

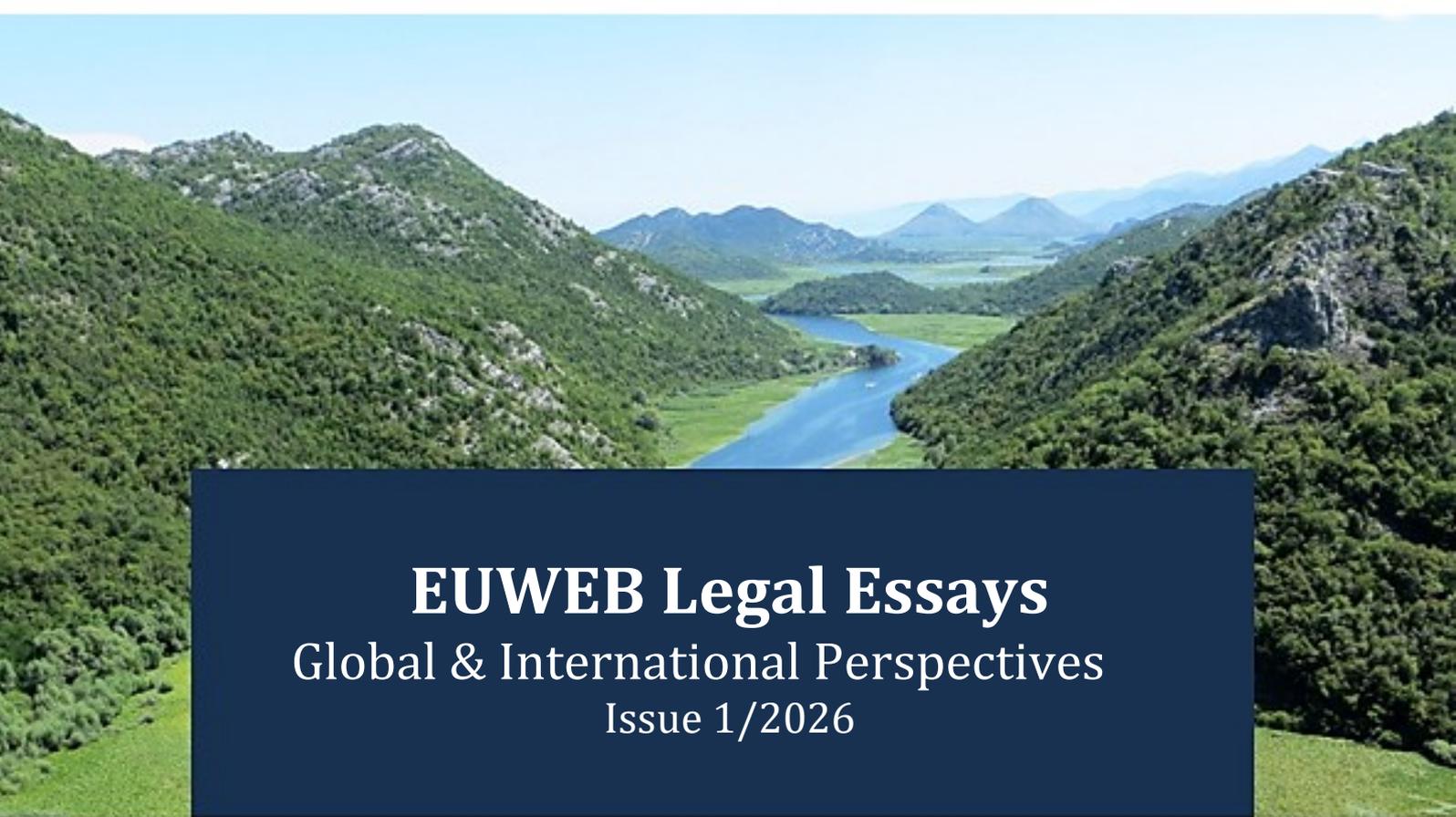
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THE PARTIAL SUSPENSION OF THE EU-ISRAEL
ASSOCIATION AGREEMENT: THE INADEQUACIES OF THE EC'S PROPOSAL
AND THE CRITICAL ISSUES ARISING FROM ITS NON-ADOPTION

*by Gabriele Rugani**

SUMMARY: 1. Introduction: Preliminary Remarks and Aims of the Contribution. – 2. The EU-Israel Association Agreement: The Relevant Provisions. – 3. The EU-Israel Association Agreement: The Critical Issues That Have Already Arisen in the Past (Follows). – 4. The European Commission's Proposal of 17 September 2025: Its Background and Its Content. – 5. The Unjustified Delay in Presenting the Proposal and the Fallacy of the Unanimity Argument. – 6. The Limits of the Proposed Measures and Their Underlying Causes. – 7. The Reasons Why More Far-Reaching Measures Would Have Been Desirable (Follows). – 8. The Critical Issues Arising from the Failure to Adopt the EC's Proposal in Light of the Persisting Violations of International Law by Israel. – 9. Concluding Remarks: The Priority Given to Political Interests over Human Rights of the Palestinian People and the Inconsistency with EU Treaties.

1. Introduction: Preliminary Remarks and Aims of the Contribution

The present article will focus on the Proposal for a Council Decision “*on the suspension of certain trade-related provisions of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part*”, presented by the European Commission (EC) on Wednesday 17 September 2025¹.

More specifically, the aim of the article will be to answer a precise research question: whether such an initiative may be regarded as an adequate response by the European Union (EU) to the ongoing situation in Palestine, namely in the Gaza Strip, which has been qualified by several authoritative voices as a “*genocide*” committed by the State of Israel (as will be discussed in greater detail below).

For the purpose of addressing such question, preliminary, an analysis of the EU-Israel Association Agreement will be undertaken, with particular emphasis on the provisions of greatest relevance to the present discussion. It will be highlighted how, in relation to the Agreement, significant objections have already emerged in the past, including explicit calls for its suspension.

At this stage, the Proposal for the partial suspension of the EU-Israel Association Agreement, presented by the Commission on 17 September 2025, will be examined, with reference both to its background and to its content.

It will then be possible to consider the critical issues of the EC's Proposal. Firstly, it will be noted that it was submitted with an unjustifiable delay, especially in light of the warnings issued already in 2024 by international courts, UN experts and recognised Non-Governmental Organisations (NGOs). In particular, attention will be paid to the fallacy

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¹ Proposal for a Council Decision *on the suspension of certain trade-related provisions of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part*, of 17 September 2025, COM(2025) 890 final.

of the unanimity argument. Secondly, the limits of the measures contained therein will be highlighted: in this regard, the causes underlying those limits will be examined, but it will also be explained why – according to several authoritative voices, *e.g.* NGOs, prominent figures and certain EU Member States – such limits render the Proposal inadequate, so that more far-reaching measures would have been desirable. Thirdly, the reasons why the Proposal may never see the light of day will be outlined, as well as the serious problems that would arise from its non-adoption. Finally, it will be possible to attempt to answer the abovementioned research question by offering some concluding remarks.

Before beginning the analysis, however, a methodological clarification is necessary: this contribution will focus exclusively on the EC’s Proposal for the partial suspension of the EU-Israel Association Agreement; other sanctioning measures against Israel envisaged by the Commission, such as sanctions on extremist ministers and violent settlers², as well as the Proposal for a Council Decision “*on the partial suspension of the Agreement between the European Union, of the one part, and Israel, of the other part, on the participation of Israel in the Union programme Horizon Europe – the Framework Programme for Research and Innovation*”, presented by the European Commission on Monday 28 July 2025³, will not be addressed in this article.

2. The EU-Israel Association Agreement: The Relevant Provisions

As well known, according to art. 217 of the Treaty on the Functioning of the European Union (TFEU), “[t]he Union may conclude with one or more third countries or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure”. The Court of Justice of the European Union (CJEU) further clarified that an association agreement creates “*special, privileged links with a non-member country which must, at least to a certain extent, take part in the Community system*”⁴: the distinctive feature of such instrument, therefore, is that it establishes a privileged relation under public international law between the EU and its counterpart⁵.

Among the Association Agreements concluded by the EU, there is also the “*Euro-Mediterranean Agreement*” with Israel⁶. The latter entered into force in June 2000⁷ and its aims are “*to provide an appropriate framework for political dialogue, allowing the development of close political relations between the Parties*”; “*to promote the harmonious development of economic relations between the Community and Israel and*

² On the point see, for instance, the webpage of the European Commission’s official website entitled “*Commission proposes suspension of trade concessions with Israel and sanctions on extremist ministers of the Israeli government and violent settlers*”, available at the following link: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2112.

³ Proposal for a Council Decision, *on the partial suspension of the Agreement between the European Union, of the one part, and Israel, of the other part, on the participation of Israel in the Union programme Horizon Europe – the Framework Programme for Research and Innovation*, of 28 July 2025, COM(2025) 620 final.

⁴ Court of Justice of the European Union, Judgment of 30 September 1987, Case C-12/86, *Demirel v. Stadt Schwäbisch Gmünd*, ECLI:EU:C:1987:400, para. 9.

⁵ On the point see P. VAN ELSUWEGE, M. CHAMON, *The meaning of ‘association’ under EU law: a study on the law and practice of EU association agreements*, Brussels, 2019, p. 11; R. ADAM, A. TIZZANO, *Manuale di diritto dell’Unione europea. Quarta edizione*, Torino, 2024, pp. 898-900.

⁶ Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, in OJ L 147, of 21 June 2000.

⁷ On the point see, for instance, the webpage of the European Commission’s official website dedicated to the “*EU-Israel Association Agreement*”, available at the following link: <https://trade.ec.europa.eu/access-to-markets/en/content/eu-israel-association-agreement>.

thus to foster in the Community and in Israel the advance of economic activity, the improvement of living and employment conditions, and increased productivity and financial stability"; *"to encourage regional cooperation with a view to the consolidation of peaceful coexistence and economic and political stability*"; and *"to promote cooperation in other areas which are of reciprocal interest"* (art. 1, para. 2).

More specifically, the Agreement regulates the following matters: political dialogue (Title I); free movement of goods (Title II); right of establishment and supply of services (Title III); capital movements, payments, public procurement, competition and intellectual property (Title IV); scientific and technological cooperation (Title V); economic cooperation (Title VI); cooperation on audiovisual and cultural matters, information and communication (Title VII); social matters (Title VIII). At the end, there are some institutional, general and final provisions (Title IX). Various Annexes and Protocols follow.

For the purposes of this article, two provisions are particularly relevant.

The first one is art. 2, which reads as follows: *"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"*. Therefore, since respect for human rights is classified as an essential element, its violation constitutes a material breach, which the EU may invoke to suspend or even terminate the application of the Agreement itself⁸.

The second one is art. 79, para. 2, included among the institutional, general and final provisions, the text of which is as follows: *"If either Party considers that the other Party has failed to fulfil an obligation under the Agreement, it may take appropriate measures (...) In the selection of measures, priority shall be given to those which least disturb the functioning of the Agreement (...)"*.

3. The EU-Israel Association Agreement: The Critical Issues That Have Already Arisen in the Past (Follows)

It cannot be overlooked that, over the years, the EU-Israel Association Agreement has often raised significant objections and, more specifically, various actors have been calling for its suspension for a long time – well before 7 October 2023 – due, among other reasons, to the illegal occupation of the Palestinian Territory and the systematic discrimination against Palestinians by Israel⁹.

⁸ In this regard see, for instance: L. BARTELS, *A Legal Analysis of Human Rights Clauses in the European Union's Euro-Mediterranean Association Agreements*, in *Mediterranean Politics*, Vol. 9, n. 3, 2004, pp. 368-395; N. HACHEZ, *"Essential Elements" Clauses in EU Trade Agreements Making Trade Work in a Way that Helps Human Rights?*, in *Cuadernos Europeos De Deusto*, n. 53, 2015, pp. 81-106; L. BARTELS, *Assessment of the implementation of the human rights clause in international and sectoral agreements*, Brussels, 2023.

⁹ See for instance: M. VIEGAS, *Parliamentary question – E-006776/2014. Human rights in Israel*, of 10 September 2014, according to which: *"In recent decades the EU has developed a number of cooperation agreements with the State of Israel, relating to trade, culture, science and military affairs. These treaties, in particular the EU-Israel Action Plan and the Euro-Mediterranean Association Agreement, have always been underpinned by specific clauses establishing as prerequisites for their validity respect for human rights, recognition by Israel of the Palestinian State and its compliance with the main United Nations Security Council resolutions on the topic, particularly regarding the 1966 borders (Resolution 242). Given that there has been a total lack of compliance with these clauses in recent years, and particularly in recent months, with the crimes committed in Gaza by the Israeli army and further influxes of settlers to the West Bank (Jerusalem and Bethlehem), how does the Commission view this situation and what steps does it*

With regard to the illegal occupation of the Palestinian Territory, it should be recalled that from a legal point of view a territory is considered occupied when it is actually placed under the authority of the hostile army – according to art. 42 of the Hague Regulations¹⁰, which reflects customary international law¹¹ – and that the West Bank, East Jerusalem and the Gaza Strip are occupied since the 1967 Six-Day War¹². The unlawfulness of the Israeli occupation – as well as of related Israeli policies and practices, such as the construction and expansion of settlements, the transfer of Israeli settlers, the confiscation of land, the demolition of homes and the displacement of Palestinian civilians – has been consistently affirmed, *inter alia*, by several resolutions of the United Nations Security Council¹³ and General Assembly¹⁴, and by advisory opinions of the International Court

intend to take regarding the various partnership agreements with Israel?"; J. FERREIRA, I.C. ZUBER, M. VIEGAS, Parliamentary question – E-008366/2014. Suspension of the EU-Israel Association Agreement, of 23 October 2014, according to which: "A number of organisations which express solidarity with the Palestinian people and the hope that a fair and lasting peace can be achieved in the Middle East have called for the suspension of the EU-Israel Association Agreement, since the principles underpinning its establishment have been blatantly violated. Among other aspects, the Agreement refers to 'the importance which the Parties attach to (...) the principles of the United Nations Charter, particularly the observance of human rights and democracy, which form the very basis of the Association'. Further to Written Question E-006776/2014, can the Commission provide the following information: 1. What specific measures has it taken or does it intend to take in response to the continuous violation by Israel of the human rights of the residents of the Occupied Palestinian Territories, the discriminatory treatment by Israel of its own citizens of Arab origin, its total disregard for the United Nations' resolutions and the political destabilisation of the region through Israel's constant military attacks on other countries? 2. Does it not consider that Israel shows no respect for the terms of the Agreement and is opposed to the humanitarian values professed by the EU and its Member States? 3. What decision does it intend to take regarding the funding of scientific cooperation programmes which help to develop Israel's military industry?"

¹⁰ The Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex, 1907, Annex to the Convention: Regulations respecting the Laws and Customs of War on Land, art. 42, according to which: "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised".

¹¹ In this regard see, for instance: M. LONGOBARDO, *The Use of Armed Force in Occupied Territory*, Cambridge, 2018, p. 29.

¹² On the point see, for instance: M. LONGOBARDO, *The Use of Armed Force*, cit., p. 10.

¹³ See for instance: UN Doc S/RES/242(1967) of the United Nations Security Council, *Resolution 242 (1967) adopted by the Security Council at its 1382nd meeting*, of 22 November 1967; UN Doc S/RES/298(1971) of the United Nations Security Council, *Resolution 298 (1971) adopted by the Security Council at its 1582nd meeting*, of 25 September 1971; UN Doc S/RES/338(1973) of the United Nations Security Council, *Resolution 338 (1973) adopted by the Security Council at its 1747th meeting*, of 22 October 1973; UN Doc S/RES/446(1979) of the United Nations Security Council, *Resolution 446 (1979) adopted by the Security Council at its 2134th meeting*, of 22 March 1979; UN Doc S/RES/452(1979) of the United Nations Security Council, *Resolution 452 (1979) adopted by the Security Council at its 2159th meeting*, of 20 July 1979; UN Doc S/RES/465(1980) of the United Nations Security Council, *Resolution 465 (1980) adopted by the Security Council at its 2203rd meeting*, of 1 March 1980; UN Doc S/RES/476(1980) of the United Nations Security Council, *Resolution 476 (1980) adopted by the Security Council at its 2242nd meeting*, of 30 June 1980; UN Doc S/RES/478(1980) of the United Nations Security Council, *Resolution 478 (1980) adopted by the Security Council at its 2245th meeting*, of 20 August 1980; UN Doc S/RES/2334 (2016) of the United Nations Security Council, *Resolution 2334 (2016) adopted by the Security Council at its 7853rd meeting*, of 23 December 2016.

¹⁴ UN Doc A/RES/ES-10/15 of the United Nations General Assembly, *Resolution adopted by the General Assembly: Advisory opinion of the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian territory, including in and around East Jerusalem*, of 2 August 2024; UN Doc A/RES/ES-10/24 of the United Nations General Assembly, *Resolution adopted by the General Assembly: Advisory opinion of the International Court of Justice on the legal consequences arising from Israel's policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and from the illegality of Israel's continued presence in the Occupied Palestinian Territory*, of 18 September 2024.

of Justice (ICJ), in particular the Advisory Opinion of 9 July 2004 on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory¹⁵ and the Advisory Opinion of 19 July 2024 on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem¹⁶ (which will be referred to repeatedly in the course of the analysis). It is also essential to specify that in legal terms the Gaza Strip remained continuously under occupation even after the withdrawal of the Israeli forces in 2005, pursuant to the so-called Disengagement Plan: indeed, if a hostile state manages to maintain its authority over the occupied territory even in the absence of its own troops on the ground, then the situation should be considered as an occupation, and, in the case of the Gaza Strip, Israel always maintained total control over several aspects, such as the borders of the area, the territorial sea, the airspace, and the supplies of water and electricity¹⁷. This position is supported not only by legal scholars¹⁸, but also by a wide range of international institutions, such as the Security Council¹⁹, the General Assembly²⁰, the International Criminal Court (ICC)²¹, the International Committee of the Red Cross²² and also the ICJ, namely in the abovementioned Advisory Opinion of 19 July 2024²³.

With regard to the systematic discrimination against Palestinians by Israel, instead, it is worth remembering that such discrimination is so severe that it even amounts to the

¹⁵ International Court of Justice, Advisory Opinion of 9 July 2004, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.

¹⁶ International Court of Justice, Advisory Opinion of 19 July 2024, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory*.

¹⁷ On the point see, for instance: M. LONGOBARDO, *The Use of Armed Force*, cit., pp. 36-38.

¹⁸ On the point see also: Y. DINSTEIN, *The International Law of Belligerent Occupation*, Cambridge, 2009; S.S. JABER, I. BANTEKAS, *The Status of Gaza as Occupied Territory under International Law*, in *International & Comparative Law Quarterly*, Vol. 72, n. 4, 2023, pp. 1069-1088; M. LONGOBARDO, *Brevi riflessioni sull'uso della forza nella recente escalation del conflitto israelo-palestinese*, in *SIDIBlog*, 15 October 2023.

¹⁹ UN Doc S/RES/1860(2009) of the United Nations Security Council, *Resolution 1860 (2009) adopted by the Security Council at its 6063rd meeting*, of 8 January 2009.

²⁰ UN Doc A/RES/64/94 of the United Nations General Assembly, *Resolution adopted by the General Assembly: Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem*, of 10 December 2009.

²¹ International Criminal Court – The Office of the Prosecutor, *Situation on Registered Vessels of Comoros, Greece and Cambodia. Article 53(1) Report*, of 6 November 2014, para. 16, according to which: “(...) the prevalent view within the international community is that Israel remains an occupying power under international law, based on the scope and degree of control that it has retained over the territory of Gaza following the 2005 disengagement (...)”.

²² P. MAURER, *Challenges to international humanitarian law: Israel's occupation policy*, in *International Review of the Red Cross*, Vol. 94, n. 888, 2012, pp. 1503-1510, at p. 1508, according to which: “(...) Even though Israel has not had a permanent presence in Gaza since its official disengagement in 2005, it has in fact maintained effective control over the Strip and its borders since 1967. In addition, it has employed various coercive measures that continue to impede the Strip's development. These closure measures have severely limited economic and social contacts with the West Bank, and undermined efforts to stabilise the social situation. They have also impeded efforts to build proper democratic institutions across areas under Palestinian administrative authority. In the ICRC's view, Israel continues to be bound by obligations under occupation law that are commensurate with the degree to which it exercises control (...)”.

²³ International Court of Justice, Advisory Opinion of 19 July 2024, cit., para. 93, according to which: “Based on the information before it, the Court considers that Israel remained capable of exercising, and continued to exercise, certain key elements of authority over the Gaza Strip, including control of the land, sea and air borders, restrictions on movement of people and goods, collection of import and export taxes, and military control over the buffer zone, despite the withdrawal of its military presence in 2005. This is even more so since 7 October 2023”; para. 94, according to which: “In light of the above, the Court is of the view that Israel's withdrawal from the Gaza Strip has not entirely released it of its obligations under the law of occupation. Israel's obligations have remained commensurate with the degree of its effective control over the Gaza Strip”.

crime against humanity of “*apartheid*”, according to (among others) recognised human rights NGOs (in particular, Amnesty International²⁴ and Human Rights Watch²⁵, but also the Israeli ones Yesh Din²⁶ and B’Tselem²⁷), UN bodies²⁸ and authoritative literature²⁹. Such crime consists in the commission of inhumane acts in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group³⁰, and is regulated by several international law instruments: in particular, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)³¹, the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid³² and the 1998 Rome Statute of the International

²⁴ AMNESTY INTERNATIONAL, *Israel’s apartheid against Palestinians: a cruel system of domination and a crime against humanity*, of 1 February 2022.

²⁵ HUMAN RIGHTS WATCH, *A Threshold Crossed Israeli Authorities and the Crimes of Apartheid and Persecution*, of 27 April 2021.

²⁶ YESH DIN, *The Israeli Occupation of the West Bank and the Crime of Apartheid*, of 9 July 2020.

²⁷ B’TSELEM, *A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid*, of 12 January 2021.

²⁸ In this regard see, for instance: UN Doc CERD/C/ISR/CO/14–16 of the Committee on the Elimination of Racial Discrimination, *Concluding observations: Israel*, of 9 March 2012, para. 24, according to which: “*The Committee is extremely concerned at the consequences of policies and practices which amount to de facto segregation, such as the implementation by the State party in the Occupied Palestinian Territory of two entirely separate legal systems and sets of institutions for Jewish communities grouped in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand. The Committee is particularly appalled at the hermetic character of the separation of two groups, who live on the same territory but do not enjoy either equal use of roads and infrastructure or equal access to basic services and water resources. Such separation is concretized by the implementation of a complex combination of movement restrictions consisting of the Wall, roadblocks, the obligation to use separate roads and a permit regime that only impacts the Palestinian population (art. 3 of the Convention)*”.

²⁹ In this regard see, for instance: J. DUGARD, J. REYNOLDS, *Apartheid, International Law, and the Occupied Palestinian Territory*, in *The European Journal of International Law*, Vol. 24, n. 3, 2013, p. 912, according to which: “*(...) On the basis of the systemic and institutionalized nature of the racial domination that exists, there are indeed strong grounds to conclude that a system of apartheid has developed in the occupied Palestinian territory. Israeli practices in the occupied territory are not only reminiscent of – and, in some cases, worse than – apartheid as it existed in South Africa, but are in breach of the legal prohibition of apartheid (...)*”.

³⁰ On the point see, for instance: G. KEMP, *The Crime of Apartheid*, in S. SAYAPIN, R. ATADJANOV, U. KADAM, G. KEMP, N. ZAMBRANA-TÉVAR, N. QUÉNIVET (eds.), *International Conflict and Security Law*, The Hague, 2022, pp. 1073-1091; M. JACKSON, *The Definition of Apartheid in Customary International Law and the International Convention on the Elimination of All Forms of Racial Discrimination*, in *International & Comparative Law Quarterly*, Vol. 71, n. 4, 2022, pp. 831-855; G. KEMP, W. NORTJE, *Prosecuting the Crime against Humanity of Apartheid: The Historic First Indictment in South Africa and the Application of Customary International Law*, in *Journal of International Criminal Justice*, Vol. 21, n. 2, 2023, pp. 405-430.

³¹ International Convention on the Elimination of All Forms of Racial Discrimination, 1965, art. 3, according to which: “*States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction*”.

³² International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973, art. II, according to which: “*For the purpose of the present Convention, the term ‘the crime of apartheid’, which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them: (a) Denial to a member or members of a racial group or groups of the right to life and liberty of person: (i) By murder of members of a racial group or groups; (ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment; (iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups; (b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their*

Criminal Court³³. In particular, it can be stated that Israel has created and is maintaining – and has been doing so for decades – such a system of oppression and domination over Palestinians due to the presence of the following key components: territorial fragmentation; segregation and control; dispossession of land and property; denial of economic and social rights; forcible transfers; administrative detention and torture; unlawful killings; denial of basic rights and freedoms; persecution³⁴. More recently, and notably in the cited Advisory Opinion of 19 July 2024, even the International Court of Justice found that such policies and practices implement a “*separation*” between the Palestinian population and the Israeli one³⁵.

What has just been illustrated, therefore, allows us to understand the reasons why the EU-Israel Association Agreement has been so harshly criticised – and has even been the subject of calls for suspension – long before 7 October 2023. However, at the level of the EU institutions, only the Court of Justice appears to have taken a firm stance on the matter, at least with regard to the export and the labelling of goods produced in the Occupied Palestinian Territory³⁶.

In particular, it is worth mentioning the Brita judgment of 25 February 2010³⁷, according to which the Association Agreement with Israel must be interpreted as meaning that products originating in the West Bank do not fall within its territorial scope and do not therefore qualify for preferential treatment provided therein³⁸. Therefore, the customs authorities of the importing Member State may refuse to grant such preferential treatment in respect of those products³⁹.

physical destruction in whole or in part; (c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association; d) Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof; (e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour; (f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid”.

³³ Rome Statute of the International Criminal Court, 1998, art. 7 (“*Crimes against humanity*”), according to which: “1. For the purpose of this Statute, ‘*crime against humanity*’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (...) (j) The crime of apartheid (...). 2. For the purpose of paragraph 1: (h) ‘*The crime of apartheid*’ means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime (...)”.

³⁴ AMNESTY INTERNATIONAL, *Israel’s apartheid against Palestinians*, cit., p. 280.

³⁵ International Court of Justice, Advisory Opinion of 19 July 2024, cit., para. 226.

³⁶ On such issue see, for instance: C. HAUSWALDT, *Problems under the EC-Israel Association Agreement: The Export of Goods Produced in the West Bank and the Gaza Strip under the EC-Israel Association Agreement*, in *European Journal of International Law*, Vol. 14, n. 3, 2003, pp. 591-611.

³⁷ Court of Justice of the European Union, Judgment of 25 February 2010, Case C-386/08, *Firma Brita GmbH v. Hauptzollamt Hamburg-Hafen*, ECLI:EU:C:2010:91.

³⁸ Ivi, para. 53.

³⁹ Ivi, para. 65.

It is also essential to cite the Psagot judgment of 12 November 2019⁴⁰, in which the CJEU dealt with the labelling of foodstuffs originating in “*territories occupied by the State of Israel since 1967*”, such as the West Bank, including East Jerusalem⁴¹. In such ruling, the Court highlighted that “[u]nder the rules of international humanitarian law, these territories are subject to a limited jurisdiction of the State of Israel, as an occupying power, while each has its own international status distinct from that of that State”⁴² and that “[t]he West Bank is a territory whose people, namely the Palestinian people, enjoy the right to self-determination”, as noted by the ICJ in the mentioned Advisory Opinion of 9 July 2004⁴³. Consequently, the indication of the State of Israel as ‘country of origin’, when foodstuffs actually originate in one of the territories referred to above, would be liable to deceive consumers⁴⁴. Therefore, the CJEU concluded that foodstuffs originating in a territory occupied by the State of Israel must bear not only the indication of that territory but also, where those foodstuffs come from a locality or a group of localities constituting an Israeli settlement within that territory, the indication of that provenance⁴⁵.

Such rulings must be seen as part of the broader framework of the CJEU case-law concerning occupied territories, which includes the judgments regarding Western Sahara (under occupation by Morocco), in particular Front Polisario I⁴⁶, Western Sahara Campaign UK⁴⁷ and Front Polisario II⁴⁸: in such litigation saga, the Court found that the EU-Morocco agreements could not be considered as covering Western Sahara as this would be contrary to the EU’s obligations under international law⁴⁹.

Therefore, the Brita and Psagot judgments must be read within this line of case law, and they are significant (especially the latter) because the Court made it abundantly clear that the Palestinian Territory is occupied by Israel and that Israel’s settlement policy violates international humanitarian law, entailing some relevant legal consequences⁵⁰. Nonetheless, this unequivocal stance of the Court of Justice has not been reflected in a corresponding approach by other institutions, notably the Commission and the Council,

⁴⁰ Court of Justice of the European Union, Judgment of 12 November 2019, Case C-363/18, *Organisation juive européenne, Vignoble Psagot Ltd v. Ministre de l’Économie et des Finances*, ECLI:EU:C:2019:954.

⁴¹ Ivi, para. 33.

⁴² Ivi, para. 34.

⁴³ Ivi, para. 35.

⁴⁴ Ivi, para. 36.

⁴⁵ Ivi, para. 60.

⁴⁶ Court of Justice of the European Union, Judgment of 21 December 2016, Case C-104/16 P, *Council of the European Union v. Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario)*, ECLI:EU:C:2016:973.

⁴⁷ Court of Justice of the European Union, Judgment of 27 February 2018, Case C-266/16, *Western Sahara Campaign UK v. Commissioners for Her Majesty’s Revenue and Customs and Secretary of State for Environment, Food and Rural Affairs*, ECLI:EU:C:2018:118.

⁴⁸ Court of Justice of the European Union, Judgment of 4 October 2024, Joined Cases C-779/21 P and C-799/21 P, *European Commission and Council of the European Union v. Front populaire pour la libération de la Saguia el-Hamra et du Rio de oro (Front Polisario)*, ECLI:EU:C:2024:835.

⁴⁹ On such litigation saga see, for instance: M. GATTI, *La sentenza Fronte Polisario 2: la Corte annulla un accordo applicato ad un territorio non autonomo senza il consenso del suo popolo*, in *Rivista del Contenzioso Europeo*, n. 3, 2024, pp. 205-211; P. HILPOLD, *Furthering the Right to Self-Determination by EU Courts: The Western Sahara Decisions of 4 October 2024 and the Völkerrechtsfreundlichkeit of the European Court of Justice*, in *European Constitutional Law Review*, Vol. 21, n. 3, 2025, pp. 504-527; F. MARTINES, *Polisario’s Legal Action as a Strategy to Reassert the Principle of Self-Determination in Western Sahara: Issues of Locus Standi, Justiciability and Jurisdiction of national and international Courts*, in S. ALLEN, J.F. DIOGO, A. MENSİ, F. PEREIRA COUTINHO (eds.), *Western Sahara in the International Legal Order*, Leiden/Boston, pp. 167-201.

⁵⁰ In this regard see, for instance: E. KASSOTI, S. SALUZZO, *The CJEU’s Judgment in Organisation juive européenne and Vignoble Psagot: Some Introductory Remarks*, in *European Papers*, Vol. 4, n. 3, 2019, pp. 753-761.

which have not deemed it appropriate to take action regarding the EU-Israel Association Agreement.

4. The European Commission's Proposal of 17 September 2025: Its Background and Its Content

As previously noted, however, this contribution intends to focus on a more specific and more recent development: that concerning the aforementioned Proposal for the partial suspension of the EU-Israel Association Agreement, presented by the European Commission in September 2025 in accordance with the provisions previously examined. Both the background and the content of such Proposal will now be analysed.

With regard to its background, it should be recalled that it was presented following the continuation – since October 2023 – of what, just a few days earlier, the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel – established by the United Nations Human Rights Council (UNHRC) – had described as “*genocide*”⁵¹. As well known, according to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide⁵², such term refers to the commission of certain acts, specifically listed in art. II, “*with intent to destroy, in whole or in part, a national, ethnical, racial or religious group*”⁵³. Accordingly, in this specific case, the UN Commission concluded that the Israeli authorities and Israeli security forces “*have committed and are continuing to commit*” against the Palestinians in the Gaza Strip the *actus reus* enumerated under art. II, letters (a)-(d), of the Genocide Convention, namely (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and (d) imposing measures intended to prevent births within the group⁵⁴. With regard to the *mens rea*, the UN Commission also found the presence of the genocidal intent to destroy, in whole or in part, the Palestinians in the Gaza Strip⁵⁵. Therefore, the UN Commission concluded “*that the State of Israel bears responsibility for the failure to*

⁵¹ UN Doc A/80/337 of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, *Report*, of 14 August 2025; UN Doc A/HRC/60/CRP.3 of the Human Rights Council, *Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide*, of 16 September 2025.

⁵² On the crime of genocide in international law see, for instance, W.A. SCHABAS, *Genocide in International Law: The Crime of Crimes*, Cambridge, 2000; J.S. MORTON, N.V. SINGH, *The International Legal Regime on Genocide*, in *Journal of Genocide Research*, Vol. 5, n. 1, 2003, pp. 47-69; C. KREB, *The Crime of Genocide under International Law*, in *International Criminal Law Review*, Vol. 6, 2006, pp. 461-502; J. QUIGLEY, *The Genocide Convention. An International Law Analysis*, London, 2006; M. MENNECKE, *Genocide Prevention and International Law*, in *Genocide Studies and Prevention*, Vol. 4, n. 2, 2009, 167-175; C. TAMS, L. BERSTER, B. SCHIFFBAUER (eds.), *Convention on the Prevention and Punishment of Genocide: A Commentary*, München/Oxford/Baden-Baden, 2014.

⁵³ Convention on the Prevention and Punishment of the Crime of Genocide, 1948, art. II, according to which: “*In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group*”.

⁵⁴ UN Doc A/80/337, cit., para. 66; UN Doc A/HRC/60/CRP.3, cit., para. 240 and para. 252.

⁵⁵ UN Doc A/80/337, cit., para. 67; UN Doc A/HRC/60/CRP.3, cit., para. 254.

*prevent genocide, the commission of genocide and the failure to punish genocide against the Palestinians in the Gaza Strip*⁵⁶.

As already said, just a few days after these clear conclusions of the UN Commission and notably on 17 September 2025, the European Commission presented the aforementioned Proposal for a Council Decision on the partial suspension of the EU-Israel Association Agreement.

Coming to the content of the EC's Proposal, first, its Explanatory Memorandum and its Whereas describe the context in which it was presented. They reiterate the European Union's condemnation of Hamas' attacks of 7 October 2023 and underscore that the EU has repeatedly called for an immediate ceasefire in the Gaza Strip and the unconditional release of all hostages⁵⁷.

At the same time, it is noted that the High Representative of the Union for Foreign Affairs and Security Policy, Kaja Kallas, presented to the Foreign Affairs Council of 23 June 2025 a review concluding "*that there are indications that Israel would be in breach of its human rights obligations*" under art. 2 of the Association Agreement⁵⁸.

Indeed, the Proposal recalls that "*[w]ith its intervention in the Gaza Strip and the ensuing humanitarian catastrophe, including tens of thousands of civilian deaths and rapidly rising numbers of extreme malnutrition specifically of children, Israel is violating human rights and international humanitarian law and thus is in breach of an essential element of the EU-Israel cooperation under the Agreement*"⁵⁹.

Therefore, the Proposal deems it appropriate – also in accordance with art. 79, para. 2, likewise already mentioned – to partially suspend the Agreement on account of a material breach by Israel of art. 2, and as a matter of special urgency⁶⁰.

For the adoption of such a measure, two legal bases are identified. One is art. 218, para. 9, TFEU, under which the Council, on a proposal from the European Commission (or from the High Representative of the Union for Foreign Affairs and Security Policy, though not in this case), "*shall adopt a decision suspending application of an agreement*"⁶¹. The other one is art. 207, para. 4, first subparagraph, TFEU, which provides that the Council shall act by a qualified majority (and therefore not unanimously)⁶².

In light of the above, art. 1, para. 1, of the Proposal for a Council Decision provides as follows: "*The application of Title II [Free movement of goods], Title III [Right of establishment and supply of services] and Chapter 2, Chapter 3 and Chapter 4 of Title IV [Public procurement, Competition and Intellectual Property] of the Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part as well as all relevant Annexes and Protocols set out in the Annex to this decision shall be suspended*".

⁵⁶ UN Doc A/HRC/60/CRP.3, cit., para. 255.

⁵⁷ COM(2025) 890 final, cit., Whereas 1.

⁵⁸ Ivi, Whereas 6.

⁵⁹ Ivi, Whereas 9.

⁶⁰ Ivi, Whereas 10.

⁶¹ Treaty on the Functioning of the European Union, art. 218, para. 9, according to which: "*The Council, on a proposal from the Commission or the High Representative of the Union for Foreign Affairs and Security Policy, shall adopt a decision suspending application of an agreement and establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement*".

⁶² Ivi, art. 217, para. 4, according to which: "*For the negotiation and conclusion of the agreements referred to in paragraph 3, the Council shall act by a qualified majority (...)*".

Under art. 1, para. 2, moreover, “[t]he suspension referred to in the first paragraph shall take effect thirty days from the date of its notification to the Association Council established by the Agreement”.

Finally, the EC’s Proposal contains one further provision, art. 2, which states that “[t]his Decision shall enter into force on the date of its adoption”.

5. The Unjustified Delay in Presenting the Proposal and the Fallacy of the Unanimity Argument

At this stage, it is appropriate to underscore the main critical issues of the EC’s Proposal for the partial suspension of the EU-Israel Association Agreement just presented.

The first aspect that cannot go unnoticed is the delay with which the Proposal was presented. This delay appears even more concerning when compared to the promptness with which the EU managed to adopt various packages of sanctions against Russia immediately following the escalation of the Russian-Ukrainian conflict in February 2022⁶³: the asymmetry between the two responses, thus, appears evident⁶⁴.

On the point, it should be noted that, as early as 26 January 2024, the ICJ – in the case brought by South Africa against Israel⁶⁵ over alleged violations in the Gaza Strip of obligations under the Genocide Convention⁶⁶ – issued an Order⁶⁷ in which it considered it “*plausible*” that acts of genocide were taking place in the Gaza Strip⁶⁸ and indicated six urgent provisional measures to the State of Israel to prevent them⁶⁹. Such Order was

⁶³ On the point see, for instance, the webpage of the official website of the European Council and of the Council of the European Union entitled “*Timeline – Packages of sanctions against Russia since February 2022*”, available at the following link: <https://www.consilium.europa.eu/en/policies/sanctions-against-russia/timeline-packages-sanctions-since-february-2022/>.

⁶⁴ On the point see, for instance, A. OLEART, J. ROCH, *The Colonial Imaginary of “Europe” in the EU’s Asymmetrical Response to the Russian and Israeli Aggressions: Ukraine as a Member of the “Family” Whilst “Othering” Palestine*, in *Journal of Common Market Studies*, Vol. 63, n. 6, 2025, pp. 1685-1709.

⁶⁵ See the webpage of the official website of the ICJ entitled “*Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*”, available at the following link: <https://www.icj-cij.org/case/192>.

⁶⁶ On the point see, for instance, A. ALEXANDER, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) at the International Court of Justice*, in *Chinese Journal of International Law*, Vol. 23, n. 1, 2024, pp. 185-190; R. PISILLO MAZZESCHI, E. CARLI, *Proof of Specific Intent in the Crime of Genocide: The Case of South Africa v. Israel Before the International Court of Justice*, in *Journal of International Criminal Justice*, Vol. 22, n. 2, 2024, pp. 429-443; M. TENTLER, J.A. KOOPS, *Whither the Global Governance of Protecting Civilians? An Initial Assessment of the ICJ’s Decision on South Africa v. Israel of 26 January 2024*, Brussels, 2024.

⁶⁷ International Court of Justice, Order of 26 January 2024, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*.

⁶⁸ Ivi, para. 54, according to which: “*In the Court’s view, the facts and circumstances mentioned above are sufficient to conclude that at least some of the rights claimed by South Africa and for which it is seeking protection are plausible. This is the case with respect to the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts identified in Article III, and the right of South Africa to seek Israel’s compliance with the latter’s obligations under the Convention*”.

⁶⁹ Ivi, para. 86, according to which: “*For these reasons, THE COURT, Indicates the following provisional measures: (1) (...) The State of Israel shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to Palestinians in Gaza, take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention (...); (2) (...) The State of Israel shall ensure with immediate effect that its military does not commit any acts described in point 1 above (...); (3) (...) The State of Israel shall take all measures within its power to prevent and punish the direct and public incitement to commit genocide in relation to members of the Palestinian group in the Gaza Strip (...); (4) (...) The State of Israel shall take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address*

followed – shortly thereafter – by two further Orders reaffirming the previous measures and indicating additional ones: in particular, on 28 March 2024, the ICJ ordered Israel to ensure, without delay, the unhindered provision of urgently needed basic services and humanitarian assistance to Palestinians in the Gaza Strip⁷⁰, while on 24 May 2024, it ordered Israel to immediately halt its military offensive and any other action in the Rafah Governorate⁷¹.

The Commission of the crime of genocide had also been repeatedly denounced already throughout 2024 by United Nations experts, such as the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967⁷², as well

the adverse conditions of life faced by Palestinians in the Gaza Strip (...); (5) (...) The State of Israel shall take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II and Article III of the Convention on the Prevention and Punishment of the Crime of Genocide against members of the Palestinian group in the Gaza Strip (...); (6) (...) The State of Israel shall submit a report to the Court on all measures taken to give effect to this Order within one month as from the date of this Order (...)”.

⁷⁰ International Court of Justice, Order of 28 March 2024, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, para. 51, according to which: “For these reasons, the Court, (1) (...) Reaffirms the provisional measures indicated in its Order of 26 January 2024 (...); (2) Indicates the following provisional measures: The State of Israel shall, in conformity with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, and in view of the worsening conditions of life faced by Palestinians in Gaza, in particular the spread of famine and starvation: (a) (...) Take all necessary and effective measures to ensure, without delay, in full co-operation with the United Nations, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance, including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care to Palestinians throughout Gaza, including by increasing the capacity and number of land crossing points and maintaining them open for as long as necessary; (b) (...) Ensure with immediate effect that its military does not commit acts which constitute a violation of any of the rights of the Palestinians in Gaza as a protected group under the Convention on the Prevention and Punishment of the Crime of Genocide, including by preventing, through any action, the delivery of urgently needed humanitarian assistance (...); (3) (...) Decides that the State of Israel shall submit a report to the Court on all measures taken to give effect to this Order, within one month as from the date of this Order (...)

⁷¹ International Court of Justice, Order of 24 May 2024, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, para. 57, according to which: “For these reasons, the Court, (1) (...) Reaffirms the provisional measures indicated in its Orders of 26 January 2024 and 28 March 2024, which should be immediately and effectively implemented (...); (2) Indicates the following provisional measures: The State of Israel shall, in conformity with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, and in view of the worsening conditions of life faced by civilians in the Rafah Governorate: (a) (...) Immediately halt its military offensive, and any other action in the Rafah Governorate, which may inflict on the Palestinian group in Gaza conditions of life that could bring about its physical destruction in whole or in part (...); (b) (...) Maintain open the Rafah crossing for unhindered provision at scale of urgently needed basic services and humanitarian assistance (...); (c) (...) Take effective measures to ensure the unimpeded access to the Gaza Strip of any commission of inquiry, fact-finding mission or other investigative body mandated by competent organs of the United Nations to investigate allegations of genocide (...) (3) (...) Decides that the State of Israel shall submit a report to the Court on all measures taken to give effect to this Order, within one month as from the date of this Order (...)

⁷² On the point see, in particular UN Doc A/HRC/55/73, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, Anatomy of a genocide*, of 1 July 2024, para. 93, according to which: “The overwhelming nature and scale of the Israeli assault on Gaza and the destructive conditions of life it has inflicted reveal an intent to physically destroy Palestinians as a group. The present report finds that there are reasonable grounds to believe that the threshold indicating the commission of the following acts of genocide against Palestinians in Gaza has been met: killing members of the group; causing serious bodily or mental harm to groups’ members; and deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part. Genocidal acts were approved and given effect following statements of genocidal intent issued by senior military and government officials”; para. 95, according to which: “The Israeli genocide

as by reports from recognised human rights NGOs, such as Amnesty International⁷³ and Human Rights Watch⁷⁴.

It must be also added that, on 21 November 2024, the International Criminal Court had issued warrants of arrest against the Israeli Prime Minister, Benjamin Netanyahu, and Defence Minister, Yoav Gallant, for crimes against humanity and war crimes committed from at least 8 October 2023 until at least 20 May 2024 (the day the Prosecutor, Karim Khan, filed the applications for warrants of arrest)⁷⁵. Such crimes include the following: the war crime of starvation as a method of warfare, the crimes against humanity of murder, persecution, and other inhumane acts⁷⁶.

against the Palestinians in Gaza is an escalatory stage of a long-standing settler colonial process of erasure. For over seven decades this process has suffocated the Palestinian people as a group – demographically, culturally, economically and politically – seeking to displace it and to expropriate and control its land and resources (...). See also: UN Doc 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*, of 1 October 2024.

⁷³ AMNESTY INTERNATIONAL, *'You Feel Like You Are Subhuman': Israel's Genocide Against Palestinians in Gaza*, of 5 December 2024, p. 283, according to which: "Through its research findings and legal analysis, Amnesty International has found sufficient basis to conclude that Israel committed, during the nine-month period under review, prohibited acts under Articles II (a), (b) and (c) of the Genocide Convention, namely killing, causing serious bodily or mental harm and deliberately inflicting on Palestinians in Gaza conditions of life calculated to bring about their physical destruction in whole or in part. The organization has also found sufficient basis to conclude that these acts were committed with the specific intent to destroy Palestinians in Gaza, as such, who form a substantial part of the Palestinian population. According to Amnesty International, the evidence it has gathered provides a sufficient basis to conclude that Israel, through its policies, actions and omissions against Palestinians in Gaza following 7 October 2023, committed and is committing genocide. Although this report focused on a nine-month period, Amnesty International is unaware of evidence suggesting that Israel's policies, actions and omissions have changed in any significant way. The commission of genocide engages Israel's responsibility under the Genocide Convention. The organization believes that further investigations and determinations by judicial and nonjudicial bodies, including the ICJ and the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, are warranted, with an examination of Israel's responsibility under the Genocide Convention and an indication of appropriate remedies".

⁷⁴ HUMAN RIGHTS WATCH, *Extermination and Acts of Genocide: Israel Deliberately Depriving Palestinians in Gaza of Water*, of 19 December 2024, p. 186, according to which: "This report concludes that Israeli authorities have inflicted on Palestinians in Gaza, as a group, conditions of life calculated to bring about the group's physical destruction in whole or in part, and are committing the ongoing crime against humanity of extermination, and acts of genocide. Genocidal intent may also be inferred from this pattern of conduct, coupled with statements suggesting some Israeli officials wished to destroy Palestinians in Gaza, and therefore these acts may amount to the crime of genocide".

⁷⁵ On the point see, for instance, L. PROSPERI, *The ICC Issued Arrest Warrants Against Netanyahu, Gallant, and Hamas' Commander-in-Chief Deif: What Next?*, in *Ordine Internazionale e Diritti Umani*, n. 5, 2024, pp. 973-980; A. PRETI, *The ICC Arrest Warrants in the Situation in the State of Palestine: Some Reflections on the Chamber's Decisions*, in *SIDIBlog*, 27 January 2025.

⁷⁶ See the webpage of the official website of the ICC entitled "Situation in the State of Palestine: ICC Pre-Trial Chamber I rejects the State of Israel's challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant", of 21 November 2024, available at the following link: https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges?fbclid=IwY2xjawPW88pleHRuA2F1bQIxMABicmlkETExcGZhUEVmYWd4VWVs3Wmtnc3J0YwZhcHBfaWQOMjlyMDM5MTc4ODIwMDg5MgABHvfTvhjVYiszxWy7YN-VmElXq2N9tKKN7N7ns-DBbhLZ9f3kzmDATYVM2Zq1_aem_IvBNty0hUfhvDvRKhaJFLg, according to which: "The Chamber considered that there are reasonable grounds to believe that both individuals intentionally and knowingly deprived the civilian population in Gaza of objects indispensable to their survival, including food, water, and medicine and medical supplies, as well as fuel and electricity, from at least 8 October 2023 to 20 May 2024 (...). The Chamber found that there are reasonable grounds to believe that the lack of food, water, electricity and fuel, and specific medical supplies, created conditions of life calculated to bring about the destruction of part of the civilian population in Gaza, which resulted

Moreover, explicit requests for action – including with specific reference to the EU-Israel Association Agreement – had been addressed to the European Commission by several EU Member State governments. In particular, one may recall the letter sent to Ursula von der Leyen by Ireland and Spain, dating as far back as February 2024, in which the two countries asked the Commission to “*undertake an urgent review of whether Israel is complying with its obligations, including under the EU/Israel Association Agreement, which makes respect for human rights and democratic principles an essential element of the relationship; and if it considers that it is in breach, that it proposes appropriate measures to the Council to consider*”⁷⁷.

Yet, despite all of the above, the Proposal at issue took almost two years to be presented. One of the reasons frequently invoked to justify the EU’s inaction in the face of Israeli conduct was the alleged need to reach unanimity among the 27 EU Member States in the framework of the Council in order to adopt sanctions against Israel. An argument also relied upon by High Representative Kaja Kallas herself, who on 18 June 2025, before the European Parliament, stated as follows: “*And of course, there are violations of international law. I agree. I try to do as much as possible to help. And when it comes to the parallels with Ukraine, the difference is that there we have 27 Member States all agreeing, and that’s why we can’t do these things. But sanctions need unanimity, they need everybody on board, and we don’t have 27 Member States on board and that’s the reality*”⁷⁸.

Now, it is undoubtedly true that certain sanctions, such as restrictive measures adopted in the framework of the EU’s common foreign and security policy (CFSP)⁷⁹, require unanimity in the Council, according to Title V of the Treaty on European Union (TEU) and namely to its Chapter 2, devoted to “*Specific Provisions on the Common Foreign and Security Policy*”⁸⁰. At the same time, *lato sensu* sanctioning measures can be adopted within the framework of the EU’s common commercial policy (Part Five, Title II, TFEU), where the Council votes by qualified majority. Moreover, in similar cases, the Commission had repeatedly shown a preference for non-unanimity bases where possible⁸¹: a recent example is represented by the Proposal to phase out Russian gas,

in the death of civilians, including children due to malnutrition and dehydration (...). In addition, by intentionally limiting or preventing medical supplies and medicine from getting into Gaza, in particular anaesthetics and anaesthesia machines, the two individuals are also responsible for inflicting great suffering by means of inhumane acts on persons in need of treatment. Doctors were forced to operate on wounded persons and carry out amputations, including on children, without anaesthetics, and/or were forced to use inadequate and unsafe means to sedate patients, causing these persons extreme pain and suffering. This amounts to the crime against humanity of other inhumane acts. The Chamber also found reasonable grounds to believe that the abovementioned conduct deprived a significant portion of the civilian population in Gaza of their fundamental rights, including the rights to life and health, and that the population was targeted based on political and/or national grounds. It therefore found that the crime against humanity of persecution was committed. Finally, the Chamber assessed that there are reasonable grounds to believe that Mr Netanyahu and Mr Gallant bear criminal responsibility as civilian superiors for the war crime of intentionally directing attacks against the civilian population of Gaza (...)”.

⁷⁷ L. VARADKAR, P. SÁNCHEZ, *Letter to Commission President Ursula von der Leyen*, of 14 February 2024.

⁷⁸ K. KALLAS, *Remarks at the EP Plenary Session for topical debate*, of 18 June 2025.

⁷⁹ On the point see, for instance, the webpage of the European Commission’s official website entitled “*Frequently asked questions: Restrictive measures (sanctions)*”, available at the following link: https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_1401.

⁸⁰ Treaty on European Union, art. 31, para. 1, according to which: “*Decisions under this Chapter shall be taken by the European Council and the Council acting unanimously, except where this Chapter provides otherwise (...)*”.

⁸¹ In this regard see, for instance, J. SCHÄFFER, *EU Sanctions and the Mirage of Unanimity. Overcoming the Hungarian Veto One Step After Another Under the Letter of EU Law*, in *Verfassungsblog*, 8 October 2025.

which was presented precisely relying on provisions concerning commercial policy (and energy policy)⁸². With regard to the case under analysis in this contribution, the abovementioned solution had not only been authoritatively endorsed in the literature⁸³, but was subsequently actually pursued: as already noted, the EC's Proposal at stake is based on Article 207, para. 4, first subparagraph, TFEU, which indeed provides that “*the Council shall act by a qualified majority*”.

This obviously does not mean that, had the measures been presented earlier, they would necessarily have been adopted. On the contrary, the formation of a blocking minority under art. 16, para. 4, TEU⁸⁴ would have been an extremely concrete possibility, in light of the opposition expressed by several Member States, including highly populous ones such as Germany and Italy, but also by Hungary and the Czech Republic⁸⁵. At the same time, the fact that the measures examined in this contribution were proposed only on 17 September 2025 – and not earlier – certainly cannot be justified by invoking the unanimity argument.

6. The Limits of the Proposed Measures and Their Underlying Causes

The second point of the Proposal of 17 September 2025 on which attention must be focused concerns the limits of the measures contained therein. As previously explained, the Commission proposed exclusively a partial suspension of the EU-Israel Association Agreement, limited specifically to Title II, on the free movement of goods, Title III, on the right of establishment and supply of services, and Title IV. The latter, moreover, is not affected in its entirety, but only with regard to Chapter 2, on public procurement, Chapter 3, on competition, and Chapter 4, on intellectual, industrial and commercial property.

In essence, the proposed measures can be described as follows. Firstly, the suspension of the EU-Israel free trade area (Title II): this would not entail a trade ban between the EU and Israel; such trade would simply no longer benefit from preferential tariffs. Goods exchanged between the parties would therefore be subject to the standard duties applied to third countries without a trade agreement. Secondly, the possibility for Member States to restrict the establishment of Israeli companies and the cross-border provision of services (Title III). Thirdly, the suspension of the provisions promoting mutual access to public markets and regulatory alignment on the protection of free competition and intellectual property rights such as patents and trademarks (Title IV, Chapters 2-4).

On the contrary, Chapter 1 of Title IV, concerning capital movements and payments, is not affected: this means that Israeli investments and financial transfers would continue to be protected under the existing legal framework⁸⁶.

⁸² Proposal for a Regulation of the European Parliament and of the Council, *on phasing out Russian natural gas imports, improving monitoring of potential energy dependencies and amending Regulation (EU) 2017/1938*, of 17 June 2025, COM(2025) 828 final.

⁸³ On the point see, for instance, M. GATTI, *La mancata sospensione dell'accordo di associazione UE-Israel*, in *SIDIBlog*, 30 June 2025.

⁸⁴ Treaty on European Union, art. 16, para. 4, according to which: “(...) a qualified majority shall be defined as at least 55% of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65% of the population of the Union. A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained (...)”.

⁸⁵ On the point see, for instance, S. DE LA FELD, *Israel, EU proposes sanctions on two ministers and trade tariffs. Now it is up to member states*, in *eunews.it*, 17 September 2025.

⁸⁶ On the point see, for instance, SIMMONS & SIMMONS, *European Commission asks for partial suspension of EU-Israel trade*, in *simmons-simmons.com*, 22 September 2025.

Moreover, the EC's Proposal completely excludes not only the provisions on political dialogue (Title I), but also those on scientific and technological cooperation (Title V), economic cooperation (Title VI), cooperation on audiovisual and cultural matters, information and communication (Title VII), as well as provisions on social matters (Title VIII).

It is, of course, necessary to consider the causes that led the Commission not to decide in favour of more radical measures. Such an approach was adopted in accordance with the aforementioned art. 79, para. 2, under which, in the selection of the “*appropriate measures*” to be taken in the event of the other party's non-compliance, priority shall be given to those which “*least disturb the functioning*” of the Agreement itself. Against this background, the Commission has made clear its intention to propose measures of a purely commercial nature, designed to have minimal impact on aspects such as the political dialogue between the EU and Israel, as well as cooperation with civil society and with research and cultural institutions⁸⁷.

The partial suspension of the Agreement, as described above, is therefore defined by the European Commission as an “*appropriate and proportionate measure responding to the breaches*”⁸⁸.

7. The Reasons Why More Far-Reaching Measures Would Have Been Desirable (Follows)

Once the limits of the Proposal and the causes underlying them are understood, it must also be emphasised that – according to several authoritative voices – such limits render the Proposal inadequate, so that more far-reaching measures would have been desirable⁸⁹.

In particular, various human rights NGOs have been highly critical of the mere partial suspension of the Agreement, noting that selective measures – which halt some forms of support while maintaining others – cannot amount to genuine pressure on Israel to end its violations and therefore lack the necessary deterrent effect⁹⁰. Even more specifically, political normalisation and the continuation of cooperation in fields such as research would ultimately further reinforce and legitimise Israel's actions⁹¹.

For these reasons, the need for more far-reaching measures had been widely advocated, including, by way of example, the full suspension of the Agreement, a comprehensive ban on trade and investment that could contribute to serious violations, as well as an immediate suspension of all arms and dual use exports to Israel. Moreover, such calls were advanced not only by NGOs, such as (once again) Amnesty

⁸⁷ On the point see, for instance: DPA GERMAN PRESS AGENCY, *Von der Leyen proposes partial suspension of EU-Israel Association Agreement*, in europeannewsroom.com, 10 September 2025.

⁸⁸ COM(2025) 890 final, cit., Whereas 12.

⁸⁹ On the point see, for instance, N. VINOCUR, *EU unveils plan to hit Israel with tariffs, sanctions amid Gaza war outcry*, in politico.eu, 17 September 2025.

⁹⁰ In this regard see, for instance: EURO-MED HUMAN RIGHTS MONITOR, *EU measures against Israel are limited, selective, and perpetuate impunity*, of 10 September 2025.

⁹¹ In this regard see, for instance, THE EUROPEAN TRADE JUSTICE COALITION, *Open Letter: Suspend the EU-Israel Association Agreement!*, of 14 July 2025.

International⁹² and Human Rights Watch⁹³, but also by prominent figures (on the point, it is possible to cite the open letter by 58 former EU ambassadors)⁹⁴, as well as by certain Member States, including once again Spain⁹⁵.

In substance, the EC's Proposal represents a watered-down compromise, strongly influenced by the opposition to sanctions from those States with the closest ties to Israel, including Italy and, above all, Germany: as is well known, indeed, the latter is the European country that has the closest ties with Israel, even after 7 October 2023, so much so that it was also called before the ICJ by Nicaragua for complicity in genocide⁹⁶. Ultimately, such Proposal contains weak measures⁹⁷: considering also the delay with which it was presented, as already mentioned above, one could at the very least have expected more incisive actions.

⁹² AMNESTY INTERNATIONAL, *EU/Israel: Anything short of suspending the EU-Israel association agreement a 'greenlight to Israel's genocide'*, of 9 July 2025, according to which: "(...) *The EU has spent years delaying action, and denying and even defending Israel's grave violations of international law. Now, according to its own assessment, it is clear that Israel is in breach of its obligations under the EU-Israel Association Agreement. When foreign ministers meet (...) there can only be one outcome: suspend the agreement. Anything less is a greenlight for Israel to continue its genocide against Palestinians in the Gaza Strip, its unlawful occupation of the whole Occupied Palestinian Territory, and its system of apartheid against all Palestinians whose rights it controls. The EU and its member states have an obligation to ban trade and investment that could contribute to these serious violations. Every day the EU fails to act, the risk of complicity in Israel's actions grows. While a minority of EU member states risk blocking this suspension – their intransigence must not prevent the rest of the Union upholding their obligations under international law (...)*".

⁹³ HUMAN RIGHTS WATCH, *EU: Suspend Trade Agreement with Israel*, of 20 June 2025, according to which: "*The European Union should immediately suspend its trade agreement with Israel as long as Israel's atrocity crimes persist (...). (...) Human Rights Watch urged EU member states to (...) move beyond repeated affirmations of support for human rights and international law, and toward concrete, time-bound measures – such as suspending arms transfers and bilateral deals and banning trade with settlements – to ensure their enforcement*".

⁹⁴ The "Open Letter by 58 former European Union ambassadors calling for immediate and effective measures against Israel's unlawful actions in Gaza and the West Bank", of July 2025, reads as follows: "(...) *We call urgently on all EU leaders and governments, especially those who prevented the Foreign Affairs Council, 15 July, from acting against Israel's egregious humanitarian and human rights violations, to take all necessary and feasible measures under international, European, and national law to bring these atrocities to an end. Action should comprise the following: 1. Resume international aid deliveries immediately at scale and flood the Gaza strip with humanitarian supplies, in full respect of the core principles of international humanitarian law. 2. Suspend with immediate effect all arms and dual use exports to Israel. 3. Ban trade with Israel's illegal settlements in occupied Palestinian territory and prohibit EU and member states' commercial and investment relations with any entity or company doing business in or benefiting from Israel's illegal settlements. 4. Suspend all preferential commercial arrangements for Israel under the Association Agreement. 5. Cancel Israel's participation in Horizon Europe and all dual use research, academic and technology programmes of the EU. 6. Impose targeted sanctions on Israeli Ministers, government officials, military commanders, and violent settlers responsible for war crimes, crimes against humanity, facilitating genocide and carrying out State-sanctioned terrorism. 7. Support international and national judicial mechanisms - including the International Criminal Court and domestic courts under universal jurisdiction - to bring perpetrators to justice. 8. Provide political, legal, and financial support to Palestinian civilian victims, human rights defenders, and humanitarian organizations operating under impossible conditions. 9. Recognize Palestinian statehood on the occasion of the UN conference in New York of 28/29 July, to create the necessary prerequisite for a two-state solution (...)*".

⁹⁵ On the point see, for instance: C. GUIS, *Spain's Sánchez urges Brussels to suspend trade deal with Israel*, in *politico.eu*, 14 October 2025.

⁹⁶ See the webpage of the official website of the ICJ entitled "*Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*", available at the following link: <https://www.icj-cij.org/case/193>.

⁹⁷ In this regard see, for instance: A. DE LUCA, *UE, sanzioni a Israele: too little too late?*, in *ispionline.it*, 17 September 2025.

8. The Critical Issues Arising from the Failure to Adopt the EC's Proposal in Light of the Persisting Violations of International Law by Israel

Finally, it is necessary to address an issue that appears perhaps even more significant, since it would end up absorbing the others: the risk that the measures in question may never see the light of day.

As is well known, on 10 October 2025 a ceasefire formally entered into force in the Gaza Strip, in accordance with the “*Comprehensive Plan to End the Gaza Conflict*” promoted by the United States administration⁹⁸. That plan was subsequently endorsed by the United Nations Security Council through Resolution 2803 (2025) of 17 November 2025⁹⁹. The latter, in truth, has already attracted significant criticism, insofar as it risks seriously jeopardising the right of the Palestinian people to self-determination, which (as well known) constitutes a *jus cogens* norm¹⁰⁰; a concern that has also been highlighted by United Nations experts¹⁰¹.

Following the abovementioned developments, although the Proposal for the partial suspension of the EU-Israel Association Agreement has not been withdrawn by the European Commission, on 20 October 2025 the High Representative Kaja Kallas stated that “[t]he ceasefire has changed the context” and further added, with reference to the various envisaged sanctions measures, “[f]or now, we are not taking them off the table, but we are not moving with them either, because the situation is very fragile”¹⁰². Similar remarks on the matter were made by Paula Pinho, Chief Spokesperson of the European Commission, according to which the sanctions were “*proposed in a given context, and if the context changes, that could eventually lead to a change of the proposal*”¹⁰³. In essence, the EC's Proposal is currently on hold, and the risk that it may never be adopted appears very high.

The possible failure to adopt sanctioning measures against Israel, however, would raise considerable concerns, for countless reasons.

⁹⁸ On the point see, for instance, M. FERRAGAMO, *A Guide to the Gaza Peace Deal*, in *Council on Foreign Relations*, 19 November 2025.

⁹⁹ UN Doc S/RES/2803 (2025) of the United Nations Security Council, *Resolution 2803 (2025) adopted by the Security Council at its 10046th meeting*, of 17 November 2025, according to which: “*The Security Council, Welcoming the Comprehensive Plan to End the Gaza Conflict of 29 September 2025 (“Comprehensive Plan”)(annex 1 to this resolution), and applauding the states that have signed, accepted, or endorsed it, and further welcoming the historic Trump Declaration for Enduring Peace and Prosperity of 13 October 2025 and the constructive role played by the United States of America, the State of Qatar, the Arab Republic of Egypt, and the Republic of Türkiye, in having facilitated the ceasefire in the Gaza Strip, Determining that the situation in the Gaza Strip threatens the regional peace and the security of neighboring states and noting prior relevant Security Council resolutions relating to the situation in the Middle East, including the Palestinian question, 1. Endorses the Comprehensive Plan, acknowledges the parties have accepted it, and calls on all parties to implement it in its entirety, including maintenance of the ceasefire, in good faith and without delay (...)*”.

¹⁰⁰ In this regard see, for instance, M. BURGIS-KASTHALA, *UNSC Resolution 2803*, in *EJIL: Talk!*, 28 November 2025. See also M. FRULLI, T. MARINIELLO, *Palestina, il Consiglio di Sicurezza Onu legittima un’occupazione illegale*, in *Il Manifesto*, 22 November 2025.

¹⁰¹ In this regard see, for instance, the webpage of the official website of the UN Office of the High Commissioner for Human Rights (OHCHR) entitled “*UN Security Council resolution a violation of Palestinian right of self-determination and UN Charter, UN expert warns*”, of 19 November 2025, available at the following link: <https://www.ohchr.org/en/press-releases/2025/11/un-security-council-resolution-violation-palestinian-right-self>.

¹⁰² K. KALLAS, *Foreign Affairs Council: Press Remarks after the Meeting*, of 20 October 2025.

¹⁰³ On the point, see G. GAVIN, N. VINOCCUR, *EU unlikely to push sanctions on Israel after Trump peace deal*, in *politico.eu*, 17 October 2025.

First, it should be recalled that one of the premises underlying the Proposal lies in the fact that “[w]ith its intervention in the Gaza Strip and the ensuing humanitarian catastrophe, including tens of thousands of civilian deaths and rapidly rising numbers of extreme malnutrition specifically of children, Israel is violating human rights and international humanitarian law and thus is in breach of an essential element of the EU-Israel cooperation under the Agreement”¹⁰⁴.

Now, with regard to such “humanitarian catastrophe” it is worth recalling that on 22 October 2025 – at the conclusion of proceedings initiated at the request of the UN General Assembly following Israel’s decision to prevent the operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) – the ICJ delivered an Advisory Opinion on the Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian Territory¹⁰⁵. In such Opinion, the Court – besides noting that Israel has not substantiated its allegations that a significant part of UNRWA employees are members of Hamas or other terrorist factions¹⁰⁶ – also reaffirmed the indispensability, in providing humanitarian assistance within the Gaza Strip, of UNRWA, for which there are no realistic alternatives¹⁰⁷. Nevertheless, Israel continues to impose restrictions on UNRWA’s activities¹⁰⁸. Overall, these facts raise serious doubts not only about whether there have been significant improvements regarding the aforementioned “humanitarian catastrophe”, but also about Israel’s compliance with its obligations in this regard.

It may further be added that previously, in the cited Advisory Opinion of 19 July 2024, the ICJ had also identified Israel’s obligations to bring to an end its unlawful presence in the Occupied Palestinian Territory (the West Bank, East Jerusalem and the Gaza Strip) as rapidly as possible, to cease immediately all new settlement activities, to evacuate all settlers from the Occupied Palestinian Territory and to make reparation for the damage caused to all the natural or legal persons concerned¹⁰⁹. More than a year after

¹⁰⁴ COM(2025) 890 final, cit., Whereas 9.

¹⁰⁵ International Court of Justice, Advisory Opinion of 22 October 2025, *Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian Territory*.

¹⁰⁶ Ivi, para. 118.

¹⁰⁷ Ivi, para. 124, according to which: “*The Court concludes that, under these circumstances, the United Nations, acting through UNRWA, has been an indispensable provider of humanitarian relief in the Gaza Strip. As the United Nations Secretary-General has observed, ‘there is currently no realistic alternative to UNRWA that could adequately provide the services and assistance required by Palestine refugees’ (see identical letters dated 8 January 2025 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, UN doc. A/79/716-S/2025/18, 9 January 2025, p. 3) (...)*”.

¹⁰⁸ On the point, see, for instance, the webpage of the official website of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) entitled “*UNRWA Situation Report #204 on the Humanitarian Crisis in the Gaza Strip and the occupied West Bank, including East Jerusalem*”, of 14 January 2026, available at the following link: <https://www.unrwa.org/resources/reports/unrwa-situation-report-204-situation-gaza-strip-and-west-bank-including-east-jerusalem>

¹⁰⁹ International Court of Justice, Advisory Opinion of 19 July 2024, cit., para. 285, according to which: “*For these reasons, THE COURT, (1) (...) Finds that it has jurisdiction to give the advisory opinion requested; (2) (...) Decides to comply with the request for an advisory opinion (...); (3) (...) Is of the opinion that the State of Israel’s continued presence in the Occupied Palestinian Territory is unlawful (...); (4) (...) Is of the opinion that the State of Israel is under an obligation to bring to an end its unlawful presence in the Occupied Palestinian Territory as rapidly as possible (...); (5) (...) Is of the opinion that the State of Israel is under an obligation to cease immediately all new settlement activities, and to evacuate all settlers from the Occupied Palestinian Territory (...); (6) (...) Is of the opinion that the State of Israel has the obligation to make reparation for the damage caused to all the natural or legal persons concerned in the Occupied Palestinian Territory (...); (7) (...) Is of the opinion that all States are under an obligation not to recognize*

that pronouncement, there appear to be no attempts by Israel to comply with such obligations.

Finally, it cannot be overlooked that compliance with the ceasefire that entered into force on 10 October 2025 must be closely monitored, given that violations by Israel have been reported, *inter alia*, by media outlets¹¹⁰ as well as by United Nations experts, who state that “[t]he ongoing Israeli attacks against the Palestinian population in Gaza constitute a blatant violation of the ceasefire agreement” and that “Israel’s continuing violations of the ceasefire in Gaza are threatening the fragile truce”¹¹¹.

In summary, violations of human rights – respect for which constitutes an essential element of the EU-Israel Association Agreement – have by no means ceased, and this would amply justify the adoption of sanctions. Therefore, the fact that the EC’s Proposal has been put on hold cannot be welcomed, all the more so considering that the measures it contained were already, in themselves, rather weak.

9. Concluding Remarks: The Priority Given to Political Interests over Human Rights of the Palestinian People and the Inconsistency with EU Treaties

It is now possible to make some concluding considerations.

The EU-Israel Association Agreement, which entered into force in 2000, states in art. 2 that relations between the parties shall be based on respect for human rights, which constitutes an essential element of the Agreement: any violation, therefore, can be invoked by the EU to adopt appropriate measures under art. 79, para. 2, including the suspension or even the termination of the application of the Agreement itself. The Proposal for the partial suspension presented by the European Commission on 17 September 2025, in accordance with such provisions, however, undoubtedly presents numerous critical issues and can hardly be regarded as an adequate response by the European Union to the ongoing situation in the Gaza Strip, which has been qualified by several authoritative voices as a genocide committed by Israel.

Firstly, due to the delay with which it was presented. Calls to suspend the said Agreement had already been made well before 7 October 2023 due, among other reasons, to the illegal occupation of the Palestinian Territory and the systematic discrimination against Palestinians (also qualified as apartheid) by Israel. After 7 October 2023, the EU’s inaction appears even more problematic, especially in view of the ICJ measures, as well as reports from UN experts and recognised NGOs, which from the very first months

as legal the situation arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory and not to render aid or assistance in maintaining the situation created by the continued presence of the State of Israel in the Occupied Palestinian Territory (...); (8) (...) Is of the opinion that international organizations, including the United Nations, are under an obligation not to recognize as legal the situation arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory (...); (9) (...) Is of the opinion that the United Nations, and especially the General Assembly, which requested this opinion, and the Security Council, should consider the precise modalities and further action required to bring to an end as rapidly as possible the unlawful presence of the State of Israel in the Occupied Palestinian Territory (...)”.

¹¹⁰ On the point, see, for instance, L. TONDO, *Israel has violated ceasefire 47 times and killed 38 Palestinians, says Gaza media office*, in *The Guardian*, 18 October 2025; AJLABS, *How many times has Israel violated the Gaza ceasefire? Here are the numbers*, in *aljazeera.com*, 11 November 2025.

¹¹¹ See the webpage of the official website of the UN Office of the High Commissioner for Human Rights (OHCHR) entitled “*UN experts urge States to act as Israeli violations threaten fragile Gaza ceasefire*”, of 24 November 2025, available at the following link: <https://www.ohchr.org/en/press-releases/2025/11/un-experts-urge-states-act-israeli-violations-threaten-fragile-gaza>.

referred at least to the plausibility of acts of genocide. The need to reach unanimity within the Council does not constitute a valid justification: as demonstrated by the Proposal itself, *lato sensu* sanctioning measures can also be adopted by qualified majority voting.

Secondly, because of the limits of the measures contained therein. Indeed, the Commission proposed only a partial suspension of the Agreement, restricted to matters of a purely commercial nature, designed to have minimal impact on aspects such as the political dialogue between the EU and Israel, as well as cooperation with civil society and with research and cultural institutions. According to several authoritative voices, however, such measures would lack the necessary deterrent effect and would ultimately further reinforce and legitimise Israel's actions. More far-reaching measures would therefore have been desirable, such as the full suspension of the Agreement, a comprehensive ban on trade and investment that could contribute to serious violations, as well as an immediate suspension of all arms and dual use exports to Israel. The Proposal thus appears as a watered-down compromise.

Thirdly, and even more importantly, because of the concrete risk that, despite all that has been said, the sanctioning measures may never see the light of day, in view of the ceasefire that entered into force in the meantime: the humanitarian catastrophe to which the Commission refers in the Proposal is far from over, and Israel continues to violate several international law obligations, including the respect for human rights referred to in art. 2 of the Agreement.

In short, the entire case under consideration reveals an evident “*double standard*” on the part of the European Union, especially when compared with the sanctioning response adopted against Russia following the escalation of the Russian-Ukrainian conflict¹¹². This is evident not only from the promptness with which various packages of sanctions were adopted, but also from the considerably stronger impact of the measures, as in that case there was far less concern about avoiding negative impacts on civil society and on cooperation in fields such as research¹¹³. Furthermore, in the adoption of sanctions against Russia, the EU was able to find solutions to overcome the resistance of opposing Member States, such as Hungary¹¹⁴, a scenario that appears far from being on the horizon in the case under review.

It is therefore clearly demonstrated that – while some States (such as Spain, Ireland, Slovenia and Belgium) have taken action in response to Israeli violations of international law, in some instances even intervening in the proceedings concerning Israel pending before the ICJ¹¹⁵ – other States (such as Germany, Italy, Hungary and the Czech Republic) and the European Commission have given clear priority to their own political

¹¹² On the EU's double standard, in general, see, for instance, U. VILLANI, *La Rule of Law nel diritto europeo e internazionale e il dovere di coerenza*, in *Archivio giuridico online*, Vol. IV, n. 1, 2025, pp. 911-925.

¹¹³ On the point, see, for instance, J. RAVET, V. DI GIROLAMO, A. MITRA, O. PEIFFER-SMADJA, E. CANTON, A. HOBZA, *EU Research and innovation and the invasion of Ukraine Main channels of impact*, Brussels, 2022; A. HOFER, *The EU's 'Massive and Targeted' Sanctions in Response to Russian Aggression, a Contradiction in Terms*, in *Cambridge Yearbook of European Legal Studies*, Vol. 25, 2023, pp. 19-39; T. MAKKONEN, T. MITZE, *Geopolitical conflicts, sanctions and international knowledge flows: EU–Russia collaboration during the Ukraine crisis*, in *World Economy*, Vol. 46, n. 10, 2023, pp. 2926-2949.

¹¹⁴ On the point see, for instance, J. LIBOREIRO, *Hungary backs down from veto threat and allows renewal of EU sanctions on Russia*, in *euronews.com*, 27 January 2025.

¹¹⁵ On the point, see, for instance, the webpage of the official website of the United Nations Regional Information Centre for Western Europe (UNRIC) entitled “*South Africa vs Israel: 14 other countries intend to join the ICJ case*”, of 30 October 2025, available at the following link: <https://unric.org/en/south-africa-vs-israel-14-other-countries-intend-to-join-the-icj-case/#:~:text=Fourteen%20countries%20have%20announced%20their,of%20Rafah%2C%20in%20south ern%20Gaza.>

convenience over the human rights of the Palestinian people¹¹⁶, as openly declared, among others, by the Prime Minister of Slovenia, Robert Golob, according to which: “*Unfortunately, some States, even important ones, put their own interests before human rights*”¹¹⁷.

All of this, on the one hand, has prevented the adoption by the EU of measures which, from a practical standpoint, were – and remain – capable of having a significant impact, by exerting pressure on Israel and making it accountable for its serious violations of international law: in this regard, also at the United Nations level¹¹⁸, the importance of sanctions, as well as of boycotts and divestments, has recently been reaffirmed¹¹⁹.

On the other hand, from a strictly legal perspective, it constitutes an abandonment not only of art. 2 of the EU-Israel Association Agreement, but also of some very important provisions of EU primary law: among these, art. 3, para. 5, TEU, according to which, in its relations with the wider world, the Union shall uphold and promote its values, contributing *inter alia* to peace, to the protection of human rights, as well as to the strict observance of international law¹²⁰; and also art. 21, para. 1, TEU, according to which the EU’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, including the universality and indivisibility of human rights and fundamental freedoms, as well as respect for the principles of international law¹²¹.

¹¹⁶ In this regard see, for instance, M. GATTI, *La mancata sospensione dell’accordo di associazione UE-Israel*, cit.

¹¹⁷ On the point see, for instance, E. BONINI, *Slovenia takes hard line on Israel at EU summit: ‘Either action by the 27, or individual states will act’*, in *eunews.it*, 26 June 2025.

¹¹⁸ In particular, see UN Doc A/HRC/59/23, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, From economy of occupation to economy of genocide*, of 2 July 2025, para. 98, according to which: “*The Special Rapporteur urges trade unions, lawyers, civil society and ordinary citizens to press for boycotts, divestments, sanctions, justice for Palestine and accountability at the international and domestic levels; together, the people of the world can end these unspeakable crimes*”.

¹¹⁹ On the point see, for instance, G. PANE, *Il mito (sfatato) della neutralità: il ruolo delle imprese nei crimini in corso nel territorio palestinese occupato alla luce dell’ultimo Rapporto Albanese*, in *SIDIBlog*, 9 July 2025.

¹²⁰ Treaty on European Union, art. 3, para. 5, according to which: “*In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter*”.

¹²¹ Ivi, art. 21, para. 1, according to which: “*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*”.

ABSTRACT

The present article focuses on the Proposal for a Council Decision on the partial suspension of the EU-Israel Association Agreement, presented by the European Commission on 17 September 2025, with the aim of answering a specific research question: whether such an initiative may be regarded as an adequate response by the EU to the ongoing situation in Palestine, namely in the Gaza Strip, qualified by several authoritative voices as a “genocide” committed by the State of Israel. For the purpose of addressing such question, preliminary, an analysis of the EU-Israel Association Agreement is undertaken, also with regard to the objections that have already emerged in the past (e.g., due to Israel’s “apartheid” against Palestinians). Subsequently, the EC’s Proposal is examined, with reference both to its background and to its content. Then, it is possible to consider the critical issues of such Proposal. Firstly, it is noted that it was submitted with an unjustifiable delay. Secondly, the attention is focused on the limits of the measures included therein: in this regard, the causes underlying those limits are examined, but it is also explained why – according to several authoritative voices – such limits render the Proposal inadequate, so that more far-reaching measures would have been desirable. Thirdly, the reasons why the Proposal may never see the light of day are outlined, as well as the serious problems that would arise from its non-adoption, given Israel’s ongoing violations of international law. Finally, the contribution offers some concluding remarks on the overall conduct displayed by the European Union in relation to the matter under examination.

KEYWORDS

Apartheid, EC’s Proposal for a Council Decision on the Partial Suspension of the EU-Israel Association Agreement, Gaza Strip, Genocide, Palestine.

LA SOSPENSIONE PARZIALE DELL’ACCORDO DI ASSOCIAZIONE UE-ISRAELE: LE INADEGUATEZZE DELLA PROPOSTA DELLA COMMISSIONE E LE CRITICITÀ DELLA SUA MANCATA ADOZIONE

ABSTRACT

Il presente articolo si concentra sulla Proposta di Decisione del Consiglio di sospensione parziale dell’Accordo di Associazione UE-Israele, presentata dalla Commissione europea il 17 settembre 2025, con l’obiettivo di rispondere a una specifica domanda di ricerca: se tale iniziativa possa essere considerata una risposta adeguata da parte dell’UE alla situazione in corso in Palestina, in particolare nella Striscia di Gaza, qualificata da diverse autorevoli voci come un “genocidio” commesso dallo Stato di Israele. Per rispondere a tale domanda, preliminarmente, si procede a un’analisi dell’Accordo di Associazione UE-Israele, anche in relazione alle obiezioni già emerse in passato (ad esempio, a causa dell’“apartheid” da parte di Israele nei confronti dei palestinesi). Successivamente, viene esaminata la Proposta della Commissione europea, con riferimento sia al suo contesto che al suo contenuto. Il contributo passa quindi a considerare le questioni critiche della Proposta. In primo luogo, si rileva che essa è stata presentata con un ritardo ingiustificabile. In secondo luogo, ci si sofferma sui limiti delle misure ivi contenute: al riguardo, si cerca di comprendere le cause da cui essi dipendono, ma si espongono anche le ragioni per cui – a detta di numerosi e autorevoli attori – tali limiti rendono la Proposta insufficiente, sicché sarebbero state auspicabili misure più incisive. In terzo luogo, si illustrano le ragioni per cui la Proposta rischia di non vedere

mai la luce, nonché i gravi problemi che deriverebbero dalla sua mancata adozione, alla luce delle persistenti violazioni del diritto internazionale da parte di Israele. Infine, l'articolo svolge alcune considerazioni conclusive circa la condotta complessiva tenuta dall'Unione Europea nell'ambito della vicenda presa in esame.

KEYWORDS

Apartheid, Genocidio, Palestina, Proposta della Commissione europea di Decisione del Consiglio di sospensione parziale dell'Accordo di Associazione UE-Israele, Striscia di Gaza.