international activities—or whether, for instance, they merely act as agents of the Union, exercising competences that the EU itself cannot assert within a state-centric international system.[52]

The critique of the EU's engagement with the Palestinian question has a long trajectory and includes multiple instances of a purposeful retreat from international law. For example, in 2003, the UN General Assembly (UNGA) adopted resolution ES-10/14 to request the ICJ for an advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.[53] The resolution passed with a vote of 90 in favor, 8 against, and 74 abstentions; all EUMS abstained.[54] In 2004, the ICJ delivered its advisory opinion, concluding that Israel's construction of the wall in the Occupied Palestinian Territory (OPT), including East Jerusalem, violates international law —mainly the prohibition of the acquisition of territory by force and the right to self-determination of the Palestinian people—, and ordered Israel to cease construction, dismantle the wall, and make reparations for all damages caused. In its conclusions it also noted that all States are un-

[50] Daniela Huber, "Organized Hypocrisy and the Logic of Coloniality. Explaining the EU's Divergent Response to Grave Violations of International Law in Russia/Ukraine and Israel/Palestine", *Journal of Common Market Studies*, 63(5) (2025): 1638-1660.

[51] Cristina Contartese, "Competence-Based Approach, Normative Control, and the International Responsibility of the EU and Its Member States", *International Organizations Law Review,* vol.17, no. 2 (2020): 418-455.

[52] Gleider Hernández and Ramses A. Wessel, *Expert Legal Opinion on the Implications for the European Union of the July 2024 International Court of Justice Advisory Opinion regarding the Policies and Practices of Israel in the Occupied Palestinian Territory*, European Parliament, 19 June 2025.

[53] United Nations General Assembly, "Illegal Israeli Actions in Occupied East Jerusalem and the Rest of the Occupied Palestinian Territory," Resolution ES-10/14, UN Doc. A/RES/ES-10/14 (12 December 2003), adopted 8 December 2003, https://documents.un.org/access.nsf/get?DS=A/RES/ES-10/14&Lang=E&OpenAgent

[54] United Nations General Assembly, *Official Records*, Tenth Emergency Special Session, 23rd Plenary Meeting, Verbatim Record, UN Doc. A/ES-10/PV.23 (8 December 2003).

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der an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining it. Likewise, it called upon States parties to the Fourth Geneva Convention to ensure compliance by Israel with international humanitarian law as embodied in that Convention.[55] However, rather than exerting pressure on Israel to uphold fundamental principles of international law, the launch of the European Neighborhood Policy (ENP) in 2004 marked a significant deepening of EU-Israel relations. This was formalized through the adoption of a specific Action Plan in December 2004, which provided a framework for closer integration, economic cooperation, and political dialogue. Notably, it was the first ENP instrument to be approved by the European Commission.[56]

Another clear division emerged in 2012 when Palestine applied for non-member observer status at the United Nations. While the EU officially supported this recognition as consistent with its long-standing commitment to a two-state solution and the right of Palestinians to self-determination, twelve EUMS abstained, and one voted against.[57] The retreat from international law continued with the subsequent attempts of the EU Foreign Affairs Council to dissuade Palestine from signing the Rome Statute for the International Criminal Court (ICC) to shield Israel from accountability.[58] Palestine acceded to the Rome Statute in January 2015. By means of a declaration under Article 12(3) of the Statute, the Government of Palestine accepted *ad hoc* ICC jurisdiction retroactively from June 13, 2014. This move sparked strong opposition from multiple sides, primarily Israel and its supporters, including many European actors. For example, Germany, objected to the participation of Palestine, arguing that it did not meet the conditions of a state party[59]. The EU High Representative, Federica Mogherini, was very cautious in assessing the step taken by Palestine, underlining that "the EU has consistently called for both parties to refrain from any unilateral actions… and has called on the Palestinian leadership to use its international

[55] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, International Court of Justice, General List No. 131, July 9, 2004, https://www.icj-cij.org/node/103742

[56] European Commission. "European Neighbourhood Policy: the First Action Plans." Press release IP/04/1453. Brussels, 9 December 2004. https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_04_1453/IP_04_1453_EN.pdf

[57] United Nations General Assembly, Status of Palestine in the United Nations, Res. A/RES/67/19 (29 November 2012).

[58] Daniela Huber, "Israel/Palestine and the Normative Power of the 'Global South'".

[59] Stefan Talmon, "For Germany the "State of Palestine" is not a State Party of the Rome Statute of the International Criminal Court", *GPIL – German Practice in International Law*, 22 September 2021, accessed 11 December 2025 https://gpil.jura.uni-bonn.de/2021/09/for-germany-the-state-of-palestine-is-not-a-state-party-of-the-rome-statute-of-the-international-criminal-court/ DOI: 10.17176/20220627-172724-0

status constructively and not to weaken efforts by partners to bring the parties back to the negotiating table".[60] In 2020, when prosecutor Bensouda requested a ruling from the Pre-Trial Chamber on the ICC's territorial jurisdiction in Palestine, some EUMS including Austria, Czechia, Hungary, Germany, came to Israel's defense by submitting amicus curie arguing that the ICC has no jurisdiction.[61]

In 2022, when the UNGA requested an advisory opinion from the ICJ on "Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem" most of EUMS either opposed the request or abstained.[62] Germany voted against the draft resolution of the UNGA,[63] while Italy[64], Hungary[65] and Czechia[66] contested the ICJ's jurisdiction in their written statements to the court, despite the fact that Israel's apocalyptic violence in Gaza was being broadcast in real time. This retreat from international law persisted even amid a growing consensus regarding the genocidal nature of Israel's recent military offensive in Gaza. Moreover, several states have vehemently opposed the ICC's efforts to hold Israeli officials —namely Prime Minister Netanyahu and Defense Minister Gallant— accountable for war crimes and crimes against humanity committed in Gaza. Chief ICC Prosecutor Karim Khan's initial application for arrest warrants, filed in May 2024, was met with strong

[60] European Parliament, "Answer given by High Representative/Vice-President Mogherini on behalf of the Commission," *Answer to Question No E-000110/15* (E-000110/2015(ASW)), 17 March 2015

[61] 'Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine'. No. ICC-01/18 (5.02.21). Available at https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_01165.PDF

[62] In the vote on Resolution 77/247 in the General Assembly on 30 December 2022, the EU Member States voted: 7 in favor, 9 against and 11 abstentions.

[63] GPIL – German Practice in International Law, "Germany Opposes Request for ICJ Advisory Opinion on Israel's Policies and Practices in the Occupied Palestinian Territory But Also Rejects Israel's Reaction," *GPIL*, February 2024, accessed December 17, 2025, https://shorturl.at/NPqu6

[64] Written Statement of Italy, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion Proceedings, International Court of Justice, Document No. 186-20230725-WRI-07-00-EN, July 25, 2023, https://api.icj-cij.org/sites/default/files/case-related/186/186-20230725-wri-07-00-en.pdf

[65] Written Statement of Hungary, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion Proceedings, International Court of Justice, Document No. 186-20230725-WRI-16-00-EN (July 25, 2023), https://api.icj-cij.org/sites/default/files/case-related/186/186-20230725-wri-16-00-en.pd

[66] Written Statement of the United Kingdom, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion Proceedings, International Court of Justice, Document No. 186-20230725-WRI-29-00-EN (July 25, 2023), https://api.icj-cij.org/sites/default/files/case-related/186/186-20230725-wri-29-00-en.pdf

opposition from several European states. Germany,[67] Czechia[68], Hungary[69] submitted briefs to the ICC opposing its jurisdiction and the issuance of arrest warrants against Israeli officials. France indicated that it would not arrest the Israeli Prime Minister or members of his government, citing respect for their immunity.[70] These objections stand in sharp contrast to France's previous positions on ICC jurisdiction and accountability processes —most notably the support for the issuance of an arrest warrant against Russian President Vladimir Putin in 2023.[71]

III. Normative power and legal subalternity

1. *Arms sales: from failure to prevent to complicity?*

In indicating a series of provisional measures in the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip*, the ICJ determined that the risk of genocide in Gaza was "plausible" and that there existed a "real and imminent risk" of irreparable harm to the rights of Palestinians protected under the Convention.[72] The Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) establishes a clear duty to prevent genocide.[73] As the Court held in the *Bosnian Genocide* case, the duty to prevent requires States Parties to employ all means reasonably available to them to avert

[67] Observations Pursuant to Rule 103(1) of the Rules of Procedure and Evidence-Federal Republic of Germany (6.08.2024). Available at https://www.icc-cpi.int/court-record/icc-01/18-307-corr

[68] Written observations as amicus curiae under rule 103 — Czech Republic (6.08.2024). Available at https://www.icc-cpi.int/court-record/icc-01/18-294

[69] Amicus curiae observations of Hungary pursuant to Rule 103 (6.08.2024). Available at https://www.icc-cpi.int/court-record/icc-01/18-296

[70] Article 98 of the Rome Statute states that the court "will not give effect to a request for surrender under which the requested State would have to act inconsistently with its obligations under international law with respect to the immunity of a State (...) unless the court has previously obtained the cooperation of that third State for the waiver of immunity.".

[71] Thomas Obel Hansen, "State Objections to the ICC Prosecutor's Request for Arrest Warrants in the Palestine Investigation", *EJIL: Talk!*, May 27, 2024, https://www.ejiltalk.org/stateobjections-to-the-icc-prosecutors-request-for-arrest-warrants-in-the-palestine-investigation/.

[72] Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the Indication of Provisional Measures: Order of 26 January 2024. https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf

[73] Orna Ben-Naftali, "The Obligations to Prevent and to Punish Genocide," in *The UN Genocide Convention: A Commentary*, ed. Paola Gaeta (Oxford: Oxford University Press, 2009), 27-57.

genocide, even where the actors in question are not under their direct control.[74] This duty arises the moment a state knows, or should have known, of a serious risk that genocide will be committed. In these cases, responsibility is incurred if States manifestly fail to take all measures within its power to prevent genocide when such measures might have contributed to preventing it. In assessing whether a state has discharged this duty, the ICJ emphasized that a crucial factor is the state's capacity to influence the actors likely to commit, or already committing, genocide. Importantly, the Court clarified that such capacity must be assessed against legal criteria, since states may only act within the limits permitted by international law. [75]

The Court also drew a distinction between the obligation to prevent genocide under Article 1 of the Convention and complicity in genocide under Article 3(e). Complicity "requires that some positive action has been taken to furnish aid or assistance to the perpetrators of the genocide"[76], whereas the violation of the obligation to prevent "results from mere failure to adopt and implement suitable measures to prevent genocide from being committed."[77] The ICJ has equated complicity in genocide with Article 16 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts, which reflects a rule of customary international law.[78] According to Articles 16, "[a] State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) That State does so with knowledge of the circumstances of the internationally wrongful act; and (b) The act would be internationally wrongful if committed by that State".[79] In its commentary on this provision, the International Law Commission clarified that a State may incur responsibility if it:

> [P]rovides material aid to a State that uses the aid to commit human rights violations. In this respect, the General Assembly has called on Member States in a number of cases to refrain from supplying arms and other military assistance to countries found to be committing serious human rights violations.[80]

[74] Bosnian Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), [2007] ICJ Rep 595, para. 166.

[75] Id, para. 430 https://www.icj-cij.org/sites/default/files/case-related/91/091-20070226-JUD-01-00-EN.pdf

[76] Id, para. 432.

[77] *Ibid*.

[78] *Ibid*, para 420.

[79] International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries (2001), in Report of the International Law Commission on the work of its fifty-third session (23 April–1 June and 2 July–10 August 2001), UN Doc. A/56/10 (2001), chap. IV.E, pp. 31–143.

[80] *Ibid*, 67.

By affirming the plausibility of genocide in Gaza, the ICJ has placed all States Parties on notice. Consequently, the continued supply of arms to Israel is not only a breach of the obligation to prevent genocide under Article 1 but may well amount to complicity in genocide under Article 3(e). This legal framework has been reinforced by a series of authoritative reports that have concluded that Israel's offensive in Gaza meets the legal definition of genocide. Among those are the reports issued by the UN Special Rapporteur Francesca Albanese. Her March 2024 report, Anatomy of a Genocide, explicitly concluded that Israel's conduct in Gaza meets the threshold of genocide.[81] This conclusion was subsequently developed by Albanese in a comprehensive analyses that situate the genocide in Gaza within a longer settler-colonial trajectory[82] and examine the "economy" and corporate infrastructures enabling mass violence,[83] and, most recently frame the genocide in as "a collective crime".[84] Likewise, in its March 13, 2025 report, the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory and Israel (ICI) issued detailed findings supporting this conclusion. In its report, the ICI documented the systematic use of sexual, reproductive, and other gender-based violence by Israeli security forces since October 7, 2023, including the targeting and destruction of reproductive-health infrastructure (for example, Gaza's main IVF facility). The ICI reached the conclusion that Israel has destroyed "in part the reproductive capacity of the Palestinians in Gaza as a group, including by imposing measures intended to prevent births, one of the categories of genocidal acts in the Rome Statute and the Genocide Convention"[85], and that such actions amount to "deliberately inflicting conditions of life calculated to bring about the physical destruction of Palestinians as a group".[86] In its

[81] Francesca Albanese, *Anatomy of a Genocide*. UN HRC, 55th session, A/HRC/55/73 (March 2024). https://docs.un.org/en/A/HRC/55/73

[82] Francesca Albanese, *Genocide as Colonial Erasure*. UN GA, 79th session, A/79/384 (October 1, 2024). https://docs.un.org/en/A/79/384

[83] Francesca Albanese, *From Economy of Occupation to Economy of Genocide*. UN HRC, 59th session, A/HRC/59/23 (June 16, 2025). https://docs.un.org/en/A/HRC/59/23

[84] United Nations Office of the High Commissioner for Human Rights (OHCHR), A/80/492: "*Gaza Genocide: a collective crime*" – Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, advance unedited version, October 20, 2025, accessed December 17. https://www.ohchr.org/en/documents/country-reports/a80492-gaza-genocide-collective-crime-report-special-rapporteur-situation

[85] Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel. "*More than a Human Can Bear": Israel's Systematic Use of Sexual, Reproductive and Other Forms of Gender-Based Violence since 7 October 2023*. A/HRC/58/CRP.6 (March 13, 2025). https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session58/a-hrc-58-crp-6.pdf

[86] *Ibid*.

latest finding of 16 September 2025, ICI concluded that there are reasonable grounds to believe that Israel has committed acts defined in the Genocide Convention. Specifically, the Commission found that Israeli authorities and security forces have carried out four of the five genocidal acts: (1) killing members of the Palestinian group; (2) causing serious bodily or mental harm; (3) deliberately inflicting living conditions calculated to bring about the physical destruction of the group, in whole or in part; and (4) imposing measures intended to prevent births within the group. More importantly, ICI also found evidence of genocidal intent on the part of senior Israeli officials, including explicit statements by leaders such as Prime Minister Benjamin Netanyahu and others. Based on the totality of the conduct of Israel (military operations, blockades, displacement, humanitarian deprivation) the ICI reached the conclusion that the only reasonable inference is that these acts were carried out with the specific intent to destroy Palestinians in Gaza, in whole or in part.[87]

International human rights organizations too reached a similar conclusion. In its December 2024 report "You Feel Like You Are Subhuman": Israel's Genocide Against Palestinians in Gaza, Amnesty International (AI) reached the conclusion that Israel was committing a genocide, with its military offensive involving killing, causing serious bodily or mental harm, and deliberately inflicting on Palestinians in Gaza conditions of life calculated to bring about their physical destruction in whole or in part. AI also emphasized that these acts were carried out with the specific intent to destroy Palestinians in Gaza.[88] In its December 2024 investigation "Extermination and Acts of Genocide", Human Rights Watch (HRW) also concluded that Israel's deliberate deprivation of water, electricity, and other essentials amounts to the imposition of conditions of life designed to make survival impossible for Palestinians in Gaza. HRW stressed that such measures not only constitute the crime against humanity of extermination but also fall within the legal definition of genocide.[89] The systematic analysis of data collected by Forensic Architecture since the start of Israel's military onslaught on Gaza in October 2023 —including data relating to attacks on ci-

[87] United Nations Human Rights Council. Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel. A/HRC/60/CRP.3. September 2025. https://www.un.org/unispal/wp-content/uploads/2025/09/a-hrc-60-crp-3.pdf

[88] Amnesty International, "You Feel Like You Are Subhuman": Israel's Genocide Against Palestinians in Gaza. London, December 5, 2024. https://www.amnesty.org/en/documents/mde15/8668/2024/en/

[89] Human Rights Watch, *Extermination and Acts of Genocide: Israel Deliberately Depriving Palestinians in Gaza of Water*. New York, December 19, 2024. https://www.hrw.org/news/2024/12/19/israels-crime-extermination-acts-genocide-gaza

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vilians and civilian infrastructure by the Israeli military— reveals the near-total destruction of civilian life in Gaza. The patterns identified in Israel's military conduct point to a systematic and organized campaign aimed at destroying life, the conditions necessary for life, and life-sustaining infrastructure.[90] Palestinian human rights organizations also continue to provide a detailed first-hand documentation of genocidal devastation in Gaza, including the comprehensive 2025 synthesis Voices of the Genocide.[91] Even Israeli human rights organizations, including B'Tselem[92] and Physicians for Human Rights-Israel,[93] have now likewise concluded that Israel is committing genocide in Gaza.

Given the EU's extensive trade relations with Israel, including arms exports by several EUMS, both the Union and its Member States possess, in the Court's terms, the "capacity to influence effectively" Israeli actions. As Nathalie Tocci highlights, "The EU is Israel's largest market, a market that, due to geographic proximity, cannot be realistically replaced by Israel's main ally, the USA. Hence, the EU potentially enjoys significant economic leverage vis-a-vis Israel".[94] Furthermore, the continued supply of weapons by EUMS could constitute complicity in genocide. In June 2024, a group of UN experts warned that the "transfer of weapons and ammunition to Israel may constitute serious violations of human rights and international humanitarian laws and risk State complicity in international crimes, possibly including genocide".[95] A similar call was issued by the ICI in its September 2025 report urging States to "take steps to ensure the prevention of conduct that may amount to an act of genocide under the Genocide Convention, including the transfer of weapons that are used or likely to be used by Israel to commit genocidal acts".[96]

[90] Forensic Architecture. *Report: A Spatial Analysis of the Israeli Military's Conduct in Gaza since October 2023*. London, October 15, 2024. https://forensic-architecture.org/investigation/a-cartography-of-genocide

[91] Palestinian Centre for Human Rights (PCHR), *Voices of the Genocide* (Gaza: PCHR, August 28, 2025). https://pchrgaza.org/wp-content/uploads/2025/08/Voices-of-the-Genocide-EN-1.pdf

[92] B'Tselem, *Our Genocide* (Jerusalem: B'Tselem, July 2025). https://www.btselem.org/publications/202507_our_genocide

[93] Physicians for Human Rights–Israel, *Genocide in Gaza* (Tel Aviv: PHRI, July 28, 2025). https://www.phr.org.il/en/genocide-in-gaza-eng/?pr=20812

[94] Nathalie Tocci, "Firm in Rhetoric, Compromising in Reality", 390.

[95] United Nations Office of the High Commissioner for Human Rights (OHCHR), "States and Companies Must End Arms Transfers to Israel Immediately or Risk Responsibility for Human Rights Violations: UN Experts," press release, June 20, 2024, https://www.ohchr.org/en/press-releases/2024/06/states-and-companies-must-end-arms-transfers-israel

[96] United Nations Human Rights Council. Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Is-

This obligation should be interpreted in a broader sense, beyond the genocidal violence in Gaza. In its June 2024 Advisory Opinion, the ICJ declared Israel's continued presence in the OPT unlawful, finding violations of the Palestinian right to self-determination, the prohibition of territorial acquisition by force, and multiple obligations under international humanitarian and human rights law, including the prohibition on racial segregation and apartheid. [97] Because these norms constitute *jus cogens*, they give rise to obligations *erga omnes*. As the ICJ has emphasized, all states have a legal interest in their enforcement and are specifically obliged not to aid or assist in maintaining such an unlawful situation.[98] In September 2024, the UNGA adopted resolution ES-10/24 on the ICJ's opinion; 12 EUMS abstained, 2 voted against, and 13 in favor.[99] The resolution translated the obligation not to recognize, aid or assist into concrete measures, calling upon States to cease the "provision or transfer of arms, munitions and related equipment to Israel […] in all cases where there are reasonable grounds to suspect that they may be used in the Occupied Palestinian Territory."[100] Likewise, the ICI highlighted the convergence between the ICJ's provisional measures in the genocide case and the Advisory Opinion on the illegal presence of Israel in the OPT, that putt all States on notice that Israel "may be or is committing internationally wrongful acts" in both Gaza and the West Bank; continued assistance thus risks rendering them complicit in such acts.[101] It reiterated this obligation

rael. A/HRC/60/CRP.3. September 2025, p. 70 https://www.un.org/unispal/wp-content/uploads/2025/09/a-hrc-60-crp-3.pdf

[97] International Court of Justice. Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem (Advisory Opinion), ICJ Case No. 186, ICJ Reports, July 19, 2024. https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf

[98] Sonia Boulos, "New Legal Avenues for a Decolonising Agenda: The International Court of Justice and the Israeli Occupation of Palestinian Territories," *Journal of Holy Land and Palestine Studies* 24, no. 2 (2025): 133–157.

[99] AG res 10/24. Advisory opinion of the International Court of Justice on the legal consequences arising from Israel's policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and from the illegality of Israel's continued presence in the Occupied Palestinian Territory (adopted on 18 September 2024)

[100] United Nations General Assembly. Advisory Opinion of the International Court of Justice on the Legal Consequences Arising from Israel's Policies and Practices in the Occupied Palestinian Territory, Including East Jerusalem, and from the Illegality of Israel's Continued Presence in the Occupied Palestinian Territory. A/ES-10/L.31/Rev.1. September 18, 2024. https://docs.un.org/en/A/RES/ES-10/24

[101] United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel. Legal Analysis and Recommendations on Implementation of the International Court of Justice Advisory Opinion, Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Ter-

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in a subsequent report by highlighting the duty to "[c]ease aiding or assisting in the commission of violations of international law, including by reviewing all relationships with Israel, such as trade, aid and assistance and arms transfers, and ending direct and indirect financial support for illegal settlements."[102]

The ICJ's legal framework must be read in conjunction with other legal obligations that States have under international law treaties, including the Arms Trade Treaty (ATT), adopted in 2013.[103] The EU has long portrayed itself as a champion of the ATT. Because certain aspects of the ATT fall within the exclusive competence of the EU in the realm of common commercial policy, or they affect the internal market rules for the transfer of conventional arms and explosives, EUMS had to require the Council's authorization to sign and ratify it. Article 6(3) of the ATT prohibits authorizing arms transfers where the exporting State "has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party." Furthermore, even if the export is not prohibited under Article 6, Article 7 requires an exporting State Party, prior to authorization of the export of conventional arms, to assess the potential that these arms or items could be used to "commit or facilitate a serious violation of international humanitarian law" or to "commit or facilitate a serious violation of international human rights law". States also must consider measures that mitigate the identified risks (Article 7(2)). In the end, the State needs to determine whether an overriding risk exists that one or more of the negative consequences laid out above will occur. In that case, the export shall not be authorized (Article7(3)).

Like any decision that falls within the realm of the Common Foreign and Security Policy (CFSP), arms export policies are beyond the control of the Court of Justice of the European Union (CJEU) and the European Commission has no powers of enforcement. Moreover, Article 346 of the Treaty

ritory, Including East Jerusalem. October 18, 2024, para. 23. https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiopt/2024-10-18-COI-position-paper_co-israel.pdf

[102] United Nations General Assembly, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, Note by the Secretary-General, Eightieth Session, Agenda Item 72 (Promotion and Protection of Human Rights), UN Doc. A/80/ 337, 2025, para. 90, https://www.un.org/unispal/document/report-of-coi-14aug25/

[103] United Nations, Arms Trade Treaty, opened for signature April 2, 2013, entered into force December 24, 2014, 3013 U.N.T.S. 269. https://treaties.un.org/doc/Treaties/2013/04/20130410%2012-01%20PM/Ch_XXVI_08.pdf

on the Functioning of the European Union exempts member states from disclosing information that affects their security interests or essential interests that are connected to the production of and trade in arms, which further limits oversight.[104] In an attempt to harmonize external arms exports, in 2008, the EU adopted Common Position 2008/944/CFSP (CP) with the aim of establishing rules for all EUMS.[105] Since the adoption of the CP, EUMS have been legally obligated to deny export licenses if there is a clear risk that exported military equipment might be used in serious violations of international human rights or humanitarian law, including genocide. The CP stipulates a set of criteria that EUMS must apply when assessing export licenses summarized as follows: 1) EUMS must deny a license if the export would breach binding international duties or political commitments (e.g., UN/EU embargoes, ban on exporting anti-personnel landmines, etc.); 2) EUMS must deny a license if there is *a clear risk* the equipment could be used for internal repression (e.g., torture, arbitrary killings, arbitrary detentions). EUMS must apply heightened scrutiny to countries flagged for serious rights violations by the competent bodies of the UN, the EU or the Council of Europe. EUMS must also deny a license if there is a *clear risk* of use in serious violations of international humanitarian law; 3) EUMS must deny a license if the export would provoke or prolong armed conflict or aggravate existing tensions or conflicts within the recipient state; 4) EUMS must deny a license if there is a *clear risk* the recipient State would use the export aggressively against another state or to assert territorial claims by force; 5) EUMS must *take into account* whether exports could harm the defense and security interests of the exporting State, other EUMS, and allied countries. This consideration cannot override the human-rights and regional-stability criteria; 6) EUMS must *take into account* the buyer's record regarding terrorism/organized crime, compliance with international law, and commitment to non-proliferation, arms control, and disarmament; 7) EUMS must *assess* the risk the items could be diverted internally or re-exported under unacceptable conditions; and 8) EUMS must *take into account* whether the export is compatible with the recipient's capacity to absorb and sustain it, and whether it would lead to excessive diversion of human/economic resources into armaments.

Although the CP is legally binding, the language used such, as "take into account", leaves latitude for States. Bonaiuti and Bortolotti argue that

[104] Treaty on the Functioning of the European Union [2012] OJ C326/47, art 346.

[105] Chiara Bonaiuti and Luca Bortolotti, "A Vanishing Normative Power? The Changing Dynamics of EU Arms Exports: Trade, Geopolitics and Ethics from the First Gulf War to the War in Ukraine", *The International Spectator* 60, no. 4 (2025): 156-175. https://doi.org/10.1080/03932729.2025.2555801

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this model resulted in "vague formulations and a tendency to harmonise at the lowest common denominator."[106] The second criterion is of a special interest in analyzing arms exports to Israel. This criterion does not refer to all arms exports, but only to those where there is a "clear risk" that the exported arms might be used for internal repression or in violation of International Humanitarian Law (IHL). Additionally, the ban is limited to specific categories of arms, such as small arms and light weapons or other instruments of repression. It is worth mentioning that in the first review process of the CP that took place in 2011, a proposal to include surveillance technologies to the military control list did not achieve consensus among EUMS.[107] Finally, the ban applies only if the "clear risk" test is met. It is not surprising then that the interpretation of the CP can vary significantly among EUMS, "resulting in controversial debates and special national paths".[108] This has led to the development of the User's Guide, which provides guidance for national authorities on how to interpret and apply the eight criteria.[109] However, this instrument proved its limited potential in monitoring arms sale, as Wisotzki and Mutschler highlight, "at the end of the day, a risk assessment is completely in the hands of the national governments, and there is no accepted European benchmark against which it could be assessed."[110] A study conducted by Chiara Bonaiuti found that the adoption of CP and particularly its second criteria did not translate into a decrease in arms exports to countries with poor human rights records. On the contrary, exports to these countries increased between 2008 and 2016.[111]

In the case of Israel, even after the ICJ indicated provisional measures in the genocide proceedings, the EU failed to adopt a unified policy on arms exports to Israel. Rather than coordinating a collective suspension or embargo through the Council of the EU, the Union deferred the decision to individual Member States. This failure resulted in fragmented responses: Slovenia was the first to implement a complete ban on all weapons trade including import, export and transit.[112] Italy imposed a total suspension of

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[106] Bonaiuti and Bortolotti, "*A Vanishing Normative Power?,* 6.

[107] Simone Wisotzki and Max Mutschler, "No Common Position! European Arms Export Control in Crisis," *Zeitschrift für Friedens— und Konfliktforschung* 10, no. 2 (2022): 273-293, 279.

[108] Wisotzki and Mutschler, "No Common Position!", 279.

[109] Wisotzki and Mutschler, "No Common Position!".

[110] Wisotzki and Mutschler, "No Common Position!", 280

[111] Chiara Bonaiuti, "Arms Transfers and Human Rights: Assessing the Impact and Enforcement of the EU Common Position on Arms Exports in a Multilevel Analysis," *European Security* 31, no. 3 (2022): 365-386.

[112] Newsweek, "Map of countries that have stopped weapons exports to Israel," *Newsweek*, September 24, 2025, https://www.newsweek.com/map-countries-weapons-exports-israel-2110947

new arms exports to Israel in October 2024.[113] Belgium's response was marked by internal fragmentation: the French-speaking Wallonia region has banned arms exports since 2009, and in 2025 a Belgian court ordered the Flanders region to halt all transits of military equipment to Israel.[114] Spain officially suspended all arms exports to Israel after October 7, 2023, though evidence of continued transactions sparked political controversy.[115] France, which has not exported major arms to Israel since 1998, stated it does not deliver arms for fighting in Gaza; however, reports indicate that between October 2023 and April 2025, France supplied $10 million worth of military goods, including 15 million bombs, grenades, missiles, and artillery.[116] The Netherlands halted F-35 fighter jet parts exports to Israel in February 2024 after a court found a "clear risk" of international humanitarian law violations,[117] though other arms transfers continued with €12.1 million in permits granted in 2023.[118] A December 2024 court ruling rejected a full arms ban, maintaining the Netherlands' position of conditional restrictions rather than a complete embargo.[119] Germany, the second-largest arms supplier to Israel after the U.S., continued exports until August 2025, when Chancellor Merz announced a temporary halt on military equipment that could be used in Gaza.[120]

Beyond the debates on the lack of enforceability of the CP by EU institutions, a less explored aspect is how the CP and other international law instrument become a site where international law is not simply ignored but *distorted* to produce or perpetuate legal subalternity. Germany is a clear Example. It avows a unique "reason of state" commitment to Israel's security, rooted in

[113] Stockholm International Peace Research Institute, "How top arms exporters have responded to the war in Gaza: 2025 update," *SIPRI Commentary*, September 30, 2025, https://www.sipri.org/commentary/topical-backgrounder/2025/how-top-arms-exporters-have-responded-war-gaza-2025-update

[114] Newsweek, "Map of countries that have stopped weapons exports to Israel".

[115] The Guardian, "Spain scraps €6.6m arms order from Israeli company after outcry," *The Guardian*, April 24, 2025, https://www.theguardian.com/world/2025/apr/24/spain-scraps-arms-order-from-israeli-company-after-outcry

[116] Stockholm International Peace Research Institute, "How top arms exporters have responded to the war in Gaza: 2025 update."

[117] León Castellanos-Jankiewicz, "Dutch Court Halts F-35 Aircraft Deliveries for Israel: A 'Clear Risk' of Abuse," *Verfassungsblog*, February 14, 2024.

[118] Stop Wapenhandel, "Dutch arms exports to Israel in 2023," *Stop Wapenhandel*, April 2024, https://stopwapenhandel.org/dutch-arms-exports-to-israel-in-2023/.

[119] Alia Shoaib, "Map of countries that have stopped weapons exports to Israel", *Newsweek*, 8 August 2025. https://www.newsweek.com/map-countries-weapons-exports-israel-2110947

[120] Stockholm International Peace Research Institute, "How top arms exporters have responded to the war in Gaza: 2025 update"; Newsweek, "Map of countries that have stopped weapons exports to Israel,"

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Germany's historical responsibility after the Holocaust.[121] In an October 2023 Bundestag address, Chancellor Scholz reaffirmed that "Israel has the right, enshrined in international law, to defend itself and its citizens" against Hamas's attacks, declaring that "there is only one place for Germany at this time, and that is by Israel's side" —epitomizing the doctrine that "Israel's security is part of Germany's raison d'état".[122] This absolutist narrative on Israel's right to self-defense is offered without engagement with the legal limitations attached to this right —mainly necessity, proportionality— and the extent to which it applies to an occupying power engaged in an unlawful occupation.[123] In the German discourse, a decontextualized self-defense becomes a totalizing category, a shield against scrutiny. Criticism based on international law principles is reframed as an assault on Israel's existence, and because of Germany's history, as an assault on Germany's own moral identity.

On 1 March 2024, Nicaragua instituted proceedings against Germany before the ICJ, alleging violations of the Genocide Convention, IHL, and other norms of general international law in the OPT, particularly Gaza. Nicaragua argued that by providing political, financial, and military support to Israel and by suspending funding to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Germany was facilitating Israel's commission of genocide and failing to fulfill its obligation to ensure respect for IHL.[124] Beyond procedural arguments on the lack of jurisdiction, during the hearing on the indication of provisional measures, Germany relied heavily on a single distinction between "war weapons" (Kriegswaffen) and "other military equipment" (sonstige Rüstungsgüter). War weapons are high-lethality items such as combat aircraft, tanks, automatic weapons, certain ammunition, and essential components. "Other military equipment" is a much broader category that can include protective gear, communications devices, camouflage paint, and subordinate parts. Germany further argued that because "war weapons" carry inherently higher risks, they face more stringent controls (including multiple licensing

[121] Federal Government of Germany. *Policy statement by Olaf Scholz on the situation in Israel*. Press and Information Office of the Federal Government. (2023, October 12).

[122] Facebook, Policy statement by Olaf Scholz, Chancellor of the Federal Republic of Germany and Member of the German Bundestag, on the situation in Israel 12 October 2023. Thursday, 12 October 2023 in Berlin

[123] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, 14 (June 27, 1986); see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.

[124] *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*, Application Instituting Proceedings filed by the Republic of Nicaragua, International Court of Justice, March 1, 2024, https://www.icj-cij.org/case/193/institution-proceedings

steps), whereas "other military equipment," though still licensable, covers many lower-intensity or supportive items. On that basis, Germany emphasized that since 7 October 2023, its licensing practice has overwhelmingly concerned the second category: 98% of licenses granted were for "other military equipment," and only four export licenses involved "war weapons" in that period. This was presented as evidence that post-October 2023 exports were largely not for the most dangerous weaponry.[125]

The so called "weapons of war" are regulated under the German Basic Law and the War Weapons Control Act, which mandate authorization for all exports of items classified as such. By contrast, "other military equipment" —including certain munitions, targeting systems, and software— falls under the more permissive Foreign Trade and Payments Act and its implementing ordinance. These regulations operate on the assumption of general freedom of trade, subject to possible restrictions for specific goods, with export approvals granted by a different national authority under less stringent conditions.[126] This distinction obscures the role that so-called non-combat weapons and equipment play in enabling flagrant violations of international law. For example, during the oral hearings, Germany—when referring to the approval of export licenses for approximately 500,000 rounds of ammunition in November 2023 and an additional 1,000 rounds approved in early 2024 —argued that these licenses concerned training ammunition allegedly unsuitable for combat operations. Similarly, Germany contended that a slip ring sold to Israel for installation in a radar system could not plausibly be used to commit war crimes.[127]

The risk assessments embedded in such arguments reveal how structural forms of colonial violence —often conceptualized as "slow" violence woven into the fabric of everyday life— remain discursively and legally invisible. International humanitarian law includes prohibitions specifically designed to safeguard human dignity, not merely to prevent death or physical destruction. Article 27 of the Fourth Geneva Convention, for example, guarantees respect for the person, honor, family rights, and protection against degrading treatment. Systematic assaults on human dignity are central to the lived reality of prolonged occupation intertwined with an apart-

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[125] *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*, Verbatim Record of the Public Sitting held on April 9, 2024, at 10 a.m., Peace Palace, President Salam presiding, International Court of Justice, 2024, https://www.icj-cij.org/case/193/oral-proceedings

[126] Kristoffer Burck and Vera Strobel, "A Hands-Off Approach to International Law: The Frankfurt Administrative Court's Stance on Arms Exports to Israel," *VerfBlog*, accessed December 18, 2025, https://verfassungsblog.de/a-hands-off-approach-to-international-law-the-frankfurt-administrative-court's-stance-on-arms-exports-to-israel

[127] *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*, Verbatim Record of the Public Sitting held on April 9.

heid regime, in which pervasive surveillance and intensified population-control measures erode dignity and perpetuate suffering.[128] Thus, while training ammunition may not immediately kill or maim, it enhances Israel's capacity to sustain systems of control over Palestinians, just as equipment such as daylight observation binoculars does.

Another legal strategy employed by Germany involved narrowing the scope of obligations contained in Common Article 1 of the 1949 Geneva Conventions, which provides: "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances."[129] Germany contended that this article merely establishes an obligation to *prevent* IHL violations, comparable to the external dimension of the Genocide Convention. Accordingly, because a State's liability for failing to prevent genocide, or for aiding and assisting genocide, can be established only once genocide has in fact occurred, the same logic applies to obligations arising under the Geneva Conventions. Germany's insistence that Israel's responsibility for violations of the Genocide Convention and IHL has yet to be established —despite mounting evidence, including findings by UN experts and the ICJ's advisory opinions— is, in itself, highly revealing. Against this reading of Common Article 1, Parisa Zangeneh argues that the provision is not merely preventative, "[r]ather, it states expressly that it imposes an obligation on High Contracting Parties to respect and to ensure respect for the Conventions in all circumstances."[130] Similarly, the International Committee of the Red Cross has interpreted the article more expansively maintaining that the duty to ensure respect "constitutes a general duty of due diligence to prevent and repress breaches of the Conventions by private persons over which a State exercises authority, including persons in occupied territory".[131]As Zangeneh argues, this narrow reading

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[128] Michael Lynk, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967*, UN Human Rights Council, 49th sess., UN Doc. A/HRC/49/87 (March 21, 2022).

[129] Geneva Conventions of 12 August 1949, Common Article 1 ("The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances"), 75 U.N.T.S. 31 (Geneva Convention I); 75 U.N.T.S. 85 (Geneva Convention II); 75 U.N.T.S. 135 (Geneva Convention III); 75 U.N.T.S. 287 (Geneva Convention IV), August 12, 1949.

[130] Parisa Zangeneh, "The ICJ's Insufficient Engagement with Germany's Interpretation of the External Dimension of Common Article 1 in the Nicaragua v. Germany Proceedings," *Opinio Juris* (blog), September 25, 2024, accessed December 18, 2025, https://opiniojuris.org/2024/09/25/the-icjs-insufficient-engagement-with-germanys-interpretation-of-the-external-dimension-of-common-article-1-in-the-nicaragua-v-germany-proceedings/

[131] International Committee of the Red Cross (ICRC), *Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, Geneva, 12 August 1949, Commentary of 2016, Article 1 ("Respect for the Convention"), accessed December 18, 2025, https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-1/commentary/2016.

forecloses the possibility of establishing Germany's international legal responsibility for failing to exercise due diligence to ensure that arms sales to Israel by individuals and entities within its jurisdiction do not contribute to violations of international law.[132]

Needless to say, that in November 2025, Germany lifted the suspension on the issuance of certain arms export licenses to Israel, a move that was described by AI "reckless, unlawful and sends entirely the wrong message to Israel: that it can continue committing genocide, war crimes, and apartheid against Palestinians".[133] A June 2025 disclosure by the German Bundestag regarding the scale of military support to Israel suggests that Germany approved export licenses for military equipment totaling at least €233,763,796 following its appearance before the ICJ.[134]

2. *Business as usual: the duty not to recognize, not to aid or assist*

As mentioned earlier, in the 2024 Advisory Opinion, the ICJ declared Israel's continued presence in the OPT unlawful, citing violations of the Palestinian right to self-determination, the prohibition on acquiring territory by force, and multiple obligations under international humanitarian and human rights law, including the prohibition on racial segregation and apartheid. As these norms constitute *jus cogens* norms, they give rise to obligations *erga omnes*.[135] The Court emphasized that all States have a legal interest in their enforcement and are specifically obligated not to aid or assist in maintaining such an unlawful situation. The measures States must adopt include non-recognition of Israel's unlawful presence in the OPT; no aid or assistance in maintaining the unlawful situation; an ensuring the removal of impediments to Palestinian self-determination. The ICJ further stressed the duty to distinguish between Israel and the OPT in all dealings with the former, including abstaining from concluding treaties with Israel

[132] Parisa Zangeneh, "The ICJ's Insufficient Engagement with Germany's Interpretation of the External Dimension of Common Article 1 in the Nicaragua v. Germany Proceedings".

[133] Amnesty International, "Germany: Resumption of Arms Transfers to Israel Reckless, Unlawful and Risks Complicity in Israel's International Crimes," press release, November 24, 2025, https://www.amnesty.org/en/latest/news/2025/11/germany-arms-transfers-to-israel-reckless-unlawful-and-risks-complicity-in-israels-international-crimes/

[134] Adil Ahmad Haque, "The Fall and Rise of German Arms Exports to Israel: Questions for the International Court of Justice," *Just Security*, June 13, 2025, accessed December 18, 2025, https://www.justsecurity.org/88249/the-fall-and-rise-of-german-arms-exports-to-israel-questions-for-the-international-court-of-justice/

[135] Sonia Boulos, "New Legal Avenues for a Decolonising Agenda: The International Court of Justice and the Israeli Occupation of Palestinian Territories," *Journal of Holy Land and Palestine Studies* 24, no. 2 (2025): 133-157.

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that purport to include the OPT; avoiding economic or trade relations that entrench Israeli presence in the OPT; and preventing investments that sustain the illegal situation. The ICJ made it clear that the duty of non-recognition specified above also applies to international organizations.[136]

In a memo sent to the former High Representative of EU for Foreign Affairs and Security Policy, Josep Borrell, on possible implications of the 2024 Advisory Opinion for the EU, Frank Hoffmeister, the director of the EU foreign service's legal department, argued that "EU law requires labelling indicating that foodstuffs originate in the West Bank and settlements,"[137] but "it is a matter of further political appreciation whether to revisit the EU's policy vis-à-vis the import of goods from the settlements."[138] This legal position stirred controversy among international law legal scholars, labeling it "legally flawed, politically damaging, and morally compromised."[139]

The EU–Israel Association Agreement, which entered into force in 2000 and regulates bilateral trade as well as Israel's participation in EU programs such as Horizon Europe, includes a human rights clause (Article 2) stating that respect for human rights and democratic principles is an essential element of the agreement. It took a livestreamed genocidal war to prompt an ultimately unsuccessful attempt to implement this clause, despite Israel's documented violations of IHL, international human rights law, and the Palestinians' right to self-determination—violations long recognized by the UN and affirmed in the 2004 Wall Advisory Opinion.[140]

Ex post conditionality is rarely invoked by EU institutions. As Al Tamimi highlights that "[h]uman rights clauses are rather aspirational, offering the EU a negotiation tool with other States".[141] Their effectiveness in protecting the human rights of individuals at risk from violations committed by actors other than the EU remains highly questionable.[142] For example, in the Mugraby

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[136] Para 280.

[137] The Intercept, "EU Bends Rules to Allow Trade with Israeli Settlements," *The Intercept*, October 23, 2024, accessed December 18, 2025, https://theintercept.com/2024/10/23/eu-israel-settlements-trade-gaza

[138] Id.

[139] Id.

[140] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, International Court of Justice, General List No. 131, July 9, 2004, https://www.icj-cij.org/node/103742

[141] Yussef Al Tamimi, "Implications of the ICJ Advisory Opinion for the EU-Israel Association Agreement," *EJIL: Talk!* (blog), July 30, 2024, accessed December 18, 2025, https://www.ejiltalk.org/implications-of-the-icj-advisory-opinion-for-the-eu-israel-association-agreement

[142] Lorand Bartels, "The EU's Human Rights Obligations in Relation to Policies with Extraterritorial Effects," *European Journal of International Law* 25, no. 4 (November 2014): 1071-1091.

case, the CJEU dismissed an action by a Lebanese human-rights lawyer seeking (i) a declaration that the Council and Commission unlawfully failed to act on his request for measures against Lebanon over alleged violations of his fundamental rights and the EU–Lebanon Association Agreement, and (ii) damages for harm caused by that inaction. The General Court found his claim manifestly unfounded. On appeal, the CJEU upheld the decision emphasizing that by "using the words 'may take', the parties to the Association Agreement indicated clearly and unequivocally that each of them had a right, and not an obligation, to take such appropriate measures."[143] Furthermore, even if measures are to be taken against any State, priority is given to less disruptive measures, as reflected in Article 79(2) of The EU-Israel Association Agreement. According to the latter, if Israel fails to meet its human rights obligations, the EU may adopt appropriate measures after informing the Association Council and seeking a mutually acceptable solution, except in urgent cases. In choosing such measures, priority must be given to those that least disrupt the functioning of the Agreement.

Article 83 of the Association Agreement and its Protocol 5 define the territory lawfully covered by the agreement, i.e. the State of Israel as recognized internationally within the 1967 borders. Therefore, the EU does not apply preferential treatment to Israeli products that are processed entirely or substantially in Israeli settlements in the OPT.[144] In 2005, the EU reached a "technical arrangement" with Israel requiring Israeli export certificates to include production locality to help EU customs identify and deny preferential treatment for settlements' goods. This measure has had limited impact as many settlement companies re-registered within Israel without relocating.[145]

In *the Firma Brita GmbH* case, the CJEU had the opportunity to examine the denial of preferential treatment to products originating from Israeli settlements in the OPT. Brita GmbH, a company based in Germany, imported carbonated water coolers, accessories and syrups manufactured by an Israeli supplier whose production site was in an Israeli settlement in West Bank. The CJEU ruled that the customs authorities of the importing EUMS may refuse to grant the preferential treatment provided for under the Association Agreement where the goods concerned originate in settlements in the West Bank. How-

[143] *Muhamad Mugraby v Council of the European Union and European Commission*, Case C-581/11 P, Order of the Court (Fifth Chamber), 12 July 2012, ECLI:EU:C:2012:466, para 70, accessed December 18, 2025, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62011CJ0581

[144] Nathalie Tocci, "Firm in Rhetoric, Compromising in Reality: The EU in the Israeli–Palestinian Conflict".

[145] Nathalie Tocci, "Firm in Rhetoric, Compromising in Reality: The EU in the Israeli–Palestinian Conflict".

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ever, the legal reasoning of the CJEU was far from reaffirming key international law principles binding on the EU when dealing with Israel. Instead of focusing on the duty of non-recognition and non-assistance in maintaining flagrant violations of international, such as those identified by the ICJ in its Wall Advisory Opinion of 2004, the CJEU resorted to the law of treaties and constructed the issues as a question of treaty-interpretation. The CJEU assumed that Israel and the OPT constitute two separate economic entities. Therefore, products originating from the West Bank cannot benefit from EU–Israel Association Agreement preferential tariffs because that agreement applies only to the territory of the State of Israel, while the West Bank and Gaza are covered by a separate EU agreement with the Palestinian Liberation Organization (PLO). Consequently, treating West Bank goods as "Israeli" would limit the effectiveness of the EU-PLO Agreement by preventing Palestinian customs authorities from exercising their competence, thereby conferring rights and imposing duties on a third party without its consent in violation of the legal principle *pacta tertiis nec nocent nec prosunt*.[146] In effect, the CJEU opted for treaty law principles to avoid reaffirming Palestinian rights.

In an "Interpretive Notice" from 2015 on the indication of origin of goods from the territories occupied by Israel since June 1967, the EU reaffirmed that it "does not recognize Israel's sovereignty over the territories occupied by Israel since June 1967, namely the Golan Heights, the Gaza Strip and the West Bank, including East Jerusalem, and does not consider them to be part of Israel's territory."[147] The notice considered the use of the label 'product from Israel' in relation to products originating from settlements in the OPT as "incorrect and misleading". Therefore, it required the use of the expression "Israeli settlement" or similar expression to distinguish such products from Palestinian products originating from the OPT. This requirement was framed as a consumer protection measure:

> [I]ndication of origin becomes mandatory when, as regards food, the omission of that information would mislead the consumer as to the true origin of the product,14 and, as regards all other goods, when information is omitted that is material, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.[148]

[146] *Brita GmbH v. Hauptzollamt Hamburg-Hafen*, Case C-386/08, Judgment of the Court (Fourth Chamber), 25 February 2010, ECLI:EU:C:2010:91, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62008CJ0386

[147] European Commission, *Interpretative Notice on Indication of Origin of Goods from the Territories Occupied by Israel since June 1967*, C(2015) 7834 final (Brussels, November 11, 2015), p. 1, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015XC1112(01)

[148] *Ibid*, p. 4.

Put differently, the duty of non-recognition is reduced to a matter of consumer information, leaving it to individuals to decide whether to purchase products linked to an illegal occupation. The ICJ's 2024 Advisory Opinion renders this reasoning —and that in the Brita case— obsolete insofar as both evade the complex legal obligations inherent in non-recognition and non-assistance. The CJEU previously held in the *Air Transport Association of America* case that under Article 3(5) of TEU, the EU must promote the strict observance and development of international law. Accordingly, when adopting acts, it is obliged to comply fully with international law, including customary international law.[149] In the case of economic relations with Israel, this entails, as the ICI has emphasized, a duty of full compliance with the obligations of international law, as articulated in the ICJ's 2024 Advisory Opinion. Those obligations include the duty not only to distinguish, in any dealings with Israel, between the territory of Israel and the OPT (non-recognition), but also the duty to "cease all financial, trade, investment and economic relations with Israel that maintain the unlawful occupation or contribute to maintaining it."[150] Therefore, a failure to prohibit the market access of settlement products allows those goods to remain commercially profitable, thereby further entrenching the occupation, even where no preferential treatment is accorded. By contrast, the EU adopted a ban in 2014 in response to Russia's illegal annexation of Crimea, prohibiting the import of goods from Crimea and Sevastopol.[151] Subsequently, the EU introduced an additional ban on new investments in Crimea or Sevastopol, including acquisitions of real estate and participation in entities there. It also prohibited the export of certain goods and technologies for use in key sectors such as transport, telecommunications, energy, and the prospection, exploration, and production of oil, gas, and mineral resources, and banned services directly related to tourism activities.[152]

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[149] *Air Transport Association of America and Others v. Secretary of State for Energy and Climate Change*, Case C-366/10, Judgment of the Court (Grand Chamber), 21 December 2011, ECLI:EU:C:2011:864, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62010CJ0366

[150] United Nations General Assembly, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, Note by the Secretary-General, Eightieth Session, Agenda Item 72 (Promotion and Protection of Human Rights), UN Doc. A/80/ 337, 2025, para. 90, https://www.un.org/unispal/document/report-of-coi-14aug25/

[151] Council Regulation (EU) 692/2014 of 23 June 2014 Concerning Restrictions on the Import into the Union of Goods Originating in Crimea or Sevastopol, in Response to the Illegal Annexation of Crimea and Sevastopol [2014] OJ L183/9.

[152] Council Regulation (EU) 1351/2014 of 18 December 2014 Amending Regulation (EU) 692/2014 Concerning Restrictive Measures in Response to the Illegal Annexation of Crimea and Sevastopol [2014] OJ L365/46 arts 2(a)-(e).

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Beyond using legal language that perpetuate the legal subalternity of Palestinians, a key feature of the EU's legal discourse is built around the fictious separation between Israel's economy inside the Green Line and the Israeli economy in West Bank and other occupied Arab territories. As Gordon and Pardo highlight, by establishing the fiction that Israel has two separate economies, the EU grants itself "normative justification to continue business as usual with Israel."[153] This fiction allows the EU to minimize the scope of its obligation to prevent trade and investment relations that entrench the illegal situation created by Israel in the OPT. This specific obligation is broader in scope and more indirect than the regulation of economic or trade relations with Israel that are specifically linked to the OPT. It has significant implications for relations with Israeli businesses and state-owned enterprises —almost all of which operate in settlements— as well as for the procurement of arms and military equipment from Israeli companies, insofar as such equipment is tested and used in the OPT.[154] As Al Tamimi highlights, separating legal trade relations with Israeli businesses from links to the illegal occupation is difficult. Examples include cooperation with Israel's national water company, which expropriates water from Palestinian springs in the West Bank; the country's largest supermarket chain, which operates in illegal settlements; and an irrigation firm implicated in settlement-related activities.[155]

The duty to prevent trade and investment relations that entrench the Israeli occupation and Apartheid regime is most salient in relation to companies and businesses that supply materials and equipment enabling the construction and expansion of settlements and related infrastructure; provide surveillance, identification, and security technologies for settlements, checkpoints, and associated systems; supply equipment used in house demolitions and the destruction of agricultural land and livelihoods; deliver services, utilities, transport, and security support to settlement-based enterprises; engage in banking and financial operations that facilitate settlement expansion and commercial activity; exploit natural resources —particularly land and water— for business purposes; engage in environmentally harmful practices in the OPT; engage in economic practices that entrench Palestinian market dependency and disadvantage Palestinian enterprises through

[153] Neve Gordon and Sharon Pardo, "Normative Power Europe and the Power of the Local", 423.

[154] Al Tamimi, "Implications of the ICJ Advisory Opinion for the EU-Israel Association Agreement".

[155] *Ibid*.

movement restrictions and administrative or legal constraints.[156] Such activities significantly contribute to the consolidation of Israel's unlawful occupation and the apartheid regime imposed on Palestinians. Ralph Wilde argues that because the economic aspects of Israel's presence in the OPT are deeply intertwined with the broader Israeli economy, all economic and trade relations with Israel inevitably risk entrenching the illegal Israeli occupation of the OPT.[157]

In May 2025, the Council, at the High Representative's initiative, opened a review of Article 2 of the EU–Israel Association Agreement —the "essential elements" clause tying this mutual relationship to respect for human rights and democratic principles— after a clear ministerial majority backed the move amid mounting concern over Gaza.[158] The European External Action Service transmitted its analysis to member states in June, concluding there were "indications", that Israel was in breach of its Article 2 obligations, with reference to impediments to humanitarian access and conduct of hostilities affecting civilians.[159] Note the language: decades of rigorous UN and ICJ documentation of flagrant violations of international law are reduced to mere "indications" relating to obstructing humanitarian assistance. Non-assistance is reduced again to the question of whether Israel still deserves tariff privileges. The severity of the violations—the genocide in Gaza, the denial of self-determination, the apartheid structure —do not translate into the reorientation of economic relations that the law actually requires. Once again, Palestinians remain legally subaltern.

While civil-society actors pressed for immediate suspension of the agreement, EU institutions initially favored intensified "engagement" and incremental leverage rather than abrogation.[160] By September 2025, the

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[156] Diakonia International Humanitarian Law Centre, *Responsibility of Third States and International Organisations Emanating from the Findings of the ICJ's Advisory Opinion of 19 July 2024* (October 2024), accessed 6 February 2026.

[157] Ralph Wilde, *Illegality of Israel's Presence in the Palestinian Gaza Strip and West Bank, including East Jerusalem, in the Light of the 2024 Occupied Palestinian Territory Advisory Opinion of the International Court of Justice, and Consequences for Third States and the European Union: Legal Opinion* (London: Faculty of Laws, University College London, University of London, December 1, 2024), https://www.ucl.ac.uk/laws/sites/laws/files/ralph_wilde_icj_opt_ao_thirdstateseu_legal_opinion.pdf

[158] European Parliamentary Research Service, "Review of the EU–Israel Association Agreement (At a Glance, 772892)," June 4, 2025, https://www.europarl.europa.eu/RegData/etudes/ATAG/2025/772892/EPRS_ATA(2025)772892_EN.pdf (accessed November 10, 2025).

[159] Euronews, "EU Review Indicates Israel Breached Human Rights in Gaza," June 20, 2025, https://www.euronews.com/my-europe/2025/06/20/eu-review-indicates-israel-breached-human-rights-in-gaza (accessed November 10, 2025);

[160] Amnesty International, "EU/Israel: Review of the EU's Relations with Israel Welcome but Devastatingly Late," May 2025, https://www.amnesty.org/en/latest/news/2025/05/

Commission proposed suspending the agreement's preferential trade concessions —effectively removing tariff preferences on an estimated €5.8 billion of Israeli exports— yet even this minimalistic measure lacked sufficient support in Council.[161]

IV. Conclusions

If Gaza has functioned as a "revealer," it is because it has forced the EU's normative self-description into direct collision with the material realities of its external action when faced with a partner implicated in mass atrocities. What Gaza exposes is not merely inconsistency, but a structural pattern in which legal commitments are discursively and institutionally reconstructed, transforming legal obligations into options and rendering protection contingent. The Palestinian question —framed against the EU's close ties with Israel and its colonial project— has become a litmus test for the claims associated with "Normative Power Europe". The Palestinian 'exception' to NPE, we argue, does more than highlight internal EU divisions over elementary requirements of international law; it reveals how these divisions have produced paralysis and, over time, an accumulation of inconsistencies that has profoundly eroded the EU's reputation and credibility, particularly across the Global South/Global majority, where European inaction and selective invocation of international law have been widely noted.[162]

Most importantly, by focusing on arms transfers and EU-Israel economic relations, this article explores how legal obligations —triggered by the ICJ's 2024 findings of a plausible and imminent risk of genocide in Gaza and its 2024 advisory opinion— can be reinterpreted and operationalized in ways that reproduce Palestinian legal subalternity. In this sense, legality does not merely fail to protect; it can be reconstructed to sustain and to normalize colonial projects and systemic oppression. The implications of this reconstruction extend beyond the immediate context of EU–Israel relations, shaping how the EU is perceived by those to whom it has long presented itself as a partner.

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eu-israel-review-of-the-eus-relations-with-israel-welcome-devastatingly-late/ (accessed November 10, 2025)

[161] European Commission, "Commission Proposes Suspension of Trade Concessions with Israel," press release, September 17, 2025, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_25_2112/IP_25_2112_EN.pdf (accessed November 10, 2025)

[162] David Lynch. When Soft Power is Spent: Gaza, Ukraine, and Europeans' Standing in the Arab World. European Council on Foreign Relations (ECFR), 2024 (accessed 11 Dec 2025) https://ecfr.eu/article/when-soft-power-is-spent-gaza-ukraine-and-europeans-standing-in-the-arab-world/.

Once perceived as a "toothless tiger" lacking meaningful hard-power instruments, the EU now appears not as an underpowered bystander but as a complicit actor, even a villain. This marks a dramatic reversal for a polity that has long presented itself as a paradigmatic normative power.[163] The widening gap between proclaimed norms and enacted policy is increasingly understood not as weakness but as deliberate choice —one with identifiable beneficiaries and foreseeable victims.

That reversal is inseparable from a broader shift in the global intelligibility of Palestine itself. As the framing of the issue changes, so too do the standards against which external actors, especially those claiming normative authority, are judged. As Baconi argues, 7 October 2023 marked a paradigmatic rupture in the terms through which Palestine is publicly discussed. For decades, the Palestinian question was framed as a conflict to be managed rather than a structure of colonial domination to be dismantled. Yet genocide has compelled a broader confrontation with realities Palestinians have long named: settler colonialism, the ongoing Nakba, and Israeli apartheid. This rupture is not merely rhetorical; it signals a substantive shift in global political understanding. Discourses of decolonization and accountability now circulate in arenas previously confined to the diplomatic lexicon of the 'peace process' and the two-state solution. Justice, in this register, requires dismantling the structures that made subjugation possible.[164]

This raises a fundamental question about the EU's capacity to act in accordance with its own legal and ethical claims: What role can the EU credibly play when it has repeatedly failed to align its actions with its professed commitments —while reproducing older colonial vocabularies and practices? These failures have particularly acute consequences in the EU's southern neighborhood, where European policy is judged not by aspirational texts but by what is tolerated, enabled, and financed. The result is a widening legitimacy deficit that rhetorical recalibration alone cannot repair. The normative rhetoric cultivated over decades no longer persuades societies that have witnessed, day after day, the EU's incoherence, obstruction, and complicity as the genocide in Gaza unfolded.

In 2024, amid mass killing, favorable perceptions of the EU among Palestinians reportedly dropped by roughly thirty points, reaching their lowest

[163] Christian Achrainer; Michelle Pace "Paralyzed into Irrelevance: How Divisions on Palestine Eroded the EU's Normative Claims", Bawader/Commentary, Arab Reform Initiative, 27 June 2025 (accessed 11 Dec 2025) https://www.arab-reform.net/publication/paralyzed-into-irrelevance-how-divisions-on-palestine-eroded-the-eus-normative-claims/

[164] Tareq Baconi. The world radicalized by the Gaza genocide. *Comentary, Al-Shabaka*, December 2025.

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level since such polling began.[165] The double standards, inconsistency, and legal maneuvering of the EU and its Member States have once again laid bare Palestine's subaltern position. In this light, Giovanni Giolitti's aphorism seems grimly apt: "Law is interpreted for friends and applied to enemies."[166]

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[165] *Opinion polls. Image and perceptions of the EU in Palestine*. EU neighbors South; Gallup. Fieldwork 2025.

[166] Giovanni Giolitti (attributed), "Le leggi si applicano ai nemici e si interpretano per gli amici," quoted in Jens Petersen, ed., *Storia e Critica: Die italienische Zeitgeschichte im Spiegel der Tages— und Wochenpresse*, nos. 69-72 (Rome: Deutsches Historisches Institut in Rom, 1996), 36.

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