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**MINISTRY OF HIGHER EDUCATION, SCIENCE, AND TECHNOLOGY**

**UNIVERSITAS GADJAH MADA**

**FACULTY OF LAW**

**LEGAL RESEARCH**

Presented as Partial Fulfilment of the Requirements for the

Degree of *Sarjana Hukum*

***Death of the Moral Commendatoré:* The European Façade of Human Rights to the March for the Ongoing Liberation in Palestine**

Written by:

Name : Zhillan Zhalila Wardana

Student No. : 20/457692/HK/22408

Department : International Law

**YOGYAKARTA**

**2025**

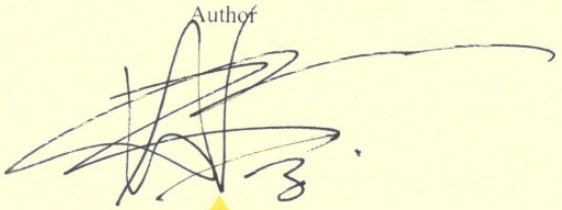
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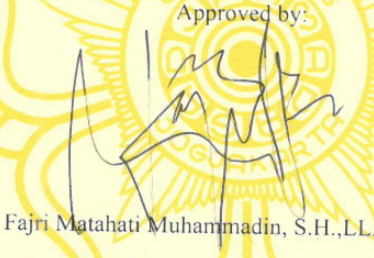
Author



Zhillan Zhalila Wardana

NIM: 20/457692/HK/22408

Approved by:



Fajri Matahati Muhammadin, S.H.,LL. M.,Ph.D.

NIKA:11119871020150810l

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# APPROVAL

This legal research had been defended before a Board of Examiners at the Faculty of Law, Universitas Gadjah Mada on

Board of Examiners

Chairperson

Rangga A. Dachlan, S.H., LL.M., M.Phil., D.Phil.
NIKA: 111198807201309101

Examiner I

Fajri Matahati Muhammadin, S.H.,LL. M.,Ph.D.
NIKA:111198710201508101

Examiner II

Ibrahim Hanif, S.H.,LL.M.
NIKA: 111199206202511101

Acknowledged by,
Head of the Department of International Law

Prof. Dr. Agustinus Supriyanto, S.H., M.Si.
NIP: 196610241994031002

Approved by,
Dean of Faculty of Law Universitas Gadjah Mada

Dahliana Hasan, S.H., M. Tax., Ph.D.
NIP: 197607041999032002

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| Year of Registration | : 2020 |
| Study Program | : IUP Law |
| Faculty | : Faculty of Law |

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"βδέλυγμα κυρίῳ δισσὸν στάθμιον, καὶ ζυγὸς δόλιος οὐ καλὸν ἐνώπιον αὐτοῦ."
*"Divers weights are an abomination unto the LORD; and a false balance is not good"*

*Proverbs 20:23*

It is with great pleasure that this legal research is completed. First and foremost, I want to dedicate a short thank you to our God who has accompanied me so far throughout this journey in my legal research. You who are tender and ever present in our hearts never abandon us in our pursuit of knowledge, justice and hardship. Yours will always be praised by Your creations. You have never once abandoned me during my time of hardship and have always filled me with Your unconditional love; I say praise be to the highest.

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For the people of Palestine,

I dedicate whole heartedly to this legal research. We shall see the olive trees grow and take root again. May our Muslim, Christian brothers and sisters who have been martyred witness your liberation from the highest of heavens and for your inheritors to run free with kites flying above your heads. One day, I visit those old stones that will testify to me of their history. Amen.

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Zhillan Zhalila Wardana[1]

## ABSTRACT

*The international community's response is increasingly vocal, yet actions remain paramount. The European Union with president Ursula von der Leyen as President, has not sufficiently tackled the surging human rights crisis in Gaza and the West Bank since October 7th 2023. This legal research analyses the tokenism of the EU's human rights obligation under the von der Leyen Commission. The EU's conducts raises concerns regarding the inadequacy in the ongoing genocide, potentially landing the institution in the Court of justice of the European Union. This research uses the presumption of distinction to highlight the selective application of international human rights law in the Occupied Palestinian Territories, questioning the EU's neutrality. A comparative-historical analysis of the EU's foreign security policy in Ukraine reveals a financial and geopolitical bias favoring Ukraine, overshadowing its legal efforts in the human rights case in Palestine. This legal research examines the historical failures of the European Community in maintaining neutrality between Israel and Palestine in the 1950s to its dissolution into the EU in 1993 post Maastricht Treaty. This legal research investigates the enduring influence of imperial legalgies on the EU's transitional justice efforts regarding Palestine.*

*Keywords:* International Human Rights, European Union, OPT, Gaza, Israel, Universal Declaration of Human Rights, Genocide, Crimes Against Humanity, Ukraine, GNR, Principle of Non-Discrimination

[1] Undergraduate Student from the Faculty of Law, Universitas Gadjah Mada

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Zhillan Zhalila Wardana

## INTISARI

*Tanggapan komunitas internasional semakin keras, namun tindakan tetap menjadi prioritas utama. Uni Eropa di bawah kepemimpinan Presiden Ursula von der Leyen belum cukup menangani krisis hak asasi manusia yang melonjak di Gaza dan Tepi Barat sejak 7 Oktober 2023. Penelitian hukum ini menganalisis sifat simbolis dari kewajiban hak asasi manusia Uni Eropa di bawah Komisi von der Leyen. Perilaku UE menimbulkan kekhawatiran terkait ketidakcukupan dalam menghadapi genosida yang sedang berlangsung, yang berpotensi membawa institusi tersebut ke Pengadilan Keadilan Uni Eropa. Penelitian ini menggunakan asumsi pembedaan untuk menyoroti penerapan selektif hukum hak asasi manusia internasional di Wilayah Palestina yang Diduduki, mempertanyakan netralitas UE. Analisis komparatif-historis terhadap kebijakan keamanan luar negeri UE di Ukraina mengungkapkan bias finansial dan geopolitik yang menguntungkan Ukraina, mengaburkan upaya hukum UE dalam kasus hak asasi manusia di Palestina. Penelitian hukum ini meneliti kegagalan historis Komunitas Eropa dalam mempertahankan netralitas antara Israel dan Palestina pada 1950-an hingga pembubarannya menjadi UE pada 1993 pasca Perjanjian Maastricht. Penelitian hukum ini menyelidiki pengaruh abadi hukum kolonial pada upaya keadilan transisi UE terkait Palestina.*

*Katakunci:* Hak Asasi Manusia Internasional, Uni Eropa, OPT, Gaza, Israel, Deklarasi Universal Hak Asasi Manusia, Genosida, Kejahatan terhadap Kemanusiaan, Ukraina, GNR, Prinsip Non-Diskriminasi

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# CHAPTER I

# INTRODUCTION

## A. Background

> *"One day, when it's safe, when there is no personal downside to calling a thing what it is, when it is too late to hold anyone accountable, everyone will have always been against this"*[2]

After two years since October 7th 2023, the EU along with the international community has condemned the ongoing genocide towards the Palestinian people at the hands of the Israeli government. The EU has initiated the "EU Civil Protection System" that is regulated under Article 196 of the Treaty on the Functioning of the European Union as a disaster relief measure to help relieve the suffering of the Palestinian people.[3] In the same limelight, the EU has also initiated the same policy during the refugee crisis at the height of the Russo-Ukrainian War in 2022.[4]As a sign of upholding international human rights standards and principles, the EU has acted out in good faith with the principles laid out by the Universal Declaration of Human Rights (UDHR) and under its own convention of the European Convention of Human Rights. However, it came with criticism from Josep Borrell, the former vice president of the European Commission who would later quote:

> "*This impotence and passivity, in contrast to the vigour of our commitment in support of Ukraine, have often been perceived outside of the Union as the*

[2] El Akkad, O. (2025). One Day, Everyone Will Have Always Been Against This. Knopf.
[3] *Palestine**. (2025, May 12). European Civil Protection and Humanitarian Aid Operations. https://civil-protection-humanitarian-aid.ec.europa.eu/where/middle-east-and-northern-africa/palestine_en
[4] Ibid

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> *sign of double standard: in the eyes of Europeans, the lives of Palestinians would not be worth as much that of the Ukrainians*"[5]

From this speech alone these calls into the question regarding the stance of the EU in times of humanitarian crisis. There is a concerning call from human rights activists and organizations that the actions taken by the EU is seen as tokenistic, a veneer of legal duty which underneath it is scrutinizing and abetting an authoritarian regime in their human rights violations towards the Palestinians in the West Bank and in Gaza. It touches on the ground problem of whether the level of universality for the Palestinian people is beneath those of the people in Ukraine.

Harrowingly, the death toll of Palestinians in Gaza and the total displacement of the population within the Gaza territory and the Occupied Palestinian Territories (OPT) have spiked according to UN human rights expert Francesca Albanese described the mass atrocity as a 'livestreamed genocide'.[6] The death toll however is exacerbated by the lack of humanitarian aid entering into the strip.[7] The total blockade of the borders in Rafah and Sufah checkpoints culminates in the population from being concentrated and encircled by the Israeli army.[8] The

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[5] Josep Borrell, Former High Representative of the European Union for Foreign Affairs and Security Policy / Vice-President of the European Commission. (2024, November 29). *The difficult process of learning to "speak the language of power"*. EEAS. https://www.eeas.europa.eu/eeas/difficult-process-learning-speak-language-power_en

[6] *A/79/384: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese - Genocide as colonial erasure*. (2024, October 1). United Nations Human Rights Office of the High Commissioner. https://www.ohchr.org/en/documents/country-reports/a79384-report-special-rapporteur-situation-human-rights-palestinian

[7] Ibid

[8] Rogers, A. (2025, October 14). Israel imposes new Gaza aid restrictions as truce comes under strain. Al Jazeera. https://www.aljazeera.com/news/2025/10/14/israel-imposes-new-gaza-aid-restrictions-keeps-rafah-crossing-closed

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official report made by the UN investigatory committee and the OHCHR has found solid ground and concluded that the Israeli government is perpetuating against the Palestinians has constituted as genocide with backings from the International Associations of Genocide Scholars that Israel has killed more than 59,000 men, women, and children with intent to forcibly expel all Palestinians from the Gaza strip with no right of return and to turn the strip into "hell".[9]

The development of this crisis harrowingly evolved in Plan Dalet, an operation that expunged a plethora of indigenous Palestinians from its villages with justification of retribution with retaliation of collective punishment towards the ethnic group for resisting European colonialism in its native land that reside in what is now the Occupied Palestinian Territories.[10] Carefully crafted, Plan Dalet was designed by Israel's first prime minister David Ben-Gurian as an acceleration plan to claim as much territory from the Palestinians.[11] During the heyday of its independence that is in tangent with the conflict– manifesting in the Deir Yassin Massacre.[12] The village of Deir Yassin became the coinage of Plan Dalet, the pattern in which Israeli soldiers attacked the village followed up with heavy bombardment followed with sporadic massacres of men, women, and children.[13] At present, Plan Dalet would be classified as a major example of the worst human rights violation committed by the Israeli state under international human rights

[9] IAGS. (2025, September 2). *Genocide scholars resolution on genocide in Gaza*. genocidewatch. https://www.genocidewatch.com/single-post/iags-resolution-on-the-situation-in-gaza
[10] Khalidi, R. (2020). *The hundred years' war on Palestine: A history of settler colonialism and resistance, 1917–2017*. Metropolitan Books.
[11] Ibid
[12] Ibid
[13] Ibid

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law.[14] Uprooting Palestinians from their villages became the legacy for the history of Palestinian as *An-Nakbah,* or 'The Catastrophe'.[15] *An-Nakbah* is understood and studied by genocide scholars as the mass expulsion of Palestinians from the aftermath of the 1947 UN partition plan later be formalised as the 1947 Resolution 181.[16] Palestinian leaders and its neighbouring leaders in the Middle-East objected to the idea of a two state solution for the Palestinians and the Jewish people, arguing that John Bull has left his responsibility of his colonial past to the newly formed United Nations.[17] The hands of Palestinian rights were left at the hands of the post-war victors who had to deal with the diaspora of the Jewish people who suffered from the Holocaust. Thus became more than a legal obligation, it catalysed into a moral obligation.[18] The role of the international community was clear: to bring a Palestinian and Israeli statehood into fruition and to solve two human rights crises with one resolution.[19] This is reflected in the formation of the United Nation Special Commission on Palestine (UNSCOP), by partitioning the former British Mandate for Palestine into a 56 percent for the newly Jewish state and 44 percent for the Palestinian State with the caveat for Jerusalem to be established as an international *corpus separatum*.[20] With the Partition and Plan Dalet in motion, *An-Nakbah* became the watershed for Palestine with the systemic ethnic cleansing and the theft Palestinian land that was

[14] Ibid
[15] Ibid
[16] Morris, B. (2004). The birth of the Palestinian refugee problem revisited (Vol. 18). Cambridge University Press.

[17] Ibid
[18] Pappe, I. (2007). *The ethnic cleansing of Palestine*. Simon and Schuster.
[19] Ibid
[20] Ibid

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seized by its occupiers; 300,000 Palestinians flocked from its ancestral homeland and another 400,000 after the defeat of the Arab armies in the 1948 Arab-Israeli War.[21]

The universality principle within the international human rights regime has long been championed by its legal drafters of the 1948 UDHR. Protected and regulated under law[22], championed that human rights are universal, inherent in every individual solely because of their human nature.[23]Yet, this application is questioned in light of the worst humanitarian crisis of the 21st century which has called whether the universality principle is not universally applicable by the EU. For the future of human rights, the hope of a transitional justice would further slip away with the current crisis within the OPT consequently the issue within the OPT stems beyond the current human rights principles and brings forth into question of the tools of transitional justice, specifically the principle of Guarantee of Non-Recurrence in order to prevent a grave human rights violations, crimes against humanity and in the case of the OPT and in the Gaza Strip–Genocide.

Therefore, in light of this situation, this thesis argues that the EU is involved in the selective application of international human rights principles and conventions that serves to undermine the universal applicability and legitimacy within the Occupied Palestinian Territories. This thesis also serves to argue based on the historical evidence of the EU, that this supranational entity has been influenced by the imperial legacies from its member states has contaminated its legal obligations

[21] Ibid
[22] Brems, E. (2021). *Human rights: Universality and diversity*(Vol. 66). Brill.
[23] ibid

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to perform international justice in pursuit of maintaining the status quo that benefits only the EU and Israel while jeopardising the rights of the Palestinians.

## B. Research Questions

This legal research delves into the question of how the selective use of International Human Rights Law by the European Union in the Occupied Palestinian Territories undermines its universality and legitimacy. By exploring this area, the Author has broken down this research into two distinct questions:

1. How has the history of the European Union in its international human rights regime's efforts in Palestine revealed a neo-imperial legacy?
2. How are the differences in the European Union's asymmetrical application of human rights obligation in Gaza and its actions in Ukraine reveal the selective use of International Human Rights Law?

## C. Research Purpose

In writing this legal research, the author has several purposes consisting of the following.

### 1. Subjective

This legal research is written as a partial fulfilment of the requirements to obtain a bachelor's degree from the Faculty of Law at Universitas Gadjah Mada

### 2. Objective

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The main purpose of this research is to critically assess and highlight the EU's shortcomings in upholding international law. However, the underlying purpose for this critical assessment is also to prove that there is a consistency in terms of ideology, that the EU is acting in line with neo-imperialistic traits in Gaza;

Second, this legal research seeks to elucidate systemic contradictions inherent in the implementation and legitimization of international law by scrutinizing the alignment of the European Union's security policy with international accords pertaining to Israel and the Occupied Palestinian Territories, as well as assessing whether it satisfies the EU's human rights obligations as prescribed by international law;

Third, to determine the extent of the EU in its asymmetrical application of human rights standards determined under International Human Rights Law, Treaties and Conventions. By drawing out another human rights issue in its eastern continental backyard this thesis will conclude whether its policies towards Ukraine are biased in matters of its protection and dignity of upholding the human rights principles and conclude that the sentiments made by the EU are equal in Gaza and in Ukraine. It is important to note that with the objective of this legal research is to make a remark of the EU's action as an attempt to undermine the legitimacy and universality of International Human Rights Law

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amidst the abuse and violation of human rights treaties by Israel towards the Palestinian.in this writing, the objective of finding the inconsistencies in the EU's outlook of human rights directly link back to its history of imperialism before the EU was formed as an institution when European States issued a carve out policy of the lands they have conquered and dominion over of;

**D. Guarantee of Authenticity**

In light of the originality of this research. It has been determined that there is no similar thesis within the Universitas Gadjah Mada Thesis Repository and/or the Universitas Gadjah Mada Faculty of Law Library. But this legal research has been supported by academic works stemming from different legal scholars who have contributed to this field of study including:

1. *In Defense of Comparisons: Russia and the Transmutations of Imperialism in International Law*.[24] The journal discusses the patterns of legalized violence and expansionism within the Russo-Ukrainian war. The article establishes a lens in how legal scholars must analyse not just Western imperialism but also imperial ambitions from non-Western powers. Imperialism in international law is a global phenomenon that is not exclusive to a Western state and such justification for occupation–regardless of their ideological or historical context

[24] Kotova, A., & Tzouvala, N. (2022). In defense of comparisons: Russia and the transmutations of imperialism in international law. *American Journal of International Law*, *116*(4), 710-719.

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should be treated as a pattern of global inequality, violence and expansionism. In comparison to this thesis, the legal writing provides a legal insight in how a supranational institution such as the EU falls under the pitfall of making legal justifications that dilutes to the extent of undermining Palestinians from their inherent right in obtaining statehood. Furthermore, this legal research focuses on the discourse within the EU through the Commission on how it has operated within its legal framework to support the development of human rights standards in Palestine has created discourse with international human rights treaties.

2. *EU policy towards the Israel-Palestine Conflict: The Limitations of Mitigation Strategies.*[25] This journal article emphasizes the failure of the EU's efforts in influencing either the Israeli and the Palestinian policies and concentration to the root cause of the conflict because of its reluctance to use punitive measures on the ongoing war. The article also points out how the EU in its cohesiveness of pursuing a united front fails to put a foothold between the strong influence from the United States and its stalwart support for Israel and the Palestinian movement for liberation. What distinguishes between this journal article and this thesis is that this thesis

[25] Akgül-Açıkmeşe, S., & Özel, S. (2024). EU policy towards the Israel Palestine conflict: the limitations of mitigation strategies. *The International Spectator*, *59*(1), 59-78.

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provides a study on the asymmetrical application of human rights standards within the EU's behaviour in terms of its security mitigation, treaties and agreements that they have intermediated between the Palestinians and the Israelis. Additionally, this legal research will also delve into the capacity of which the EU's president Ursula von der Leyen, in her legal capacity, has tried to become the mediator between the two states.

3. *Securitizing Peace: The EU's Aiding and Abetting Authoritarianism.*[26] This journal article critiques the EU's approach to peacebuilding and state-building in the Occupied Palestinian Territories arguing the security centric aid has prioritised political stability and authoritarian governance over genuine peace and self-determination for the Palestinian people. The article argues that to some extent, the EU policies towards the Palestinian-Israel peace making has given an adverse effect for the Palestinian people whilst strengthening an authoritarian regime such as Israel thereby aligning with Israeli and U.S priorities, effectively making the Palestinian authority a subcontractor of occupation. In contrast to this journal article, this legal research will provide a comparative lens of its abetment in the Palestinian Israeli conflict to security

[26] Tartir, A. (2019). Securitizing Peace: The EU's Aiding and Abetting Authoritarianism. *Palestine and Rule of Power: Local Dissent vs. International Governance*, 227-247.

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centric aid and political stability with Russo-Ukrainian War to showcase the nuance of its subconscious bias towards conflict to the other

## E. Benefits of Research

Two key benefits can be seen by conducting this legal research

1. To the theoretical field theoretically, this legal research will assist an ever-evolving field of study of human rights law within the lens of a non-western scholar. By examining the behaviour of the EU through its human rights policies and initiatives in the Occupied Palestinian Territories and Israel, it offers a keener insight of how the applicability of human rights can be selective and undermine the framework in which states and international legal scholars who expertise in the field of human rights and how an international legal order can be influenced by external factors away from the legal field. encourages a critical lens of how the principle of universality does not always attend towards those in need.
2. Practically, encourages legal scholars and researchers in assessing EU mechanisms concerning human rights outside of its continental backyard as well as help the endeavour of legal scholars to aid practitioners in placing accountability to human rights violations by an occupying state.

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# CHAPTER II

# THEORETICAL REVIEW

## A. Principles of Human Rights

The principles of human rights are enshrined in notable international human rights conventions, and these principles are laid out in Articles within the documents. In this legal research, human rights can be distinguished between first generation and second generation of human rights. The first generation of human rights concerns itself with the liberty of the individuals. Linking back to the French Revolution, the first generation of human rights can be categorised to the bourgeoisie, they recognised all kinds of civil and political rights. In this legal research the primary example of the first generation is the European Convention of Human Rights (ECHR).[27] The second generation of human rights is an evolved step of the first generation of human rights, they focus on the economic, social and cultural nature. Whilst the third generation of human rights which are the collective rights that exist from the emancipation of colonised states and the solidarity of people based on equity and justice, the two bases that have not yet been encapsulated in the first and second generation.[28] The differences between the third generation and the first and second generation are also the responsible actors, the former being the individual whilst the latter is the state.[29]

[27] Zohadi, R. L. (2004). The Generations of Human Rights. *Int'l Stud. J.*, *1*, 95.
[28] ibid
[29] ibid

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Within this legal research there will be two focal principles that will be discussed namely the principle of non-discrimination and the guarantee of non-recurrence. Each and every principle in its international level is further codified into its national law. But these principles are not always codified but rather adopted or incorporated into regional frameworks that inherit the traits of international principles of human rights. While the former discusses the general principle stipulated under the UDHR, the latter orbits between both human rights principle and contemporary transitional justice.

### A.1 Principle of Non-Discrimination

The principle of non-discrimination appears in almost all international human rights conventions stemming from the UDHR that is also embedded into the regional human rights conventions in the Americas, Africa and in Europe.[30] It is understood as an elemental idea that all humans regardless of their status and background are given the same and equal amount of rights to any other humans hence it is why in its first article of the UDHR "All human beings are born free and equal in dignity and rights".[31] But the nuance regarding the principles non-discrimination can further be examined further within two categories: subordinate norms and autonomous norms.[32] The former can be defined as the prohibition of discrimination within the

[30] Petersen, N. (2018). The principle of non-discrimination in the European Convention on Human Rights and in EU Fundamental Rights Law. *Contemporary Issues in Human Rights Law*, 129. See also, Antkowiak, T. M., & Gonza, A. (2017). *The American Convention on Human Rights: essential rights*. Oxford University Press, Mitchell, S. M., & Atanga, L. L. The African Human Rights Regime. *Legalization of Human Rights in Africa*, 85-100.
[31] United Nations, 1948, art.1
[32] Moeckli, D. (2017). Equality and non-discrimination. In *Equality and Non-Discrimination under International Law* (pp. 53-70). Routledge.

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international conventions while the latter guarantees the general context of non-discrimination.[33] A staunch example within the UDHR that can be given within the context of subordinate and autonomous norms of non-discrimination is Article 2(1) and Article 7 respectively but this is not exclusive only to the UDHR, other international human rights conventions include both scope of norms within their framework.[34] Within the regional framework such as the ECHR, subordinates also exist in their frameworks and are showcased within Article 8 in conjunction with Article 14 of the ECHR and follow the same principles laid out within the UDHR.[35]

Article 2(1) of the UDHR stipulates:

> *"Everyone is entitled to all rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation sovereignty"*[36]

In tandem with Article 7 of the UDHR stipulates:

> *"All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination"*[37]

[33] ibid
[34] ibid
[35] ibid
[36] United Nations, 1948, UDHR art.2(1)
[37] United Nations, 1948, UDHR art.2(1)

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Both Articles are a prime example of the principle of non-discrimination and closely analysing the drafters, it was intentional that the article was made to be open-ended. They ensured that even after listing the elements of what could constitute as discrimination, they have intentionally made the phrasing of the article to include 'such as' to open to other lists of forms of discrimination in order to prevent perpetrators from creating discriminatory policies. It is in the same vein with regional conventions in which the application of an open-ended Article is to ensure the equal protection of every human from facing discrimination from the state and institutions that hold power over its people. It is pertinent in discussing the principle of non-discrimination as noted under General Comment 18 on Non-Discrimination established by the UN Human Rights Committee 'constitute a basic and general principle relating to the protection of human rights' can therefore be defined and understood as any implication of distinction, preference or exclusion from a particular group to another. The principle itself is envisioned to ensure that all people receive the same level of enjoyment of rights and that no person is beneath another under both international and national law.[38]

The principle of non-discrimination must be implemented not only universally but unconditionally. It is the backbone of universality, and this principle can be divided into two major categories: direct discrimination and indirection. The former is met cumulatively.[39]That is there is a treatment that compromises

[38] *CCPR General Comment No. 18*
[39] Moeckli, D. (2017). Equality and non-discrimination. In *Equality and Non-Discrimination under International Law* (pp. 53-70). Routledge.

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a person or a group; the treatment of two different groups in the same situation creates an imbalance where one is at an advantageous position; the discriminatory policy is based on identity; and lack of justification for the policy.[40]The latter similarly has the same set of criteria's, however the object of this indirection discrimination lies in the measures and policies. For this matter alone, indirect discrimination focuses on the policies that in face value is not discriminatory that is aimed or targeted to a specific group of people but the effects that arise from the policies or rules formulated an adverse impact where in fact, creates a disadvantageous situation for a particular group.[41]

However, it is important to note that within the principle of non-discrimination, definitions within the frameworks and their approach on how they prohibit the grounds for discrimination varies.[42] Within the framework of the ECHR Article 14 follows a category of norms of an *open-ended list* of prohibitions, in this instance the Article provides that:

> *"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."*[43]

An *open-ended lis*t norm differs from its two counterparts: *general guarantee of equality* and *exhaustive list.*[44] An *Open-ended list* norm within the example

[40] ibid
[41] ibid
[42] ibid
[43] Council of Europe, (1950), European Convention on Human Rights, Article 14
[44] Moeckli, D. (2017). Equality and non-discrimination. In *Equality and Non-Discrimination under International Law* (pp. 53-70). Routledge. See also, Dvaladze, G. (2022). Non-discrimination

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of Article 14 of the ECHR can be deduced as an article that includes elements that are not explicitly mentioned in the article because of its subjective wording like 'such as'. While the article has mentioned the elements regarding non-discrimination this article opens to other lists and forms of discrimination to ensure the accountability of the perpetrator. An open-ended list in Article 14 serves similarly as a residual clause in order to prevent impunity similar to ones seen in Article 7(k) of the Rome Statute.[45] Hence it serves not only as an article to prevent impunity it is a safety net to prevent impunity.

### A.2 Guarantee of Non-Recurrence

The principle concerning the guarantee of non-recurrence (GNR) is a developing norm within the international human rights law and humanitarian law as a form of reparations from state responsibility from their wrongful acts.[46] GNR as a form of state responsibility in public international law served to prevent repeating atrocities from happening again.[47] In the 1991 Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission, GNR was at the forefront of the future for transitional justice. According to Nita Shala, the concept of GNR originated from the special regime of state responsibility detailing that states for the past two centuries have attempted to take responsibility for

under international humanitarian and human rights law. In Research *Handbook on Human Rights and Humanitarian Law* (pp. 411-434). Edward Elgar Publishing.

[45] Rome Statute Article 7(k). See also, Triffterer, O. (1999). Commentary on the Rome Statute of the International Criminal Court. *Baden-Baden: Nomos*, *7*.

[46] Mayer-Rieckh, A. (2017). Guarantees of non-recurrence: An approximation. *Human rights quarterly*, *39*(2), 416-448.

[47] Davidovic, M. (2021). The law of 'never again': Transitional justice and the transformation of the norm of non-recurrence. *International Journal of Transitional Justice*, *15*(2), 386-406.

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injuries inflicted to foreigners.[48] Nita Shala further details the normative basis for state responsibility is the failure of the accepting state to provide the necessary protection for foreigners. The concept of GNR is further used also as a political remedy in diplomatic negotiations between the injured state and the inflicting state.

GNR in contrast to satisfaction measures differs and is noted by the ILC Special Rapporteur Willem Riphagen in his special report in both 1981 and 1985. Riphagen initially distinguishes GNR and satisfaction measures in which the former is a secondary obligation for the responsible state to offer in cases where it is inconceivable to give restitution for the harm caused to the inflicted parties.[49] Furthermore GNR compared to satisfaction measures is future oriented meaning that it focuses on preventing future catastrophes in relation to gross human rights violations and transgressions while in satisfaction measures they can be applied both retroactively and future .[50] Further distinction is also made between the two regarding the after-applicability. For GNR, the application of this measure continues even after the full reparation has been complete and satisfied, suggesting that GNR is more of a holistic approach to transitional justice, meaning that this type of measure targets the issue from a broader perspective compared to satisfaction measures where it is targeted directly to the victims with reparations. Distinguishing GNR and satisfaction measure is crucial as the implication in

[48] Shala, N. (2024). *Guarantees of Non-repetition in International Human Rights Law and Transitional Justice: Building Peace After Conflict*. Routledge.
[49] Ibid
[50] Ibid

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relation to the former allows third state parties to intervene and invoke on behalf of the injured state under international law, stipulated under Article 48(2)(b) on the Responsibility of States for Internationally Wrongful Acts. Later development was also introduced by Special Rapporteur James Crawford who proposed the idea that GNR should be paired alongside cessation as both have the future focused nature that differentiate the two from other forms of reparation.[51] However, other ILC members argue this point stating that cessation simply ends the unlawful behaviour of the state and reestablishes the *status quo* while on the other hand, GNR creates a new set of obligations for that responsible state in order to prevent from initiating actions that constitute as unlawful and in breach of international law.[52]

The concept of GNR would also appear again in the UN Basic Principles in which it has become a right for the victims under Article 23 of the Basic Principles which lays out eight mechanisms to address GNR:

> *"Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention:*
>
> *a) Ensuring effective civilian control of military and security forces;*
> *b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;*
> *c) Strengthening the independence of the judiciary;*
> *d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;*
> *e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of*

[51] Ibid
[52] Ibid

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*society and training for law enforcement officials as well as military and security forces;*

*f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;*

*g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;*

*h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law."*[53]

The purpose of the GNR is clear, to prevent human rights atrocities from repeating.[54] As an obligation, GNR is also a factoring tool to address reparation for violation of human rights that is owed to the victims. GNR can also be understood as a distinct obligation in which states have the obligation to cease and prevent its repetition because they are under international legal obligations to prevent its repetition of gross human rights violations towards the victims and serve as a reparation to compensate victims. The Updated Principles to Combat Impunity stipulates:

> *"States shall ensure the victims do not again have to ensure violations of their rights. To this end, States must undertake institutional reforms and other measures necessary to ensure respect for the rule of law."*[55]

Usually, these states who undertake institutional reforms and other necessary measures to ensure the protection of GNR for victims from human rights

[53] United Nations (1990) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Article 23.
[54] Davidovic, M. (2022). *The Law, Politics and Practice of 'Never Again': Guarantees of Non-Recurrence in Transitional Justice*(Doctoral dissertation, Durham University).
[55] Haldemann, F., Unger, T., & Cadelo, V. (Eds.). (2018). *The United Nations principles to combat impunity: A commentary*. Oxford University Press.

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atrocities are through the implementation of national laws that guarantee and protect the rights of individuals, human rights training, the enforcement of laws that criminalise human rights violations, and the reformation of laws encompasses any impunity towards individuals who contribute to human rights violations. Additionally, GNR measures also focus on consolidating accountability towards institutions that are prone to conduct human rights violations, therefore this principle could be understood as a preventive and an inclusive measure for states and institutions who are in no risk of conducting to human rights violations— to the highest level of risk. GNRs exist in regional conventions too. In the Inter-American human rights system for example, the concept of GNR is implemented through the Inter-American Court of Human Rights (IACtHR) which frequently order states to adopt legislative and institutional reforms as GNRS in order to address the central cause from states that allowed the enablement of human rights violations, these also include investigations of human rights abuse perpetrated by individuals and institutions.[56] In the EU, Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) stipulates the right to effective remedy:

> *"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before national authority notwithstanding that the violation has been committed by persons acting in official capacity".*[57]

[56] ibid, see also, Ferstman, C. (2021). Do guarantees of non-recurrence actually help to prevent systemic violations? Reflections on measures taken to prevent domestic violence. *Netherlands International Law Review*, *68*(3), 387-405.
[57] European Convention for the Protection of Human Rights and Fundamental Freedoms Article 13

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From this Article alone, there are four key elements that can be identified to fulfil the necessity of this Article. One, the rights and freedoms within the ECHR are violated. Second, there needs to be an effective remedy, such an effective remedy can be interpreted as an immediate measure to address the victims' rights that were previously violated and must be addressed by the national authority thereby the government of the state to ensure that those rights of the victims are protected and compensated through financial, psychological and social aid. Importantly, these measures must also include legislative reforms that follow in line with the principles of GNR. It is also duly noted that the implementation of GNR can occur at any point in the country's history but GNR would frequently exist during the a key transitional period of that country after a major event that fundamentally changes the state.

Article 41 of the European Convention on Human Rights (ECtHR) illuminates the principle of GNR as a long term measure for victims of state violence, it is stipulated that:

> *"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall. if necessary, afford just satisfaction to the injured party."*

From this article alone Article 41 allows for the Court to take extra measures in cases in which just satisfaction is not fulfilled and when the internal law, in this instance, the domestic law of the state does not provide the necessary measures to implement just satisfaction. Positively, the ECtHR also allows for victims of gross human rights violations to directly access to the Court for

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further implementation of satisfaction measures. The implementation of GNR within the European sphere is overseen by the Committee of Ministers. GNR within the European Framework is implemented through their pilot judgement mechanism. Additionally it is revealed within the European Framework that GNR has been seen to also address issues in which the state intentionally or unintentionally delays the implementation of satisfaction measures due to the delayment of internal law or the domestic judgement of that state.[58] In such a situation GNR serves as a tool for the European Court to instruct the state on how to implement the effective remedy and other satisfactory measures for the state not only for the prevention of future gross human rights violation but also to solve the case where states conduct non-enforcement and or delayed enforcement.

### B. TWAIL: Façade of Europeanism Leeching onto Universalism

Third World Approach to International Law (TWAIL) can be understood as a category of international legal scholars who are concerned with the current international legal regime. Understanding that TWAIL itself is a major camp that is divided further into subcategories of TWAIL critiquing different fronts of international law hence divided into three forms: TWAIL I, TWAIL II, and TWAIL III. TWAIL I focuses between the prism of nation states and powerful states that use international law as a tool for oppression and self-interest, centered in colonial structures within the international legal framework.[59] TWAIL II is the

[58] Shala, N. (2024). *Guarantees of Non-repetition in International Human Rights Law and Transitional Justice: Building Peace After Conflict*. Routledge.
[59] Khosla, M. (2007). The TWAIL discourse: The emergence of a new phase. *Int'l Comm. L. Rev.*, *9*, 291.

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development of TWAIL I, directing the focus on how international institutions interact with the international legal system in order to further entrench an already unfair hierarchy by international law.[60] TWAIL III on the other hand shifts from international institutions and back to the prism of nation states and international law, the difference between TWAIL III and I is the focus of which nation states. The former looks into small groups of nations, not powerful states, in how they behave against international law, while the latter focuses on the powerful states.[61] The focus of a small group of nations can be seen as contradictory, however, it is central and complimentary as regardless of status of power, both act in complete disregard of international law and how it can undermine the integrity of international law.

TWAIL long criticised international human rights as an instrument for the West, particularly former European colonial states, to civilize its former colonial subjects. In some ways this legal instrument acts as a segue of its imperialistic behaviour from one of direct subjugation to an indirect subjugation of the people they colonise.[62] Civilization of non-European states was the façade they took by distinguishing between civilization and barbarity.[63] Such a term used by TWAIL scholars would metamorphosize civilization to a European civilization, a product of Eurocentrism deep rooted in its imperial legacy in Asia, Africa and the Americas– simply put it was the hegemony policy for most of the modern century.

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[60] Ibid
[61] Ibid
[62] Brems, E. (2021). *Human rights: Universality and diversity*(Vol. 66). Brill. See also, Mutua, M. (2023). Human Rights: A TWAILBlazer Critique. *Denv. J. Int'l L. & Pol'y*, *52*, 185.
[63] Aidonojie, P. A., Agbale, O. P., Odojor, O. A., & Ikubanni, O. O. (2021). Human rights: between universalism and cultural relativism. *AJLHR*, *5*, 97.

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The tool for civilizing the non-Europeans is the concept of human rights that has been formed and well established by European scholars. The idea of universality is often in conflict with cultural relativism as a result of differing interpretations of what human right is.[64] Makau Matua accurately targets the problem of the universality of human rights that universal human rights is embedded within the western school of thought; that even in the drafting of the UDHR is comprised of both scholars with an educational background from the West and non-Western scholars who are influenced or cultured in a liberal, western sphere.[65] Universal human rights was therefore seen as a medicine to cure the barbarism that plagued the areas of their former colonies.[66] Propounding, in its deliverance of this western concept, rooted out an internal racist view towards the post-colonial states of what is now the Global South.[67]

Syed Muhammad Naquib Al-Attas elegantly yet sharply points out its critique of universal human rights being imposed towards the Global south as:

> *"Western man is always inclined to regard his culture civilization as man's cultural vanguard; and his own experience and consciousness as those representative of the most 'evolved' of the species, so that we are all in the process of lagging behind them, as it were, and will come to realize the same experience and consciousness in due course sometime."*[68]

Al-Attas critiques and points out the paradox of the concept of western values such as universal human rights as the zenith of human evolution, the apex of human intellect while devaluing those around them as not sophisticated or in this

[64] Supra. 33
[65] ibid
[66] ibid, see also Sharma, V. (2024). Human rights are a form of neo-colonialism and cannot, therefore, address the neo-colonial injustices of the neoliberal global order. *Authorea Preprints*.
[67] ibid
[68] Al-Attas, S. M. N. (1993). Islam and Secularisation. *Kuala Lumpur: International Institute of ISTAC [Islamic Thought and Civilisation]*. p.25

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case 'lagging'.[69] The paradox of universal human rights and its applicability extends in the labelling of universality, when the philosophical foundation of universal human right is grounded in Western liberal thought particularly in secular-individualisms.[70] TWAIL scholars have often concluded that within the rhetoric of universal values and how Western-European scholars mask themselves as being altruistic in reality is a pantomime. A pantomime to cover the true reason of self-interest rather than a shared humanity.[71]

Preceding Makau Mutua, Christian Wolff concept of *civitas maxima* ties back to the feign altruism of Western-European States and scholars who voice their initiative of civilizing nations to perfect human nature. He argues that this ideology of interconnectedness where barriers between people from different countries were less about the concern of others but the necessity to preserve oneself.[72]Furthermore European legal scholars took the mantle of responsibility in honing human rights as they are the apex of civilization.[73] Another example is Johan Caspar Bluntschli, a 19th century constitutional lawyer who captured the Euro-centrist mind of viewing the non-Europeans in the lens of human rights. By describing themselves as representatives and protectors of international law because they emerge from an already advanced society.[74] TWAIL argues that the notion of universal human rights is an exclusive creation designed by Europeans to establish harmony and to discipline what they in non-European states as

[69] Supra. 33
[70] Donnelly, J. (1984). Cultural relativism and universal human rights. *Hum. Rts. Q. 6*, 400.
[71] Fitzmaurice, A. (2017). Scepticism of the civilizing mission in international law. *International law and empire: Historical explorations*, 359-384.
[72] ibid
[73] Kant, I. (1795). Toward perpetual peace. In *Theories of federalism: A reader* (pp. 87-99). New York: Palgrave Macmillan US.
[74] BLUNTSCHLI, J. (1881). Droit international codifié, traduit de l'Allemand par MC Lardy.

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barbaric behaviours.[75] The exclusivity is further entrenched during this period where civilisation and humanity is taken as a term to refer to themselves to justify European expansionism.[76]

However, it is important not to disregard that ideas of universal human rights which will later be documented within the UDHR, signed and ratified by States are 'cofounded' by other cultures outside of non-Western States.[77] TWAIL scholars commend the development of human rights as a tool later for the Global South to now hold European states accountable for their negligence. First by establishing a strong narrative that the current human rights system is interwoven with the hierarchical powers showcased in how human rights NGOs in the Global North have always concerned themselves in the Global South rather than their own territory in the Global North.[78] Concentrating their focus in the Global South, TWAIL criticizes their efforts as a reinforcement of neo-imperialism and showcasing their superiority complex.[79] However, The movement by the Global South and the development of human rights have evolved to be more inclusive from cultures outside of the Western sphere.

The second field of study that TWAIL scholars divulge into is how European States and scholars have become a problem in the field of international law in the 21st century. In this section, TWAIL scholars such as Ben Golder and Ratna Kapur

[75] Supra. 42
[76] ibid
[77] Samson, C. (2020). *The colonialism of human rights: Ongoing hypocrisies of western liberalism*. John Wiley & Sons. See also, Kimber, N. R. (2023). *The Human Right to Development: Historical and Contemporary Linkages to Colonialism* (Master's thesis, The University of Western Ontario (Canada)), Maldonado-Torres, N. (2021). On the coloniality of human rights. In *The pluriverse of human rights: The diversity of struggles for dignity* (pp. 62-82). Routledge.
[78] Supra.33
[79] ibid

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would assess the current human rights regime. Ratna Kapur for example have argued that the current human rights regime is characterised as a governance project not a freedom project[80]– which connects to the Christian Wolff's concepts of *civitas maxima*, that a 'global society' was not driven by altruistic intentions of uniting humanity of a common belief system that all people have the same set of rights, but the argument that human rights crafted from a liberal individualism where in its focal point emphasises on 'I' than the cultural relativist emphasis of 'We'.[81] This argument is compounded by the fact that the weakness of the international human rights regime such as the UDHR and the UN is that they will use human rights to interfere with internal affairs by the great powers hence in cases where cultural relativist view of human rights persist, those who enforce universal human rights towards states who priorities their own interpretation of rights can be seen as sidelining their culture, values with an ideology that is alien, separate and incompatible to an entrenched cultural tradition. Ergo, the West's not only applicability to human rights practices has been disproportionately applied but it has shown that the application of universal human rights.[82] It also duly added that there has been pushback on the conception of universal human rights as a form of 'emancipation' from the Western hold. Thus, culture relativism endures as demand out of respect for states cultural values. States that embrace cultural relativism, as most TWAIL scholars have pointed out, do so not only out

[80] Kapur, R. (2018). *Gender, alterity and human rights: Freedom in a fishbowl*. Edward Elgar Publishing. See also, Golder, B. (2021). Critiquing human rights. *Humanity: An International Journal of Human Rights, Humanitarianism, and Development*, *12*(2), 226-238.
[81] ibid
[82] Golder, B. (2021). Critical humanities and the human of international human rights law. *Routledge Handbook of International Law and the Humanities*, 148-156.

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of the necessity to protect their cultural values but also because the priorital evaluation between human rights and economic development needs to be considered

### C. Structure of the European Union

Established by the 1993 Maastricht Treaty, the EU was formed from the resulting merging bodies of its predecessor, the European Community (EC).[83] The purpose of the EC prior to the 1993 Maastricht Treaty was to foster economic growth between its member States.[84] However, the purpose of the EU has stretched beyond economic policies between the member States and has grown to become a successful supranational organization with a sophisticated human rights court system equipped with its own regional human rights convention, the Charter of Fundamental Rights.[85] This is not to be confused with the Treaty of the EU, which enshrines rights that are already recognized in separate sources which was later consolidated in the Treaty of Lisbon by EU Member States which consequently granted binding powers.[86] The EU is also provided its own court called the European Court of Justice which has overlapping jurisdiction with the European Court of Human Rights by which individuals can bring the EU institutions or the Members of the EU accountable if their fundamental rights are being violated.[87] Below this section explains the structure and responsibilities of

[83] Laursen, F., & Vanhoonacker, S. (2019). The Maastricht Treaty: Creating the European Union. In *Oxford Research Encyclopedia of Politics*.
[84] Laffan, B. (1993). The Treaty of Maastricht: political authority and legitimacy. *The state of the European Community*, *2*, 35-51.
[85] Duranti, M. (2021). The European Convention on Human Rights and postwar history: why origins matter. In *The European Court of Human Rights* (pp. 90-108). Edward Elgar Publishing
[86] Ziller, J. (2019). The Lisbon Treaty. In *Oxford Research Encyclopedia of Politics*.
[87] ibid

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the key institutions that are relevant to this research as well as its regional human rights convention the ECHR:

### C.1 Court of Justice

The Court of Justice of the European Union (CJEU) is the judicial branch of the EU. The role of the CJEU is to ensure that EU law is interpreted and applied the same way in every EU country; ensuring countries and EU institutions abide by the law.[88] Under special circumstances, the CJEU can take actions initiated by either individuals, companies or organisations if their fundamental rights are being violated. Article 19(3) of the Treaty of the European Union (TEU) states:

> *"The Court of Justice of the European Union shall, in accordance with the Treaties rule on actions brought by a Member State, an institution or a natural or legal person;*
>
> *a) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions;*
> *b) rule in other cases provided for in the Treaties."*[89]

The CJEU has its unique difference compared to the EUCtHR in that there is no requirement of exhaustion of domestic remedies. While the EUCtHR regulates the exhaustion of domestic remedies under Article 35 (1) of the ECHR which stipulates:

> "*The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules*

[88] Rosas, A. (2022). The Court of Justice of the European Union: A Human Rights Institution? *Journal of Human Rights Practice*, *14*(1), 204-214.
[89] European Union (2016) art.19(3)

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> *of international law, and within a period of six months from the date on which the final decision was taken."*[90]

The purpose for excluding the exhaustion of domestic remedies in the CJEU is due in part to the principle of direct effect in which the individual has the right to invoke EU law directly before the domestic national courts.[91] In both cases, the CJEU and the EUCtHR grants its citizens the luxury of options if their rights are violated by either the state who provides those rights or the institution by virtue of providing those rights.[92]

### C.2 The Commission

The Commission is an integral part of the EU. Serving as the executive body is responsible for drafting and creating legislations. Regulated under Article 17 of the TEU, The Commission is also responsible for implementing decisions of the European Parliament and the Council of the EU. Composed of the President of the Commission and 27 Commissioners which form the College of Commissioners, they represent the EU internationally in matters of trade policy with their international partners as well as matters of humanitarian aid, as well as playing a key role in negotiations in international agreements that involve the EU.[93] Taken responsibly, all commission members have equal powers in the decision making process and they support the

[90] European Convention on Human Right Art.35(1)
[91] Burak, S., Bratsuk, I., Gutnyk, V., Petlenko, Y., & Yavorska, I. (2022). Direct and indirect effect of European Union directives in the context of European Union Court of Justice decisions. *Revista de la Universidad del Zulia*, *13*(38), 89-106.
[92] Ibid
[93] Blanke, H. J., & Mangiameli, S. (Eds.). (2021). *Treaty on the Functioning of the European Union: A Commentary*. Springer.

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Executive Vice-President and the High Representative in submitting proposals to the College with a simple majority in passing legislation. On the other hand, when it comes to handling foreign policy and security representation, these matters are handled by either the High Representative of the Union for Foreign Affairs and Security Policy and the President of the European Council not to be mistaken with the President of the Commission who is at present Kaja Kallas and António Costa respectively

### C.3 The European Convention on Human Rights

The ECHR, adopted in 1950 drafted by the Council of Europe after the Second World War. Its initial goal was to deter the spread of communism that has influenced eastern European countries. Establishing the ECHR was also a reaction to the gross human rights violation that occurred during the Second World War most notably the Holocaust and therefore needed a framework that would bring any future violations of human rights to the attention of the European states.[94] The ECHR is comparable with other regional human rights frameworks such as the American Convention on Human Rights and the African Charter on Human and Peoples Rights. All belong to a network of the wider international human rights treaties. Compared to other regional human rights frameworks, the ECHR belongs to the first generation of human rights, prioritising on individual rights in civil and political activities. The legal relationship between the ECHR and the EU prior to the TEU as amended by

[94] Harris, D. J., O'boyle, M., Bates, E., & Buckley, C. (2023). *Law of the European convention on human rights*. Oxford university press (pp.3-36)

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the Treaty of Lisbon that no party can make an application to the CJEU as the institution was not a party thereto.[95] However after the TEU was amended by the Treaty of Lisbon, claims may therefore be submitted before the CJEU in the instance EU action goes against the ECHR. In contribution to international human rights law, the ECHR became the landmark framework for states to accept its legal obligations to ensure human rights is enforced within the jurisdiction of its member states as well as allowing individuals to forward claims against it when their rights are breached. It was revolutionary as legal jurisdiction no longer belongs to the domestic but now treated as an international case.[96]

[95] Ibid
[96] Nowak, M. (2021). Introduction to the international human rights regime. See also Zohadi, R. L. (2004). The Generations of Human Rights. *Int'l Stud. J.*, *1*, 95.

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# CHAPTER III

# RESEARCH METHODOLOGY

## A. Type of Legal Research

In conducting this legal research, the Author will employ qualitative-doctrinal legal research that will examine and analyse legal texts and doctrines within the framework of the Commission's action in conducting international humanitarian affairs in Ukraine and in the Gaza Strip. This legal research further examines treaties conducted by the EU with states involved in the region. This legal research will also conduct a historical-comparative analysis, analysing how the EU in its past has treated the international humanitarian crisis in the Global North differently to that of the Global South and hence it is critical to assess the differing international treaties and agreements by the Commission. It is imperative to note that by doing a historical-comparative analysis, the Author analyses the ideological consistencies of the imperialistic legacies that remain in the European Union. These imperialistic legacies can be scrutinized through the analysis of legal frameworks and agreements that preferentially benefit one party while simultaneously marginalising the other; ergo, when it comes to the legal interpretation the author will use the presumption of distinction ("*praesumptio distinctionis)* to achieve the epistemological goal of exposing the power imbalances in international norm productions. Implementing two school of thoughts: Third World Approach to International Law (TWAIL) will dissect the dialectics of the Commission's international agreements with the State of Israel

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and Ukraine to draw out of what is perceived as an inconsistency in the Commission's behaviour is perceived as consistent in towards a different ideology. In this case, modern imperialism but through this does not only mean that this legal research hyper focuses on the Commission; but also points out the consistencies of modern western imperialism. Furthermore, this legal research will also be complimented using a post-colonial school of thought to better understand the effects of colonialism and how it persists to exist in the 20th century leading up to the present. Basing on post-colonial school of thought allows this research to scope into the view of scholars of how they were able to draw the connection of the effects of colonialism in shaping modern international law, international organisations and supranational organisations such as the EU

**B. Types of Data**

To complete this legal research, the sources that will be used throughout this writing will encompass three sets of legal data

1. Primary Legal Sources: In this regard, primary legal sources will embrace legislations, international treaties and agreements as well as case laws as mentioned but not limited to the following
    a. General Assembly Resolutions
    b. Security Council Resolutions
    c. Genocide Conventions
    d. The 1949 Geneva Conventions
    e. The Venice Declaration 1980
    f. The Maastricht Treaty 1993

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g. Oslo Accords

h. Euro-Mediterranean Framework

i. Amsterdam Treaty

j. The EU-Israel Action Plan

2. Secondary Legal Sources: In terms of secondary legal sources, such sources will be extracted from books of international law, international law journals and theses and dissertations by international legal scholars. To acquire these resources will require accessing through official and reputable publishers that is not limited to Cambridge, Oxford Academic, HeinOnline and any other reliable sources to conduct this legal research and the Author ensures that such secondary sources must come from reputable publishers
3. Tertiary Legal Sources: Tertiary legal sources such as legal dictionaries, encyclopaedias, guidebooks and bibliographies will also be used to ensure that any terminologies shall be used properly and within the context of this legal research
4. Non-Legal Sources: When it comes to non-legal sources, because this research will be an interdisciplinary topic with international politics and much of the international legal theatre is shaped around this field, then news, articles, reports and conferences will be taken into consideration. These sources include but are not limited to books, journals and articles relevant to this legal research

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and the search for these sources include but also not limited to online media and up-to-date printed resources.

### C. Data Analysis

The type of data analysis that will be conducted throughout this legal research will utilise a descriptive-qualitative method. With the descriptive-qualitative as a tool for this research the Author aims to examine the Commission's approach to international humanitarian affairs in Ukraine and in the Gaza Strip and the Occupied Palestinian Territories. The descriptive-qualitative methodology facilitates a methodical analysis of legal texts, treaties and institutional practices by employing a doctrinal and historical-comparative framework.

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# CHAPTER IV

# RESULT AND ANALYSIS

## A. The EU, Imperialism and its Impediment towards IHRL for international Transitional Justice

*"For any human being, freedom is essential, crucial to our dignity and our ability to be fully human."*[97]

Understanding the cause of the EU in its impediment of initiating its international human rights obligation in the OPT but in the wider spectrum, the question concerning the selective use of international human rights law by the EU undermines universality and legitimacy. There needs to be a historical understanding of how its behaviour in conducting international agreements falls short of its international legal obligation in the region. It is undisputed that the EU is deeply ingrained in its colonial roots. With the United Kingdom and the French Republic being key states in carving out sections in the Middle East. To their discretion, the EU has sought itself to remind its member states not to treat its imperial and colonial past as a matter of exclusive national sovereignty, that its history with colonialism does not affect the political and legal workings of the EU. The EU for example has continuously reached out especially to former yet older colonial powers such as the United Kingdom to address its neo-colonial situation, i.e. the case of the British colony of Gibraltar.[98] The case opens the

[97] Abuelaish, I., & Myers, J. J. (2015). I Shall Not Hate: A Gaza Doctor's Journey on the Road to Peace and Human Dignity. *Revista Científica General José María Córdova*, *13*(16), 19-32.
[98] Schuerch, R. (2017). European colonialism and neo-colonialism. In *The International Criminal Court at the Mercy of Powerful States: An Assessment of the Neo-Colonialism Claim Made by African Stakeholders* (pp. 19-41). The Hague: TMC Asser Press. See also, Sharma, V. (2024).

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window to how the EU deals with its imperial shadows that redirects away from its acceptance of their imperial history.[99] In light of this example, this section will be divided into two sub sections that is the legacy of the EU in its international human rights efforts in Palestine prior to the Maastricht Treaty of 1993 and post 1993 Maastricht Treaty.

Prior to the formulation of the EU, the European Economic Community which was the former organisation designed for economic and trade purposes were also the pioneers of the 1949 armistice line from the aftermath between the Arab Israeli war for which Israel would declare its independence whilst the Palestinian labelled the event as the Nakba or 'the Catastrophe'. Such a result of the 1949 Armistice line would be renamed into the Green Line.[100] The purpose of the Green Line was clear: to establish an economic border that would benefit the European Economic Community in conducting economic practices with the states of Israel and Palestine. The extension of this Green Line became the status quo for both states in the eyes of the European Economic Community.[101]

But prior to the establishment of the Green Line and the 1967 war, it is revealed that the EEC has found reluctance in establishing economic and political relations with the newly established Israeli state. The EEC who witnessed Israel's attempt to integrate her new state to be part of the organisation saw the move as a political

Human rights are a form of neo-colonialism and cannot, therefore, address the neo-colonial injustices of the neoliberal global order. *Authorea Preprints*.

[99] Ibhawoh, B. (2008). *Imperialism and human rights: Colonial discourses of rights and liberties in African history*. State University of New York Press.

[100] Geçeci, E. (2022). *Perceptions of the European Union in Israel*. Middle East Technical University (Turkey).

[101] Ibid, See also, Greilsammer, I. (1991). The non‐ratification of the EEC‐Israel protocols by the European parliament (1988). *Middle Eastern Studies*, *27*(2), 303-321 and Bulut, E. (2010). European involvement in the Arab-Israeli conflict. *Chaillot Paper*, *124*.

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front rather than an economic motive hoping to gain further international recognition—for Israel's legitimacy.[102] Israel came close during the midst of the 1967 war of being granted full associate status and preferential trade agreement with the EEC. But the Six-Day War proved the opposite, leading to the EEC's unanimous agreement and passing of the Schuman Document.[103] This secret report filed by the founder of the EEC, Robert Schumann, established six principles, however two of the principles highlight the human rights issue are the total Israeli withdrawal from occupied territories i.e the OPT with minor adjustments to the border and the choice for Palestinian refugees to return to their home or being indemnified.[104] The idea that the EEC who has witnessed Israel's attempt to integrate with the EEC during the Six-Day war reveals two facts. One is the TWAIL backed idea that the human rights regime is characterised as a governance project not a freedom project rooted in the imperial habits of the member states of the EEC.[105] The second reveals what TWAIL scholars have concerned itself is the idea of *civitas maximas* or the idea of a global society is pushed not by altruistic motives but rather a transactional policy where the parties in this case, the EEC demands that Israel cease its operations in order if it wants itself to be an integral part of the EEC. The former according to Héctor Lopez Bofill has described the motives for the formulation for the EEC as "Western

[102] Greene, T., & Rynhold, J. (2023). Europe and Israel: Between conflict and cooperation. In *Survival 60.4* (pp. 91-112). Routledge.
[103] Ibid, See also Pardo, S., & Peters, J. (2009). *Uneasy neighbors: Israel and the European union*. Lexington books and Asderaki, F. (2021). The EU in the Eastern Mediterranean: Multilateral and Bilateral Relations. In *The New Eastern Mediterranean Transformed: Emerging Issues and New Actors* (pp. 31-67). Cham: Springer International Publishing.
[104] Pardo, S. (2015). *Normative power Europe meets Israel: Perceptions and realities*. Bloomsbury Publishing PLC.
[105] Kapur, R. (2012). Human rights in the 21st century: Take a walk on the dark side. In *Wronging Rights?* (pp. 23-60). Routledge India.

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European States entrenched themselves as nation-states after losing their empires" that these states had to "abandon" their overseas territories in order to compensate their national defence in mainland Europe.[106] Bofill further argues that the formation of the EEC is dependent on the continuity of the nation-states and their tendency to dominate and plunder other social and national groups.[107] Bofill identifies that the formulation of the EEC was less of a break from Europe's imperial past than a transformation an 'imperial' forum appealed to former imperial states in their need to preserve European dominance.[108] The return of a former grandeur as to not extinguish their former imperial glory, Bofill notes that concept of a European integration such as the EEC and later the EU would allow these former member states to not only reshape the their former imperial powers into the façade of economic wellness, democracy and liberal development but for these states to forget the horrors of their colonial invasion in continental Africa and in Asia.[109] Hence when Israel initiated attempts to integrate with the EEC then there is a reasonable level of hesitancy from members of the EEC seeing that Israel's action in the OPT reflects their own imperial past, it is the reason for the EEC to formulate the Schuman document that when looked peered deeper serves two purposes where outwardly seen as a principled stance on human rights; yet

[106] Bofill, H. L. (2023). *Nostalgic Empires: The Crisis of the European Union Related to Its Original Sins*. Bloomsbury Publishing USA.
[107] Ibid
[108] Ibid
[109] Ibid. See also, Moor, L., & Simpson, A. B. (2005). Ghosts of colonialism in the European Convention on Human Rights. *British year book of international law*, *76*(1), 121-194.

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inwardly, reaffirmed the EEC's role as a post-imperial order set out to give conditions for Israel to fulfil before entering the European market.[110]

The debate is further contested whether the EEC has redeemed itself from its imperial legacy and shifting slowly towards the current shape of the EU is during the joint declaration in 1973 after the Yom Kippur in which it has stated that:

> *"Israel to end the occupation on the territories gained during the 1967 conflict; the inadmissibility of the acquisition of territory by force; the respect for sovereignty territorial integrity and independence of every State in the area and their right to live in peace within secure and recognized boundaries; the recognition that in the establishment of a just and lasting peace account must be taken of the legitimate rights of the Palestinian"*[111]

The context of this statement followed after the EEC's call for ceasefire based on UNSC Resolution 242 calling for the immediate ceasefire and withdrawal of **all** Israeli armed forces from the occupied territories—the Golan heights.[112] Further through the UNSC Resolution, the EEC calls for the termination of all claims and respect the territorial sovereignty of every state in the area and their right to live in peace that is within the secure and recognised boundaries.[113] Combined with the joint declaration in order to pressure Israel, the view of this action seems to an extent, redeemed the concerns of Bofill and Kapur who have expressed

[110] Bicchi, F., & Voltolini, B. (2021). The European Union and the Israeli-Palestinian conflict: How Member States came together only to fall apart again. In *Routledge Handbook of EU–Middle East Relations* (pp. 311-320). Routledge.
[111] Veuthey, A. (2023). *EU foreign policy Via sectoral cooperation: The EU joined-up approach towards Switzerland, Israel and Morocco*. Springer Nature.
[112] Ibid, See also, Veuthey, A. (2023). EU-Israel. In *EU Foreign Policy via Sectoral Cooperation: The EU Joined-up Approach Towards Switzerland, Israel and Morocco* (pp. 123-202). Cham: Springer Nature Switzerland.
[113] Ibid, See also, McDowall, D. (2014). Clarity or ambiguity? The withdrawal clause of UN Security Council Resolution 242. *International Affairs*, *90*(6), 1367-1381. And McDowall, D. (2014). Clarity or ambiguity? The withdrawal clause of UN Security Council Resolution 242. *International Affairs*, *90*(6), 1367-1381.

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respectively that the EEC is driven by European member states who still clung to the 'imperial' glory of the past and that the issue of human rights and the enforcement of a global society is driven not by altruistic motives but a transactional policy. The latter cannot be said however, as it is proven that the joint declaration arose not only because of the EEC's desire to pressure Israel but because of the pressure that the Arab states have imposed on oil amongst the EEC. This situation therefore circles back to Kapur's diagnosis of the current international human rights regime that the current human rights regime and the concept of freedom and human rights not as universalised freedom with social justice but a governance project procured in the structures on the hierarchies of power seen through the EEC's economic and political power—and the history of the imperial past brought by the member states.[114] The EEC's declaration consolidated Ratna Kapur's understanding that "One can then understand exactly what rights are: a conditional, preferential, discriminatory heuristic that is differentially procured, bestowed, valorised and upheld in the name of freedom".[115]

Further evidence in the EEC's commitment to move further away from its imperial legacy is in their first unified declaration at the London Declaration of 1973 calling for the inalienable right of the Palestinians to return to their territory and the end of Israeli occupation of the OPT since the Six-Day War. For the EEC, the issue of the Israeli Palestinian conflict was the first of its agenda, demanding

[114] Kapur, R. (2018). *Gender, alterity and human rights: Freedom in a fishbowl*. Edward Elgar Publishing. See also, Bofill, H. L. (2023). *Nostalgic Empires: The Crisis of the European Union Related to Its Original Sins*. Bloomsbury Publishing USA.
[115] Ibid

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for peace negotiations between the Arab states and the Israeli with Israel recognising the rights of the Palestinians and to enforce equal treatment, the acquisition of the occupied territories in order for the Palestinians to have an effective national identity. Additionally, the EEC has expressed in the London Declaration with the highest level of urgency by recalling the UNSC Resolution 242 and 338 in which both Resolutions call for the immediate ceasefire, and the resumption of peace talks for a "just and durable" peace in the Middle East. Nevertheless, the goals for the London Declaration—up until the 1980 Venice Declaration, once again serves a double purpose. One is the repeated outward expression of devoting their enforcement of human rights issues in the OPT, the second layer that the EEC is too afraid to mention is the economic motive. When Arab states in the Gulf increased the oil price by 70% and the limitation of oil production of 25% followed by 5%, the EEC realised the repercussions that it would have in their own theatre.[116] It is therefore, ironically, similar to the situation of the EU with the Russo-Ukrainian War with Russia being the EU's main reliance on oil.

Another example in how the EU utilised the Green Line is in its Euro-Mediterranean Framework/Barcelona Process, a socio-economic peace agreement between the Mediterranean states, the Levant containing Israel and Palestine and the EU. Designed to promote open trade practices, the Barcelona Process has a design flaw that critically undermines the rights of the Palestinians

[116] EEC (1973) London Declaration. See also, Veuthey, A. (2023). EU-Israel. In *EU Foreign Policy via Sectoral Cooperation: The EU Joined-up Approach Towards Switzerland, Israel and Morocco* (pp. 123-202). Cham: Springer Nature Switzerland.

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within the occupied territories and within the Gaza strip. The absence of the Green Line is critical in the effects leading after the agreement, this is due in part that the term was replaced by "territory of the State of Israel'.[117] Treaty interpretation requires good faith principle within the Vienna Convention on the Law of Treaties, ensuring that the correct meaning is applied to the treaty based on the conduct and agreement of the parties. This principle is anything but present. By inserting the term, the "territory of the State of Israel", Israel has inserted itself to include the Occupied Palestinian Territories from their resulting illegal settlements scattered in the West Bank. The effect to replace the term would mean the EU would receive Israeli export of goods from their illegal settlements from the West Bank in Palestine and from the Gaza Strip. While it is arguable that the EU responded by implementing an interim association agreement in order to clarify the term in order that any products coming from Israel must be determined precisely of its geological location to ensure that the product does not fall under occupied territories.[118] The interim Association Agreement would then later be rectified in its Technical Agreement signed by the EU and Israel.

From a human rights perspective this case showcases how the EU lacks to an extent in upholding international human rights principle of non-discrimination. Without the acknowledgement of the Green Line, the EU finds itself in allowing Israel validation over the Occupied Palestinian Territories. Compounding an already systematic and discriminatory policy imposed on the Palestinians.

[117] Pfleging, J. (2025). *Paying Without Playing?: Assessing the European Union's Actorness in the Middle East Peace Process*. College of Europe. See also, Galariotis, I., & Gianniou, M. (2021). EU foreign policy incoherence in the United Nations: The case of the Middle East. In *Routledge Handbook of EU–Middle East Relations*(pp. 169-180). Routledge.
[118] Ibid

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Palestinians are denied the right to a socio-economic participation with the EU whilst Israeli settlers gain access to the EU market on equal and preferential terms. It has been discussed before that the principle of non-discrimination under Article 2(1) of the UDHR that:

> *"Everyone is entitled to all rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation sovereignty"*[119]

Recalling that Article 2(1) along with Article 7 of the UDHR is described as an open-ended list, it can be argued that the EU did not properly uphold the criteria of Palestinians entitled to socio-economic rights without distinctions based on the second sentence of Article 2(1). Article 2(1) is applied fittingly when scoping into the wordings of "under any other limitation sovereignty" because as the situation involves the Palestinians under active occupation, their rights and status are differentiated by the Israeli government. Given the different set of rights and status under Israel, the implication of using the "territory of the State of Israel" from the Barcelona Process gives the implication that Palestinians under its occupied territories fall under the jurisdiction of Israeli Law instead of Palestinian jurisdiction if the Green Line was used in the Barcelona Process. While indeed, that the Barcelona Process is an economic agreement designed to open trade for Mediterranean states and including Israel and Palestine, the notion that the Barcelona Process uses the phrasing of "territory of the State of Israel" puts the

[119] United Nations, 1948, art.2(1)

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implication on the EU be it intentionally or unintentionally inflicts an indirect discrimination towards the Palestinians.

While the EU rectified in its Association Agreement and later consolidated in the Technical Arrangement to clarify the term of "territory of the State of Israel" the latter does not acknowledge the territories marked for the Palestinians. What the Technical Arrangement has reached is that any products from Israel would remain labelled 'made in Israel' but the EU now explicitly requires for the state to stipulate where the product is made in Israel in order to determine if the product is produced from Israel proper or from the Occupied Palestinian Territories. Hence from a general glance it may seem that the EU is attempting to hold Israel accountable of its sourcing of its products and produce to ensure that they are not being made at the expense of the expulsion of Palestinian civilians. However, this only further legitimises Israel's claim over the Palestinian territories and further complicates the peace process between the two states.

Hence, in this case concerning the EU's pattern of support to Mutua and TWAIL scholars in critiquing the institution's blueprint in peacebuilding within the Occupied Palestinian Territories. The pattern is identified by how TWAIL scholars present the EU in displaying a tokenistic attitude and lack of an altruistic intention of enforcing international human rights law. Ratna Kapur description of European colonialism in the context of human rights can be applied to this case as well. That there is an assimilation of European tradition followed by cultural

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erasures.[120] In this context, it can be seen through how the EU's silencing of the Palestinians in the Barcelona Process. What seems to be a technical omission in the treaty language is but a ruse, that it reinforces settler-colonial claims where in which Palestinian presence and rights are depicted as invisible in the Barcelona Process which is designed to foster peace and economic cooperation created a double effect that the EU is unaware caused the sidelining of the Palestinian population. It is a façade of accountability masking structural complicity.

The Venice Declaration of 1980 emerged from the ECC's further interest and consolidated commitment to be more inclusive and active in the Middle East Peace Process (MEPP) that was designed to settle the long standing Palestinian Israeli Conflict, the Venice Declaration is one part of the Middle East Peace Process.

Under Article 4 of the Venice Declaration which states:

> *"On the bases thus set out, the time has come to promote the recognition and implementation of the two principles universally accepted by the international community: the right to existence and to security of all States in the region, including Israel, and justice for all the peoples, which implies the recognition of the legitimate rights of the Palestinian people"*[121]

As well as Article 9 of the Venice Declaration which states:

> *"The Nine stress the need for Israel to put an end to the territorial occupation which it has maintained since the conflict of 1967, as it has done for part of Sinai. They are deeply convinced that the Israeli settlements constitute a serious obstacle to the peace process in the Middle East. The Nine*

[120] Kapur, R. (2018). *Gender, alterity and human rights: Freedom in a fishbowl*. Edward Elgar Publishing. See also, Kapur, R. (2025). Under the Shadow of 'the Bullet': TWAIL Reflections on the 'Worth'of War and Peace. *Queen Mary Law Research Paper*, (464).
[121] Venice Declaration Art.4, 1980

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> *consider that these settlements, as well as modifications in population and property in the occupied Arab territories, are illegal under international law."*[122]

Both Articles in this instance show a commitment by the EEC's shift from an economic issue to a human rights issue. Both Articles explicitly calls for the recognition of the rights of the Palestinian people and points on the illegality of the occupation of the OPT under international law. Compared to the London Declaration and the Schuman Document, the Venice Declaration displays a strong clarity of where the EEC begins to stand, that the rights of Palestinians are paramount in preserving the international legal order. From the humiliation of its former imperial members Britain and France who have colluded with the Israeli government during the Suez Crisis in which Israel has occupied the Sinai Peninsula both in 1958 and in 1967 during the Six-Day War, the EEC pushed through a strong and provocative declaration as a taught lesson and clarity that the imperial "glory" that former imperial member is trying to reclaim was now something of the past.[123]

Laying out the European Community's role in resolving the MEPP which includes the recognition of the legitimate rights for the Palestinian people and their right to self-determination.[124] However the Venice declaration was met with fierce opposition from Israel who argued that such declaration compromises the 'democratic' values of the State for an organisation they categorized as a terrorist

[122] Venice Declaration Art.9, 1980
[123] Bofill, H. L. (2023). *Nostalgic Empires: The Crisis of the European Union Related to Its Original Sins*. Bloomsbury Publishing USA.
[124] Jäntti, B. Designed to fail: EU Foreign Policy vis-à-vis Israel's encroachment on the Occupied Palestinian Territories.

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group led by Yasser Arafat. [125] This is only exacerbated during the *intifada* where Israel took another step to view the Venice Declaration as a further attempt to sabotage the region.[126] For the EU, the Venice Declaration was seen as the first step forward for Palestinian freedom, to establish peace and stability in line with human rights principles was tantamount to releasing itself from its colonial roots presented by its predecessors attempting to break away from its imperial legacy.[127] Staunch in rooting for Palestinian rights, Israel actively excluded the EEC from being an active player in the peace negotiations for a two state solution. The anger and sense of betrayal from the Israeli government labelled the EEC's role in the Venice Declaration as a desire fulfilled by Yasser Arafat of "liberating Palestine and liquidate the Zionist entity" and alluded to his words to *Mein Kampf.* The declaration is not only just an attempt for the European Community to unshackle itself from its colonial roots but also rectify its 20th century disasters by its founding members during the Holocaust. But the unshackling from imperial roots.

For Palestinians, the idea that the European Community is embracing and willing to move forward in declaring a Palestinian state even if the wording from the document does not express explicitly, the implicit impression however determines the European Communities willingness to support a Palestinian statehood.

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[125] Huber, D. (2022). *Equal rights as a basis for just peace: A European paradigm shift for Israel/Palestine*. Istituto Affari Internazionali (IAI).
[126] Ibid
[127] Sierp, A. (2020). EU memory politics and Europe's forgotten colonial past. *Interventions*, *22*(6), 686-702. See also, Behr, H. (2007). The European Union in the legacies of imperial rule? EU accession politics viewed from a historical comparative perspective. *European Journal of International Relations*, *13*(2), 239-262.

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For TWAIL scholars, the action taken by the European Community who acted as a predecessor of the EU can be seen as a positive outlook for European Legacy. For scholars stemming from the Post Colonial school of thought, the idea that the European Community is standing by through its moral principles to acknowledge and move forward for the establishment of a Palestinian state is a step in the right direction. But this does not discourage the fact that the Venice Declaration has its own shortcomings. For one, the Venice Declaration is argued to be a watered-down version of the original intent of what the EEC had in mind. This can be evident in the way that the EEC has attempted to modify UNSC Resolution 242 to include the right to self-determination of the Palestinian people.[128] But change was affected by their American counterpart who disagreed with the proposal stating it would compromise the Camp David Accords initiated by President Jimmy Carter. Undoubtedly, it is clear that the EEC's attempt in addressing the Palestinian issue within the OPT and their solution to recognise the rights of Palestinian and condemning Israel's action within the OPT is influenced by the political hegemony of the U.S and their ability to utilise their veto power as a UN permanent member state in the Security Council. Another consequence of the Venice Declaration is the following action taken by Israel. With addition to the heavy rejection and denial of the EEC in contributing to the peace negotiations, Israel pushed further in compromising the idea of a two-state solution by proclaiming Jerusalem as its eternal capital, the breaking point for the Venice Declaration ended when Israel invaded Israel 1982 effectively undermining the

[128] Veuthey, A. (2023). *EU foreign policy Via sectoral cooperation: The EU joined-up approach towards Switzerland, Israel and Morocco*. Springer Nature.

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EEC's role as peacemaker and enforcement of international human rights obligations.

From the historical lens the predecessor of the EU has gained its way in trying to combat an emerging problem that shows an inconsistent engagement of its human rights treatise whilst responding to neo-colonial practices. Both the Schumann Document and the London Declaration were a first step forward for the institution that contained former imperial states in addressing the emerging neo-colonial practices of newly formed states through its economic and military power. For the EEC they see the neo-colonial practices conducted by the Israeli state through the economic leverage and occupation it has to the Palestinians. As previously mentioned, the territories that Israel has occupied and settled were used for its own economic purposes whilst creating a discriminatory leverage that benefits Israeli settlers over the indigenous Palestinians. However, when diagnosing the aforementioned document and declaration, the inconsistent engagement is found in the motives. As Bofill has mentioned, the EEC was driven by members who still clung to imperial glory and the matter of upholding the current human rights regime is but a transactional matter that needs to benefit the institution economically.

Compared to Makau Mutua's view, these events can be closely described as "A part of the geopolitical hegemonic calculus that drives the international legal order, that it promises too much and delivers too little to societies in the Global South".[129] What his words mean is that a 'sophisticated' and 'well-developed'

[129] Mutua, M. (2023). Human Rights: A TWAILBlazer Critique. *Denv. J. Int'l L. & Pol'y*, *52*, 185.

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states such as the U.S and members of the EEC has the capability to internationally govern the world because of the political strength that they wield e.g. two of the permanent member of the UNSC come from Europe and one being the U.S, they become the determinant for which international issue takes precedence but their promise to address the humanitarian and human rights issue from the Global South can only be described as tokenistic. These words ring especially true in the context of the EEC and its attempts to resolve the Palestinian issue, the Schuman Document, the London Declaration and the Venice Declaration is but big promises that the EEC brings forth to the table yet fail to push forward because of this 'geopolitical hegemonic calculus' that the EEC is complicit of and the U.S that actively partakes. The big promises made by the EEC to the Palestinians and the Arab states during the Six-Day War and the Yom-Kippur War is effectively compromised by the political winds coming from the U.S and the aggressive rejection from Israel, the big promise of a Palestinian statehood, the right to return and importantly the right to self-determination enshrined in the UDHR. Complimented by Ratna Kapur's analysis that the international human rights mechanism is more less a 'governance project', the Venice Declaration overshadowed by the Camp-David accord because of the political hegemony that the U.S wields as so far as to use its veto power to reject any modification of UNSC Resolution 242 and 338 can be more or less be described as both a 'governance project and a 'political project'. In short, because Europe and the U.S dominate the architecture of international law, the EEC's promises could never be more than symbolic so long as the U.S.-Israel sets the

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limits of action and therefore removes them from achieving the goals for the Palestinians of achieving statehood and justice measures for the grave human rights violations conducted by the Israeli state.

Bhupinder S. Chimni also chimes into the critique of Bofill's idea that the current international human rights mechanism is rooted into the bygone era of imperialism and colonialism. He quoted:

> *"The inability to govern is projected as the root cause of frequent internal conflicts and the accompanying violation of human rights necessitating humanitarian assistance and intervention by the north. It is therefore worth reminding ourselves that colonialism was justified on the basis of humanitarian arguments"*[130]

His argument is similar, that in any instance where a human rights issue takes place, the 'white man' takes the initiative of intervening with humanitarian assistance. For the EEC, the issue lies whether there is a genuine, 'altruistic' motive behind their action and whether those actions behind the Venice and London Declarations were purely in the full interest of the Palestinian people. In this instance, Chimni is warning that colonialism now takes in the form of humanitarian intervention implying that those in the Global South i.e. the Palestinian does not have the capability to govern their own political structure without the assistance of a modernised-developed state. The London Declaration certainly falls into this category, it is perceived to be driven by human rights motives, but the inner motive lies in their economic urgency due to the Arab state restriction on natural gas and oil. Like the legacy of colonialism, these interests

[130] Chimni, B. S. (2003). Third world approaches to international law: a manifesto. In *The third world and international order*(pp. 47-73). Brill Nijhoff.

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are self-driven to empower their own economic and political needs in order to establish a stronger foothold on those they deem as less sophisticated or in Syed Muhammad Naquib Al-Attas's words where the "Western man is always inclined to regard his culture civilization… experience and consciousness of the most 'evolved' species".[131] In fact Al-Attas's comment regarding the dynamic between the Western-European liberal states and the Global South compliments directly with Chimni's diagnosis of the current international human rights enforcement by the EEC.

Hence when comparing four legal scholars in viewing the EEC, it can be concluded that within this section there reveals an inheritance of colonial and neo-imperial legacy that exists that compromises the international human rights regime's efforts.

### B. Asymmetrical of Human Rights Obligation between Gaza and Ukraine

The second section of this legal research reveals the result of the EU's conduct within the Gaza Strip and in Ukraine with the ongoing war with Russia. This section reveals the legal policy as well as statements and sentiments by EU stakeholders in conducting two different human rights cases and how they are treated asymmetrically which leads to the overall selective use of international human rights law and undermining the concept of universality and legitimacy towards the international community. Within this section this research will be

[131] Al-Attas, S. M. N. (1993). Islam and Secularisation. *Kuala Lumpur: International Institute of ISTAC [Islamic Thought and Civilisation]*. p.25

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divided into two subsections: looking into the humanitarian efforts and human rights efforts in Gaza and looking through the extensive use of the EU support mechanism in Ukraine. Throughout this subsection it is revealed that within two identical situations of occupation, invasion, and human rights abuse, there is a different level of urgency and the nuance policy showcasing the double standard in the form of economic and financial tools that is revealed through the mechanism laid out by the institution whilst still falling under the legal duties laid by their own treaties. Through this subsection, it is indicative there is different priorital needs affected by economics, political and geographics in addressing the two human rights issues in Gaza and in Ukraine and how these factors compromise the EU's standing with a modern and 'living' human rights mechanism and reveals a façade in the universality of human rights

### B.1 Breaking Down the Gates of Gaza

The EU has proven to such an extent, consistently with its inconsistency towards Gaza and their human rights obligations. To this regard this section breaks down the legal application of the EU's efforts in Gaza. Anticipation from the EU in contributing a two-state solution before the ongoing humanitarian crisis in Gaza has always been constant and an integral part in its European Union Foreign Security Policy (EUFSP).[132] The EU, under President Ursula von der Leyen initiated its commitment in Gaza by

[132] Akgül-Açıkmeşe, S., & Özel, S. (2024). EU policy towards the Israel-Palestine conflict: The limitations of mitigation strategies. *The International Spectator*, *59*(1), 59-78.

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activating the EU Civil Protection Mechanism.[133] Regulated based under Article 196 (1) of the TFEU which states:

> *"The Union shall encourage cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters. Union action shall aim to:*
>
> *a. support and complement Member States' action at national, regional and local level in risk prevention, in preparing their civil-protection personnel and in responding to natural or man-made disasters within the Union;*
> *b. promote swift, effective operational cooperation within the Union between national civil-protection services;*
> *c. promote consistency in international civil-protection work"*[134]

By establishing the legal basis and element for initiation of the EU Civil Protection Mechanism, the Mechanism fulfills sub-article (a) and (c) of Article 196. The humanitarian crisis in Gaza aligns with Article 196 of TFEU particularly in promoting consistency in international civil protection work and preventing man-made disasters. In Gaza this man-made disaster is showcased in the constant Israeli impunity through mass starvation;[135] the indiscriminate bombing of civilian infrastructure on hospitals, UN schools

[133] Augusto, O. (2024). International Law and Humanitarian Assistance: Obligations and Positions of the European Union and Its Member States. The Case of Gaza. See also, (*Speech by President von Der Leyen at the European Parliament Plenary on the Preparation of the European Council Meeting of 21-22 March 2024 - Enlargement and Eastern Neighbourhood*, 1 Janurary 2025.)
[134] TFEU Article 196
[135] Field, R. (2023). The International Law of Siege and Starvation: The Case of Gaza After October 7, 2023. *Buff. Hum. Rts. L. Rev.*, *30*, 161. See, Also Maharmeh, I. (2025). Starvation in a Time of Genocide: A Weapon of Israeli Settler Colonialism in Gaza. *Policy Analysis*.

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and residential buildings;[136] the forced relocation of the majority of Palestinians within the Gaza territory conducted by the Israeli military.[137]

Former executive director for Human Rights Watch, Kenneth Roth would comment that the "Israeli military's repeated use of massive two-thousand-pound bomb in populated areas with predictability devastating consequences for civilians…Hamas's wrongful use of human shields and fighting from civilian-populated areas did not relieve Israeli forces of the duty to refrain from such disproportionate attacks".[138]

Thus, activating the EU Civil Protection Mechanism can be argued as a proper response as evident when the EU invested €250 million in aid for the Palestinians along with cargo ships that are being directed from Cyprus to Gaza.[139] However, despite the efforts made by the EU, President Ursula von der Leyen has also expressed her grievances and urged members of the Commission and the international community that aid must reach Gaza.[140] When taken into a TWAIL Lense in assessing this movement, the issue also becomes clear that the institution articulately navigate the Gaza crisis away from an international human rights concern and treat it as a disaster zone without acknowledging the evident accountability of those who perpetrate grave human rights violations against the Palestinian populace.

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[136] Kaliser, M. S. (2007). A Modern Day Exodus: International Human Rights Law and International Humanitarian Law Implications of Israel's Withdrawal from the Gaza Strip. *Ind. Int'l & Compar. L. Rev.*, *17*, 187. See also, Bantekas, I., & Jaber, S. S. (2025). The human rights obligations of belligerent occupiers: Israel and the Gazan population. *Journal of Conflict and Security Law*, *30*(1), 103-120.
[137] Ibid
[138] Steinberg, G. M. (2025). Righting Wrongs: Three Decades on the Front Lines Battling Abusive Governments: by Kenneth Roth (New York: Alfred A. Knopf, 2025), 434 pages.
[139] Supra. (Directorate-General for Neighbourhood and Enlargement Negotiations, 2024)
[140] Ibid

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Under global pressure, the EU has taken initiatives to suspend the EU's free trade agreement with Israel.[141] This comes under the basis of Article 2.[142] Under Article 2 of the EU-Israel Free Trade Agreement which stipulates:

> *"Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guides their internal and international policy and constitutes an essential element of this Agreement."*

Article 2 is clear, that parties, that is, Israel and the EU must conduct the agreement based on human rights principles. Such human rights principles can allude to the principle of non-discrimination which Israel has consistently violated before and after the inception of this free trade agreement. In the OPT, Israeli forces carried out large scale raids on Palestinian refugee camps resulting in the killings of 130 of Palestinians.[143] Under Israeli occupation of the West Bank, 60% of the total area is under Israeli Exclusive Control, labelled Area C.[144] Undisputedly, Palestinian under Israeli occupation falls under military jurisdiction.[145] Israel's reliance on the military creates a regime that gives Israel sweeping authority to govern the local population, and while

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[141] European Commission. (2025, September 17). *Commission proposes suspension of trade concessions with Israel and sanctions on extremist ministers of the Israeli government and violent settlers*. Middle East, North Africa and the Gulf. https://north-africa-middle-east-gulf.ec.europa.eu/news/commission-proposes-suspension-trade-concessions-israel-and-sanctions-extremist-ministers-israeli-2025-09-17_en

[142] Guasti, M. (2020). Israeli Territory, Settlements, and European Union Trade: How Does the Legal and Territorial Jurisdictional Regime that Israeli Imposes throughout Israel-Palestine affect the EU-Israel Association Agreement and the EU-Palestinian Authority Association Agreement?. *The Palestine Yearbook of International Law Online*, *21*(1), 3-31.

[143] Human Rights Watch. (2025, March 24). *World report 2025: Rights trends in Israel and Palestine*. https://www.hrw.org/world-report/2025/country-chapters/israel-and-palestine

[144] Ibid

[145] Ramati, N. (2020). The rulings of the Israeli military courts and international law. *Journal of Conflict and Security Law*, *25*(1), 149-169.

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Israel uses the argument of Article 64(1) of the Fourth Geneva Convention and a 27 page booklet established after the 1967 War which allowed Israel to create the military courts and defined the new penal provisions within the OPT.[146] The dual legal regime the occupying state violates the core principle of non-discrimination under Article 2(1) specifically calling for no distinction on the basis of jurisdiction under limited sovereignty i.e. Israel established a civil court for Israeli settlers in the OPT while military courts with strict and often without legal representation are reserved for Palestinians in the West Bank.[147] It is this very principle under Article 2(1) of the UDHR that is also implied in Article 2 of the EU-Israel Free Trade Agreement is being violated. President Ursula von der Leyen has strictly commented that man-made famine can never be a weapon of war. Proposed a package of measures for the EU to confront the humanitarian crisis. One is ending the bilateral support to Israel by suspending payments in the area within the free trade agreement without compromising the work of Israel civil society or Yad Vashem.[148] Two further proposals were also brought to the Council by the President in addressing extremist ministers and violent settlers in the OPT.[149]

[146] See also, Chinkin, C. (2010). Laws of occupation. *Multilateralism and International Law with Western Sahara as a Case Study*, 197-204.
[147] Ramati, N. (2020). The rulings of the Israeli military courts and international law. *Journal of Conflict and Security Law*, *25*(1), 149-169.
[148] Jennifer Rankin. (2025, September 10). *Ursula von Der Leyen calls for suspension of EU free trade with Israel*. the Guardian. https://www.theguardian.com/world/2025/sep/10/ursula-von-der-leyen-suspension-eu-trade-israel
[149] Sarkin, J. J. (2021). Towards a greater understanding of guarantees of non-repetition (GNR) or non-recurrence of human rights violations: How GNR intersects transitional justice with processes of state (re) building, the rule of law, democratic governance, reconciliation, nation building, social cohesion and human rights protection. *Stan. J. Int'l L.*, *57*, 191.

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In this extent the EU there is a clear indication of exercising the principle of GNR. As understood, the principle of GNR is a form of state responsibility in order to prevent repeating atrocities. It is to the understanding that GNR is also to ensure that no group achieves an advantage in access to state resources and that no one is excluded after a conflict is ended.[150]Importantly GNR are designed to maintain fairness and non-discrimination by any means possible.[151] To that end the termination albeit temporarily establishes EU in bridging the problem that Israel is in clear violation of the principle of non-discrimination with financial and political restrictions to put pressure on Israel in order to prevent the continuation of grave human rights violations. It is also pertinent to note while GNR are mostly found during the transitional period after a conflict has concluded i.e. found in legislations and in constitutions, GNR are well founded in actions or policies and sometimes in speeches and deeds.[152] Because of the steps taken by the EU to protect Palestinians, there is then an indicative step towards the slow transitional justice for the Palestinian population in the OPT and in the Gaza Strip.

The conjecture that will determine the EU's stance in enforcing human rights obligations in the OPT and in Gaza is therefore based on the enforcement of their foreign policy. To an extent EU members have been vocal and condemned Israel's action in the Gaza strip, however the criticism that is supported among human rights scholars is the lack of urgency. Further legal

[150] Ibid
[151] Ibid
[152] Krivenkova, M. V. (2017). Assurances and guarantees of non-repetition as a form of international responsibility. *QUID: Investigación, Ciencia y Tecnología*, (1), 1341-1346. See, also Hůlová, E. (2022). The position of guarantees of non-repetition within transitional justice.

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support of the actions of the EU sanctions towards the Israeli government and violent settlers are also based on the EU Global Human Rights Sanction Regime established back on the 7th of December 2020 in which the European Council implemented sanctions towards parties involved in acts of genocide, crimes against humanity and other grave human rights issues. The proposal that was issued by the Council of the EU recalled the violation of Article 2 constitutes a material breach of the EU-Israeli trade agreement hence justifying the unilateral suspension by the EU and stands by the position that their action is horizontally proportionate and in their view of ending the violations.

Ending the EU Israeli trade agreement is also consistent with existing policy provisions in the policy area in complement to Article 207(1) of the TFEU.[153] Under Article 207(1) of the TFEU which states that any common commercial policy shall be conducted in the contexts of the principles and objectives of the Union's external action.[154] While it is also essential that the suspension came from the established conclusion dated back on the 27th of June 2024 with the EU condemning Hamas, it has also condemned the extremist settler violence in the OPT and urged the protection and safe access to the holy sites of Jerusalem.

Based on this observance, sanctions in the hands of a major power holder to punish an occupier have shifted and a parallel can be made that draws back to the façade of the EU. One is the familiar and continuing existence of colonial

[153] TFEU Article 207(1)
[154] Ibid

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violence in non-European states and how it has consistently persisted alongside neocolonial practices by Western states. It also shows the fickleness of the inconsistencies of human rights practices and principle; the plaster of 'respect to human rights principles' be it in GNR or non-discrimination is but a veneer tied down to the regulation and management of the settler colony profited by both state and non-state actors in their amoral collusion in the unjust global governance regime. Suspending a trade agreement can indeed be seen as a positive movement by the 'white man' but the same can be said that from the inception of the trade agreement itself is a complicity of the EU in their pursuit of business and investment in a terrain that is shaped by the forced displacement of a local indigenous people for their profiteering agenda.[155] With 25 years of legal trade between the EU and Israel, there is concrete reason as to why the international community have described the relationship between the supranational and the colonial state as a 'cart blanche' which applies to all forms and ties it has whilst UN expert state under the 19 July 2024 ICJ Advisory Opinion in which the Court finds the discriminatory legislation and measures from the restriction of movement to the demolition of Palestinian residents concluded that the measures taken by Israel and their capacity to as an occupying power is unjustifiable that it amounts to the territory of apartheid.[156] The partial suspension is a reflection of their failings as the moral superior towards the 'Other'.[157]

[155] Mutua, M. (2023). Human Rights: A TWAILBlazer Critique. *Denv. J. Int'l L. & Pol'y*, *52*, 185.
[156] ICJ Advisory Opinion 19 July 2024
[157] Supra.130

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### B.2 Kiev: the EU's Willingness to Enforce Human Rights Mechanism

While the EU has applied measures to relieve the human rights catastrophe in Palestine, the extensive measures that the institution has taken in Kiev against Moscow's aggression is not only influenced by its legal obligation but an economic and geopolitical driven purpose. In 2024, President Ursula von der Leyen at the European Parliament Plenary held a speech urging the EU to continue its support in Ukraine.[158] The President commented regarding Putin's invasion towards Ukraine sovereignty as a misjudgement believing that the EU will be complacent as Russian soldiers press their march to Ukrainian territory in Donetsk and Luhansk. This speech is followed with the determined action of the EU to inject a sweeping amount of both financial and military support, totalling of up to €122 billion.[159] It is a testament of solidarity for the oppressed against an occupier.

In 2023, the EU's Commission held a motion of debate regarding the Act in Support of Ammunition Production or ASAP. ASAP was designed to support the EU's defence industry in manufacturing. Capacity in order to match the increased demand of weapons such as missiles and ammunition and facilitate access to finance the EU defence companies and address the bottleneck to ensure quick delivery rates. This policy which was designed to specifically

[158] European Commission. (2022, March 1). *Speech by President von Der Leyen at the European Parliament plenary on the Russian aggression against Ukraine*. European Commission Representation in Cyprus. https://cyprus.representation.ec.europa.eu/news/speech-president-von-der-leyen-european-parliament-plenary-russian-aggression-against-ukraine-2022-03-01_en

[159] 'Speech by President von Der Leyen at the European Parliament Plenary on the Need for Unwavering EU Support for Ukraine, after Two Years of Russia's War of Aggression against Ukraine - European Commission'.

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aid Ukraine and last from 2023 to 2025 is budgeted of up to €500 million in which the budget is further broken down to finance and project explosives, powder, shells, and missiles.[160] ASAP is a testament for the EU for its shared heritage and history that the EU has with Ukraine.[161] From a legal perspective ASAP is in line with the rules and regulations of Article 51 of the Charter of Fundamental Rights of the European Union (CFEU) which states:

1. *The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.*
2. *The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties*

The essence of this Article within the CFEU is to address EU institutions and to other Member States only when implementing EU law and must respect the rights and observe the principles and application of the CFEU. This legal argument is supported by President Ursula von der Leyen and European Commissioner Thierry Breton.[162] But while ASAP is a defence industry support measure not a human rights measure, the underlying influence that is driven by the President and the EU Commissioner is indeed by both humanitarian and human rights concerns as well. By invoking Article 51 of

[160] European Commission. (2023, October 18). *Commission supports the ramp-up of European ammunition and missiles production with first calls for proposals*. European Commission - European Commission. https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5105
[161] Ibid
[162] Ibid

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the CFEU, Thierry Breton is encapsulating ASAP to respect the fundamental rights as stated in Article 6(2) in the consolidated version of the Treaty on the European Union which details that "The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.".[163] This in turn creates a complimentary effect, because Article 51 is in line with and reinforces Article 6(2) of the Treaty on the European Union by ensuring that in practice that EU institutions remain bound by the fundamental right standards whenever they act as ASAP has shown. Article 51 operationalises the commitment of the EU to align with the ECHR and hence embedding human rights considerations into ASAP even when their primary focus is industrial and defensive. ASAP is evident as a response to the increasing human rights cases in Crime where the EU has drawn its attention following its joint statement on the Day of Resistance to Occupation of the Autonomous Republic of Crime and the City of Sevastopol.[164] Calling for respect of territorial integrity, accountability of human rights abuses in Crimea and the protection of Ukrainian identity.[165]

The EU is clear that their focus on Ukraine is paramount. The cross boundary of human rights with the geopolitical as well as resource concerned is evident. From a political lens, the EU neighbours an oligarchic-autocratic state that is

[163] TEU Article 6(2)
[164] EEAS Press Team. (2025, February 26). *Joint Statement following the meeting of the participants of the International Crimea Platform on the Day of Resistance to Occupation of the Autonomous Republic of Crimea and the City of Sevastopol*. EEAS https://www.eeas.europa.eu/eeas/joint-statement-following-meeting-participants-international-crimea-platform-day-resistance_en
[165]Ibid

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in contrast to their beacon of democracy and human rights. Oil is one factor.[166] Prior to the Russo-Ukrainian War, the EUs dependency on Russia's oil makes two major pipelines crossing Ukrainian territory back when Ukraine was still part of the Soviet Union.[167] Russian oil and gas which has supplied EU members through winters make up one third of the total oil and natural gas that has been fuelling EU member states. For the EU, the institution has noticed that the Russian government now holds a significant chip in the geopolitical forum. For each purchase of oil and gas originating from Russia, the EU indirectly funds the very state it tries to resist in Ukrainian soil. While sanctions on Russian oil and gas companies, the banking sector and Russian officials were enforced in the form of packages, they are and have to be motivated out of human rights interest. To argue on this, point the statement made by the President of the Commission regarding the shared democratic values echo that of Article 21(1) of the TEU which states:

> 1. *The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.*
> *The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first*

[166] Wolff, G. B. (2022). The EU without Russian oil and gas. *Intereconomics*, *57*(2), 66.
[167] Barabash, I. H., Serdiuk, O. V., & Steshenko, V. M. (2020). Ukraine in European human rights regime: Breaking path dependence from Russia. In *The EU in the 21st Century: Challenges and Opportunities for the European Integration Process* (pp. 247-270). Cham: Springer International Publishing.

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> *subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.*[168]

Actions guided by democracy, enlargement, the rule of law and human rights are the key driven factors for the EU to enforce its sanctions towards Russia. A key wording into this article is the "indivisibility" of human rights which suggests that politics and economic development cannot be excluded from the principles of human rights. Article 21 is lieu of the sanctions serves as the guiding mandate for the EU, it is an instrument to enforce and pressure Russia to reconsider its actions in Ukraine in which multiple human rights abuse cases such as the use of military drones targeting Ukrainian civilians in Kherson; the repeated use of prohibited weapons such as landmines and cluster munitions causing indiscriminate casualties in the 28 provinces in Ukraine; the illegal and arbitrary detainment of 14,000 Ukrainian civilians without legal due process and a registered total of 55,000 missing Ukrainians since the start of the war. A total of 18 packages of sanctions levelled against Russia was adopted as a unified effort from the EU to support the shared democratic values it has with Ukraine with the same subject of import bans of refined petroleum products and its latest transaction bans on the Russian Nord Stream 1 and 2.[169]

Politically, Ukraine is also seen as a struggle for the common democratic values against an autocratic state. In her State of the Union (SOTU) address,

[168] TEU Article 21(1)
[169] Bosse, G. (2022). Values, rights, and changing interests: The EU's response to the war against Ukraine and the responsibility to protect Europeans. *Contemporary security policy*, *43*(3), 531-546. See also, Pérez-Bernárdez, C. (2023). The human rights sanctions regime and the rule of law: towards a stronger European Union?. In *Enhancing the rule of law in the European union's external action* (pp. 132-161). Edward Elgar Publishing.

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the President of the EU Commission underscores the peril posed to democratic principles by Russia and advocates for the establishment of an open strategic autonomy via the strengthening of an EU normative authority that is founded upon and codified in its treaties, which articulate the core tenets of human dignity, democracy, equality, and the rule of law. [170]

Additionally, the case of EU's common foreign and security policy (CFSP) as well as the common security defence policy (CSDP) are centred around human rights principles of non-discrimination and. These policies are formed based on Article 2 of the Treaty on the European Union recalling:

> *"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."*[171]

Indicative, that the TEU establishes the foundational value creates an obligation that extends to all areas of EU activity similar to what has been mentioned in Article 51 of the CFEU. The attention of Ukraine is what initiated the CSDP operations because their objective aside from the political standpoint is also to address and engage in crisis situations where genocide, crimes against humanity and gross human rights violation become prevalent.[172] The concept of the CSDP particularly coincides with the principle of GNR because of its core mission in transitional justice

[170] Supra. Budiakivska, Y. (2024). *Foreign policy in the agenda of European Commission: case of Ukraine* (Doctoral dissertation, University of Warsaw)
[171] TEU Article 2
[172] Gorgiladze, M. (2024). Challenges of the Common Foreign and Security Policy of the European Union after Russia-Ukraine War. *Teisė*, *130*, 44-54.

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mechanisms relevant for the security and justice reforms. In lieu of Article 13 of the ECHR which grants a party or individual an effective remedy as a result of a violation of their rights before the ECHR, the CSDP presents GNR through their system of demobilisation, disarmament and reintegration, in this sense the EU has consolidated these three goals into DDR.[173] Because DDR must respect to the human right principle, the comprehensive approach thus prevents the recurrence of human rights abuses by addressing the institutional reforms.[174] Hence the utilisation of the EU's CSDP is shown in the Russo-Ukraine War. From the onset of the war the EU has mobilised 2 billion euros for military assistance to Ukraine. Former Vice-President of the European Commission and served as the High Representative of the Union for Foreign Affairs would also later comment that the EU has supported Ukraine in its war effort up until 2024 with a total of 45 billion euros as a result based of his comment two years ago that "Russia's ongoing illegitimate and unjustified war of aggression against Ukraine and its people brings further horrific atrocities day by day the European Union actively supports all measures to ensure accountability for human rights violations and violations of international humanitarian law".[175] In 2023 the EU revised the civilian CSDP mission's mandate and expanded the roles to support the rule of law and civilian resilience in Ukrainian territory. From 2023 to 2025, the EU

[173] Ibid
[174] Ibid
[175] EEAS Press Team. (2022, July 29). *Ukraine: Statement by the high representative Josep Borrell on the latest Russian atrocities*. EEAS. https://www.eeas.europa.eu/eeas/ukraine-statement-high-representative-josep-borrell-latest-russian-atrocities_en

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continues to refine their CSDP-related activities including their European Peace Facility and strategic initiatives in order to create a bulwark defence industry for crisis situations such as Ukraine.[176] Indeed, the CSDP revealed the EU's transitional justice mechanism is in need to be desired but the motive and the awakening call through the excessive financial and military aid to Ukraine not only showcases their commitment to GNR but present a unified front.

TWAIL scholars would contend this unified front to a human rights crisis in Ukraine compared to lack of unity in the case of Gaza ties back to the eurocentrism the EU provides. W.E.B Du Bois's double consciousness illustrates the EU's approach to Ukraine and in Gaza. Double consciousness, that is the experience of holding two conflicting identities simultaneously and perceiving oneself through the lens of a dominant force and often from an oppressive society. Here TWAIL scholars who have long struggled to be part of the international academic but recognised the discord between their emancipatory goals and the predatory nature of international law can be seen through the lens of the EU who, as an institution, with a sophisticated human rights mechanism has upheld their standards yet faced with the reality that their treatment towards the Palestinians in the OPT and in Gaza differently.[177]

Du Bois's double consciousness is then displayed in Josep Borrell's speech concerning the inaction of the human rights action in Gaza as:

[176] Gorgiladze, M. (2024). Challenges of the Common Foreign and Security Policy of the European Union after Russia-Ukraine War. *Teisė*, *130*, 44-54
[177] Bruce, D. D. (1992). WEB Du Bois and the idea of double consciousness. *American Literature*, *64*(2), 299-309.

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> *"This impertinent and positivity, in contrast to the vigour of our commitment in support of Ukraine, have often been perceived outside of the Union as the sign of double standard: in the eyes of Europeans, the lives of Palestinians would not be worth as much that of the Ukrainians".*[178]

This statement shows Josep Borell's reality of the EU despite the opposing statement made by the President. Josep Borell points his critique that the President and the policy she has passed for Ukraine as evident above puts the pedestal for Ukrainian lives higher and perceives the Ukrainian population as victims of aggression while failing to hold the same level sympathy for the Palestinians up until the recent temporary suspension of the EU-Israel free trade agreement.[179] While the speech made by the former Vice-President goes against the speeches made by the President at the Hudson institute shows the misalignment that "Vladimir Putin wants to wipe Ukraine from the map. Hamas, supported by Iran, wants to wipe Israel from the map. Shelter democracies we must"[180] it affirms the reality that the president engages in action predominantly in response to the international condemnation directed at Israel. It disempowers Palestinians from affirming their rightful claim to self-determination, particularly given the disproportionate power dynamics between Israel and Palestine, as recognized by UNGA Resolution 35/35, which acknowledges that the Israeli occupation of the West Bank and the extensive blockade of the Gaza Strip impede the Palestinian people's collective and persistent right to self-determination and liberty.[181]

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[178] Supra Note. 1
[179] Ibid
[180] European Commission. (2023, October 19). *Speech by President von Der Leyen at the Hudson institute*. European Commission - European Commission. https://ec.europa.eu/commission/presscorner/detail/en/speech_23_5162
[181] UNGA Resolution 35/35

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## C. He Who Formed the Voice: The Silence on Action in Gaza

> *"This is how colonialism works. It convinces us that the fallout from resistance is entirely our fault, that the immoral choice is resistance itself rather than the circumstances that demanded it."*[182]

Part C consolidates through the discussions of TWAIL scholars regarding the failings of the EEC and the EU's asymmetrical application to a human rights crisis. Within this section TWAIL Scholars critique on the flaw and issue of a supranational institution in dealing a human rights crisis outside of its economic and political border. It is imperative to note that below are a group of TWAIL scholars that belong to TWAIL II, a category of scholars that diagnose the power that international institutions and organisations have in interacting with international law and how these institutions exploit the flaws of international law in the oppression of weaker states.

The reflection from TWAIL scholars is grouped by their consensus that the current human rights regime strives as a paradox regarding its inception and its Western origins being applied to the non-Westerns. Noura Erakatt would point out the ultimate flaw regarding UNSC Resolution 242 resulting in the EEC to fall into the imperial pit the organisation tries to escape. Resolution 242's first fatal flaw lies in the ambiguity of the text. It was further compounded by the nature behind UNSC Resolution 242 in that it normalised Israel's establishment within the OPT. Noting further that the UNSC Resolution was designed to recognise Israel's right to exist but left the national rights of the Palestinian in question. Furthermore, UNSC Resolution 232 did not include the Palestinians nor were they able to

[182] Kuang, R. F. (2023). *Babel*

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contribute or give input but were only mentioned in passing as the "refugee problem".[183] For Noura Erakat UNSC Resolution 242 was seen as an already dictated resolution which gave Israel full authority of the terms and conditions and the results have shown that after the inception of UNSC Resolution 242, Israel justified its settler colonialism in the OPT and encircling the status of the OPT as *sui generis.* For the EEC to adopt UNSC Resolution 242 as the guiding framework for the peace process in the Middle East not only reveals the power imbalance between the Palestinians and Israel's political dominancy with the U.S and the EEC but reveals that the EEC were aware of regarding the status of UNSC Resolution 242. Hence reinforcing what TWAIL scholars have already argued regarding the 'governance project' through the international mechanisms rather than the 'freedom project'.

TWAIL scholars Ray Murphy, Anita Ferrara and Susan Power also encapsulates the oppression of the Palestinians under international law and how the countries and hegemonic supranational states such as the EU who advocate for the Oslo Accords are in the same vein refuse to recognise a Palestinian statehood—and profiteering from Israel's exploitation of Palestinian resources.[184] They have concluded that the formulation of international law was not a 'neutral discipline' but a 'naked power' designed to put a foothold in non-Western states. Reached to the same conclusion that the inequalities between Ukraine and in the OPT is clear. Where Ukraine receives the support of its allies from the EU and the U.S in the

[183] Erakat, N. (2020). *Justice for some: Law and the question of Palestine*. Stanford University Press.
[184] Murphy, R., Ferrara, A., & Power, S. (2023). The Occupation of Palestine from a TWAIL Lens. In *Prolonged Occupation and International Law* (pp. 52-68). Brill Nijhoff.

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backing of sanctions, any move holding Israel accountable was more reserved from the EU and its members and the U.S. For Palestine the call for sanctions towards Israel in 2020 did not garner the same level of support as it did with Russia. Furthermore, they have mentioned regarding the status of powerful states such in the scope of international law who criticise that for these states, international law has become an *a la carte* choosing which international law benefits them. In part A it has been discussed regarding the rebranding of the EEC and its attempt to unshackle itself from its imperial roots however through Murphy's, Ferrara's and Power's claim regarding the status of international law as a 'naked power' confirmed through the law itself reconstructed the EEC's shadow of imperialism into an economic and legal governance whereby the priorities of the EEC comes first and when such human rights issue arise and for the EEC to step forward, it is only followed by pressure of another powerful hegemonic state. In part B the '*a la carte'* is more prominent applying or ignoring legal norms based on interest. Only until recently in which the EU decided to pursue legal steps in temporarily suspending its trade agreement with Israel, prior to this the EU has only been lacking in terms of the financial and direct political aid towards the Palestinians compared to Ukraine as so far as to directly avoid strict condemnation towards Israel until the International Association of Genocide Scholars conclude and finalised to what Israel is conducting in the OPT meets the legal definition of genocide based out under the UN Convention on the Prevention and Punishment of the Crime of Genocide.[185] For Ray Murphy, Anita Ferrara and

[185] *IAGS Resolution on the Situation in Gaza*. (2025, July 28). genocidescholars.org. https://genocidescholars.org/wp-content/uploads/2025/08/IAGS-Resolution-on-Gaza-FINAL.pdf

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Susan Power, they are critiquing how an supranational institution can selectively enforce international legal norms to preserve the integrity of the institution whilst resulting in systematic inequality in the treatment of the Palestinians in comparison to Ukraine. Hence it answers the general question regarding the universality and legitimacy of the international human rights regime as a result of this selective use.

Rimona Afana concluded in her paper regarding the occupation and colonisation:

> *"The colonial nature of international law and the inconsistent ways in which it is applied leave illusory solutions for the weak and indefinite loopholes for the powerful. The brutality and impunity of Israel's occupation are thus part of a wider discussion about the changing nature of crime, the limitations and fragility of international law, and the geo-political agendas shaping repair."*[186]

Rimona Afana's observation regarding the occupation and colonisation is not dissimilar with previous TWAIL scholars. Afana points to what previous TWAIL scholars have indicated, that international law is shaped by the geo-political agendas proven in both parts A and B in which the EEC and the EU respectively act upon its geopolitical needs. Oftentimes, these geopolitical needs rarely consider the human rights aspect and in cases where transitional justice is called for such as GNR, those considerations are outweighed by its personal needs. Such goals for an economic enterprise from the EEC and EU would also be shown through Antony Anghie who quoted:

[186] Afana, R. (2023). The occupation–colonialism continuum: Impact on transitional justice in Palestine/Israel. In *Prolonged occupation and international law* (pp. 133-158). Brill Nijhoff.

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> *"The explicit association between governance and commerce was gradually elaborated over time to establish a more morally nuanced justification for commerce and colonialism, after the decline of trading companies and the direct engagement of European governments in imperial enterprise"*[187]

Here, Antony Anghie is describing the veil of modern international law and the current hegemonic states who utilise international law to its own goals. For the EEC and the EU these centres around the EU-Israel Free Trade Agreement and the subsequent temporary suspension based under Article 2 of the agreement which requires for the respect of international human rights principles under international law. Understanding that Article 2 of the EU-Israel Free Trade agreement must comply with international human rights standards, the Article can be seen as only a façade towards a reality. The EEC was willing to compromise with a colonial state i.e through the London Declaration and the Schumann Document on the conditions that Israel comply with international human rights standards if Israel were to be integrated to the EEC market. Hence then as discussed in part A, would reinforce Bofill's claim that the EEC is only reinforcing a post-colonial order set out to compromise those who are oppressed by the international legal system. It is only compounded by the reality that this agreement albeit principled by Article 2 deprives the Palestinian of a socio-economic equality under Article 2 of the UDHR along with Article 14 of the EU's own ECHR both calling for the enjoyment of rights and freedoms without discrimination on grounds of political, social origin or other status. Evidently shown that after the Venice Declaration any products coming from

[187] Anghie, A. (2007). *Imperialism, sovereignty and the making of international law* (Vol. 37). Cambridge University Press.

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Israel must be labelled determining the precise origin if it came from Israel proper or from the OPT. The solution does not target the problem whereby the solution of labelling a product stemming from the OPT does not solve the deprivation of socio-economic rights compounded by the reality that within the OPT these products come at the expense of Palestinian expulsion by violent Israeli settlers, which the EU has recently placed sanctions towards.

Steve Crawshaw's observations on both Ukraine and in Gaza showcase the dangers of such selective approach to justice, he argued that such approach creates victims of unintended consequences. Pointing out while Western governments were in full support of condemning Russia in its invasion and human rights atrocities, Steve Crawshaw points out the "bent over back-wards to avoid criticising Israel".[188] The effects are detrimental not only for those in the OPT but holding accountability between Russia and Ukraine as well. Steve Crawshaw draws the correlation between the reservedness of the West in its response to Gaza, Russia and its leader would resume its own crimes against Ukrainian soil. He points out the similar attitudes to which Russia is behaving similar to Israel: A colonialist. That through his observation from president Zelensky who modern colonialism that divides states. In correlation to the EU's staunch and heavy support to Ukraine it is clear that modern colonialism is at its backdoor however the same can be true with Israel a state integrated with the EU can be seen as a colonial encroachment through the EU's backdoor. Steve Crawshaw is signalling if the EU continued its behaviour in tolerating the crimes committed in Gaza prior

[188] Crawshaw, S. (2025). *Prosecuting the Powerful: War Crimes and the Battle for Justice*. Bridge Street Press.

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to the temporary suspension of the EU-Israel Free Trade Agreement it will only embolden other hegemonic states to act within its vested powers to pursue its confidence in encroaching upon other states rights and the human rights violations that could follow.[189]

Conclusively, what TWAIL scholars have drawn and how through the EU and its predecessor the EEC knots back through the selective use of the universality of the international human rights mechanism. One, that there is a continuity of imperialism guised in the law and governance. Second, the current international law in its broadness, not excluding the current international human rights law is treated as an *a la carte*, a pick and chosen by hegemonic states to suit its interests in empowering itself or to empower its allies. Third, the selective use of human rights undermines the universality and legitimacy, with the EU treating asymmetrically in Ukraine and in the OPT, it reveals the conditional and an ironic contradiction, approach to the universality of human rights. The universality of human rights is only applied when the political needs are met. Taken together, these results substantiate the assertion of the remnants of imperialism existing within the external-relations framework of the EU which universalises EU norms while applicating a selective standard and the EU's human rights initiatives only perpetuate a hierarchy rather than facilitating an equitable transitional justice as well as emboldening states actively pursuing other states sovereignty and committing human rights abuses.

[189] Ibid

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# CHAPTER V

# CONCLUSION AND RECOMMENDATION

*"…there is no such thing as humane colonization."*[190]

## A. Conclusion

Points can be drawn based on the historical and comparative analysis it is clear that what the EU is projecting is similar to that of their colonial ancestors. This research has demonstrated that the EU, despite the sophisticated legal and institutional framework, continues to exhibit selective enforcement of international human rights law particularly in its treatment of the Palestinian crisis compared to its response to the war in Ukraine. The most compelling conclusion throughout this research is the EU's attempt to break away from the ouroboros of its imperial past evident in their attempts to fully recognise and cooperate with the Palestinian people in establishing an independent state and as so far as to condemn an apartheid state for their illegal occupation within the OPT. The ouroboros is only consumed by another ouroboros of economic geopolitical interest that consumes and takes part in the wheel in which the EU desperately hopes to unshackle from its imperial sins. The London, Venice Declarations are the earlier indications of these attempts. While these attempts were driven not by altruistic intentions and certainly not purely out of the interest of a freedom project, it cannot be denied however that these actions represent a shifting movement of the EU of decolonising itself from its original sins of its member

[190] Kuang, R. F. (2023). *Babel*

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states who have perpetuated imperialism and colonialism to its former colonies. But in the same vein it cannot be ignored and must duly point out that the EU and its predecessor the EEC were critiqued for creating almost a habitat for former imperial states to project its economic and political power to the Global South and particularly the Palestinians. Yet when it comes to the issue of Ukraine shows a different face and narrative through the financial, military and legal mechanisms. Such a façade when the value of human life is immeasurable needs to be a reflection for the EU in counter measuring the encroachment of its imperial shadow. The theoretical framework from TWAIL and not limited to Makau Mutua, Héctor Lopez Bofill, Ratna Kapur has already provided an instrument exposing the EEC and the EU's human rights regime as more of a governance project than a freedom project which reinforces a global hierarchy rather than dismantling them. Through TWAIL, the EU that plays the part of a moral commendatore exposes the selective use of international human rights law down to the regional human rights mechanism thus undermining the universality of human rights to which they have championed in regional human rights conventions. The asymmetry between Gaza and in Ukraine is the result of the EU's legacy of imperialism.

## B. Recommendation

The residue of which needs to be cleaned can only happen if the EU presents a common and unified front in order to contribute to international human rights issues and crucially in Palestine. Hence several determining recommendations to steer the course of the EU's legitimacy of its human rights

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mechanism and restore the institution's position not only as a moral commendatore but to also live up to their reputation for having sophisticated and efficient human rights mechanisms.

One, it is pertinent that the EU must further investigate the effectiveness and the equality of its foreign security policy and their commitment to the established declarations. It has been mentioned before regarding the extent that the Venice Declaration had on the peace process for the Palestinian issue and the extent it has taken in order for the establishment of a recognised, legitimate, and stable statehood. But considering that it has been more than 30 years since the Venice Declaration took place and no Palestinian statehood established, the EU must take another introspection to consider whether they need to recommit to the Venice Declaration or renew and establish a declaration that pushes the limits by expressing an explicit guarantee for an independent Palestine, this new declaration must recommit to the principles of human rights specifically on non-discrimination and GNR in order for an equitable transitional justice followed by a periodic inspection in order to reinforce their commitment rather than repeating the same level of tokenism it has before hence an establishment of an oversight body that is neutral to the biases of EU political forum and consist of international human rights scholars from a diverse school of thought that is both critical of the EU foreign security policies and their achievements and anti-euro centrist for the EU to unshackle itself from its original sin and façade. Furthermore, the establishment of a Palestinian statehood must be non-negotiable. Such declaration alone must include measures that hold Israel accountable and in

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line with previous ICJ case considering the illegality of the occupation and settlement and incitements to genocide in the OPT including the Gaza strip as mentioned in the *South Africa v. Israel* on the Application of the Convention on the Prevention and Punishment of the Crime and Genocide in the Gaza Strip. These accountabilities must include preventive measures towards the current Israeli government and must apply the same continued pressure that it has back in early September with the same level of sanctions that it has levelled to Moscow and redirect a symmetrical application of packaged sanctions towards Tel Aviv.

Second, recalling that the EU has enforced temporary suspension on the EU-Israel Free Trade Agreement, the suspension and sanctions must also encapsulate those complicit outside of the Israeli government and settlers and push forwards for sanctions against private companies complicit in financing Israel's war machine in the Gaza Strip. Likened to the dependency of oil with Russia, and their ability to find alternative oil and gas resources, the EU must apply the same level resolution by reducing its economic reliance with Israel in terms of goods and services. Realising that between Russia and Israel has the same level of power dynamic towards Ukraine and the Palestinians, the EU must urgently further diversify its economic agreements as well as further cooperation with states and NGOs to address the human rights crisis in the OPT. Geopolitical interest within the EU cannot take precedence over the value of human casualties, the moral and altruistic compass cannot be derailed because of the comfort of the people who benefit from the genocide inflicted towards the Palestinians. Because if the EU is willing to suffer the same experiences it had when it came to the sanctions of

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Russian oil and natural gas, then it can suffer the same level of experience it will have when it comes to any proposed packages towards Israel.

Third, TWAIL and Anti-colonialist scholars must advocate for the EU's role in decolonizing the international human rights regime. Bofill critiques the EU's foundational flaws within the economic dynamics of the Palestinian issue. The EU's financial tendencies are unmistakable, but the intricate nature of geopolitical conversations surrounding human rights complicates the sincere effort for peace for Palestinians. TWAIL perspectives should view recent EU initiatives as temporary, necessitating structural reforms for universality. Part A highlighted the imperial roots of EU policies, while Part B exposed their uneven application in contemporary contexts, offering two pivotal insights for EU policymakers. The EU may utilize legal frameworks to support Palestinians, yet these measures do not address the systemic issues inherent in international law that marginalizes those lacking legal power. Reforms must directly confront the colonial tendencies within the EU's human rights approach. The EU's efforts must be acknowledged despite political and economic limitations. However, such tribalism is untenable. If the EU views Ukraine favorably in its pursuit of membership while condemning Russia, the criteria for human rights become contingent on perceived value, undermining the principles of universality and legitimacy in international law.

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