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Implementing the Responsibility to Prevent: The European Union and its Preventive Engagement in the Common Foreign and Security Policy

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ABSTRACT *This article examines the European Union's role in implementing the preventive dimension of the Responsibility to Protect (R2P) through its Common Foreign and Security Policy (CFSP). It provides a critical assessment of key CFSP tools for atrocity prevention, identifying their main strengths and structural limitations, and advancing recommendations to address existing gaps. This contribution further explores the existence and scope of due diligence obligations aimed at preventing serious violations of peremptory norms of general international law, clarifying whether such obligations apply to the European Union and the extent to which it contributes to shaping their content and fostering their effectiveness.*

KEYWORDS Responsibility to Protect, international core crimes, European Union, Common Foreign and Security Policy, *jus cogens*, due diligence, duty to prevent genocide

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1 INTRODUCTION

According to the UN Secretary-General, the world is currently facing the highest number of violent conflicts since the Second World War.¹ The crises in Ukraine, Israel, and the Occupied Palestinian Territory (OPT), together with ongoing conflicts across Africa and the Middle East, reveal a highly unstable international landscape marked by a growing number of situations that involve, *inter alia*, the commission of international core crimes.² The Statute of the International Criminal Court underlines that international core crimes, including genocide, war crimes, and crimes against humanity, constitute the most serious and heinous forms of violations of human rights. These atrocities threaten the peace, security and well-being of the world.³ Therefore, when States fail in their duty to protect their own citizens, the international community is expected to act fast and decisively.

Two decades after the endorsement of the Responsibility to Protect (R2P) by the United Nations and its Member States, the promise of halting and preventing atrocity crimes remains unfulfilled. While both recent and longstanding debates have largely focused on the legal issues linked with the R2P reactive realm,⁴ it is equally important to focus on the legal and practical implications of its preventive engagement—arguably the single most important element of the Responsibility to Protect.⁵ Among the regional organisations committed to addressing mass atrocity crimes worldwide, the European Union (EU) possesses the greatest potential to fully operationalise the Responsibility to Protect, particularly through conflict prevention.⁶ In this regard, the Common Foreign and Security Policy (CFSP) has a wide array of tools at its disposal to prevent core international crimes in third States.

Against this backdrop, the aim of this contribution is twofold. First, it intends to assess the EU's implementation of the R2P preventive dimension through its CFSP atrocity-prevention tools. This includes a critical assessment of their main strengths and weaknesses, along with recommendations to address

¹ Report of the Secretary-General, 'Strengthening of the coordination of emergency humanitarian assistance of the United Nations' (2023) UN Doc A/78/73-E/2023/61.

² See Global Centre for the Responsibility to Protect, 'Populations at Risk' (*GlobalR2P*, 15 July 2025) <<https://www.globalr2p.org/publications/populations-at-risk-july-2025/>>.

³ See the preamble of the Rome Statute. Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3.

⁴ Carlo Focarelli, 'The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine' (2008) 13(2) *Journal of Conflict & Security Law* 191; Hannah Yiu, 'Jus Cogens, the Veto and the Responsibility to Protect: A New Perspective' (2009) 7 *New Zealand Yearbook of International Law* 207; Hitoshi Nasu, 'The UN Security Council's Responsibility and the "Responsibility to Protect"' (2011) 15 *Max Planck Yearbook of United Nations Law* 377; Anne Peters, 'The Security Council's Responsibility to Protect' (2011) 8 *International Organizations Law Review* 15; Patrick M Butchard, *The responsibility to protect and the failures of the United Nations Security Council* (Hart 2020).

⁵ Alex J Bellamy and Edward C Luck, *The Responsibility to Protect: From Promise to Practice* (Polity Press 2018) 140.

⁶ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Brookings Institute Press 2008) 183-184.

existing gaps. Second, this study critically examines the existence of due diligence obligations aimed at preventing serious *jus cogens* violations, by clarifying whether they apply to the EU and what role the EU plays in shaping their content and fostering their effectiveness. Following an evaluation of the EU's current practice in this field, the study will examine whether these obligations of conduct translate into concrete and proactive measures.

2 THE AFFIRMATION OF THE RESPONSIBILITY TO PROTECT WITHIN THE EU FRAMEWORK

The international community's failure to tackle international core crimes,⁷ together with the debate over NATO's intervention in Kosovo,⁸ prompted States to develop a new framework for preventing and halting mass atrocities: the Responsibility to Protect. The International Commission on Intervention and State Sovereignty (ICISS) first introduced R2P in 2001.⁹ Four years later, in occasion of the World Summit, the United Nations and its Member States committed to upholding this doctrine.¹⁰ Crucially, while emphasising the States' primary responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity, they agreed on the international community's subsidiary role in taking collective action when States manifestly fail to protect their populations from the commission of the above-mentioned crimes.¹¹

As the 2009 UN Secretary-General's Report underlines, the Responsibility to Protect, which scholars have examined in-depth over the past two decades,¹² relies on three interconnected pillars: the responsibility of each State to protect its populations (Pillar I); the responsibility of the international community to assist States in protecting their populations (Pillar II); and the responsibility of the international community to protect when a State is manifestly failing to protect its populations (Pillar III).¹³ This Three-Pillar approach underscores the equal importance of each pillar, which together sustain the whole "edifice" of the Responsibility to Protect.¹⁴ Since its adoption, the UN Security Council has

⁷ Report of the Secretary General, 'We the Peoples: The Role of the United Nations in the Twenty-First Century' (2000) UN Doc A/54/2000, para 217.

⁸ Defined as 'illegal but legitimate'. Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (OUP 2000) 4.

⁹ ICISS, *The Responsibility to Protect* (14 August 2002) UN Doc A/57/303, Annex.

¹⁰ UNGA, 'World Summit Outcome' (24 October 2005) UN Doc A/RES/60/1, paras 138-139.

¹¹ *ibid.*

¹² See, *inter alia*, Carsten Stahn, 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?' (2007) 101 AJIL 99; James Pattison, *Humanitarian intervention and the responsibility to protect: who should intervene?* (OUP 2010); Alex J Bellamy, Sara E Davies and Luke Glanville (eds), *The responsibility to protect and international law* (Nijhoff 2011); Anne Orford, *International Authority and the Responsibility to Protect* (CUP 2011); Jared Genser and Irwin Cotler, *The responsibility to protect: the promise of stopping mass atrocities in our time* (OUP 2012); Peter Hilpold (ed), *Responsibility to Protect (R2P): A New Paradigm of International Law?* (Nijhoff 2014); Susan Breau, *The Responsibility to Protect in International Law: An Emerging Paradigm Shift* (Routledge 2016).

¹³ UNGA, 'Implementing the Responsibility to Protect: Report of the Secretary-General' (12 January 2009) UN Doc A/63/677.

¹⁴ *ibid.* 9-10, para 12.

invoked the Responsibility to Protect in more than 95 resolutions.¹⁵ The current geopolitical scenario further underscores the relevance of this topic, which requires States and international organisations to play a crucial role in ensuring its effective implementation.

The European Union has been a staunch supporter of the Responsibility to Protect since its inception. Even before the UN's endorsement of the Responsibility to Protect, the EU actively promoted efforts in tackling international core crimes.¹⁶ In fact, the 2001 Presidency Conclusions of the Gothenburg European Council and 2003 European Security Strategy emphasised the importance of conflict prevention and crisis management tasks— aspects which are at the heart of the Responsibility to Protect.¹⁷ Following the World Summit Outcome, the EU continued to advocate R2P in subsequent UN debates. For instance, during the 2009 discussions following the *Implementing the Responsibility to Protect* Report, Sweden's representative, speaking on behalf of the European Union, reiterated the EU's full support and need to ensure an effective implementation of the Responsibility to Protect.¹⁸ As usually happens, several non-EU members States also joined the EU's position.¹⁹ Internally, the Council of the European Union, the European Parliament, and the European Commission supported the Responsibility to Protect through two key joint declarations: the 2006 European Consensus on Development and the 2008 European Consensus on Humanitarian Aid.²⁰ These documents underscored the three main EU institutions' commitment to advancing the Responsibility to Protect under the outcomes of the World Summit,²¹ with a concrete focus on conflict prevention.²² Over the past decade, the European Union has strengthened its support to R2P. The 2016 EU Global Strategy underlines the EU's continued

¹⁵ Global Centre for the Responsibility to Protect, 'What is R2P?' <<https://www.globalr2p.org/>>.

¹⁶ David Carment, Sean Winchester and Joe Landry, 'The Role of Regional Organizations' in Alex Bellamy and Tim Dunne (eds), *The Oxford Handbook of the Responsibility to Protect* (OUP 2016) 335, 344.

¹⁷ Presidency Conclusions, Gothenburg European Council, 15 and 16 June 2001, SN 2001/01 REV 1, paras 47-54. Council of the European Union, 'A Secure Europe in a Better World - European Security Strategy' (*Consilium Europa*, 12 December 2003) <<https://www.consilium.europa.eu/media/30823/qc7809568enc.pdf>>.

¹⁸ UNGA (63rd Session) 97th Plenary Meeting (23 July 2009) UN Doc A/63/PV.97, 3-6.

¹⁹ Concerning Armenia, see UNGA (63rd Session) 100th Plenary Meeting (28 July 2009) UN Doc A/63/PV.100, 14; Concerning Bosnia and Herzegovina, see UNGA (63rd Session) 97th Plenary Meeting (23 July 2009) UN Doc A/63/PV.97, 15-16; Concerning Georgia, see UNGA (63rd Session) 101st Plenary Meeting (28 July 2009) UN Doc A/63/PV.101, 7; Concerning the Republic of Moldova, see UNGA (63rd Session) 97th Plenary Meeting (23 July 2009) UN Doc A/63/PV.97, 5; Concerning Turkey, see UNGA (63rd Session) 99th Plenary Meeting (24 July 2009) UN Doc A/63/PV.99, 21.

²⁰ Joint statement by the Council and the representatives of the governments of the member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus' (24 February 2006) OJ C 46, 1-19, para 37. Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission (30 January 2008) OJ C 25, 1-12, para 17.

²¹ Geert de Baere, 'The EU and the Responsibility to Protect' in Bart Van Vooren, Steven Blockmans and Jan Wouters (eds), *The EU's Role in Global Governance* (OUP 2013) 95, 102.

²² The European Consensus (n 20) para 37; de Baere (n 21) 102.

engagement in advancing R2P alongside international humanitarian law, international human rights law, and international criminal law.²³ The 2017 Strategic Approach to Resilience in the EU's External Action and the New European Consensus on Development (NECD)²⁴ highlight the importance of prevention, fostering the EU's role in promoting early detection and prevention of atrocities.²⁵ On the same path, the European Commission's 2021-2027 multi-annual indicative programme on Peace, Stability and Conflict Prevention further consolidates the EU's role in advancing the R2P preventive pillar.²⁶

The European Union has also reaffirmed its support to the Responsibility to Protect in international fora, particularly through statements delivered before the UN General Assembly.²⁷ Since the 2005 World Summit Outcome, the EU has consistently promoted R2P as a core element of its foreign and security policy.²⁸ The statement delivered in June 2025 by the Deputy Head of the EU Delegation to the UN during the 79th Session of the General Assembly further confirms this view. In that occasion, she stressed:

R2P continues to be a key principle for our national and international efforts to prevent atrocities, and has helped to protect people across the world from unconscionable suffering. [...] When prevention fails, we need to make every effort to ensure that the perpetrators of atrocity crimes are held accountable. In this context, the EU reaffirms its unwavering support for the international criminal justice system, particularly to the International Criminal Court.²⁹

²³ EEAS, 'Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign and Security Policy' (EEAS, June 2016) <https://www.eeas.europa.eu/sites/default/files/eugs_review_web_0.pdf>.

²⁴ European Commission, Joint Communication to the European Parliament and the Council, 'A Strategic Approach to Resilience in the EU's External Action' (7 June 2017) JOIN(2017) 21 final. European Commission: Directorate-General for International Cooperation and Development, *The new European consensus on development - 'our world, our dignity, our future'*, Publications Office, 2017, para 66.

²⁵ *ibid.*

²⁶ European Commission, Multiannual Indicative Programme 2021-2027, 'Thematic Programme on Peace, Stability and Conflict Prevention' 14 <https://international-partnerships.ec.europa.eu/system/files/2022-01/mip-2021-c2021-8985-peace-stability-conflict-prevention-annex_en.pdf>.

²⁷ For further information, see Carmela Pérez-Bernárdez, 'Respuestas del sistema diplomático ante el Servicio Europeo de Acción Exterior (SEAE): el caso de la Unión Europea en la Asamblea General de las Naciones Unidas' (2011) 44 Cuadernos Europeos de Deusto 111.

²⁸ UNGA (73rd Session) 93rd Plenary Meeting (27 June 2019) UN Doc A/73/PV.93, 4; UNGA (75th Session) 64th Plenary Meeting (17 May 2021) UN Doc A/75/PV.64, 7; UNGA (77th Session) 83rd Plenary Meeting (26 June 2023) UN Doc A/77/PV.83, 4.

²⁹ EU statement on behalf of the European Union and its Member States, 'Responsibility to Protect and the Prevention of genocide, war crimes, ethnic cleansing and crimes against humanity' (EEAS, 25 June 2025) <https://www.eeas.europa.eu/delegations/un-new-york/eu-statement-un-general-assembly-responsibility-protect-and-prevention-genocide-war-crimes-ethnic-0_en>.

Accordingly, the abovementioned EU political statements and strategy documents, often seen as indicators of “norm acceptance”,³⁰ consolidate the Union’s commitment to the Responsibility to Protect,³¹ placing particular emphasis on the implementation of its preventive dimension.

3 IMPLEMENTING THE RESPONSIBILITY TO PROTECT UNDER THE COMMON FOREIGN AND SECURITY POLICY: A FOCUS ON ITS PREVENTIVE ENGAGEMENT

The UN Secretary-General’s report on the Responsibility to Protect consistently underlines the crucial role of regional organisations in ensuring its effective implementation.³² Among these, the European Union stands out as the regional organisation that holds the greatest potential to fully operationalise the Responsibility to Protect, particularly through conflict prevention.³³ While the implementation of R2P starts internally, the EU—unlike other organisations³⁴—places greater emphasis on its external policies.³⁵ This focus reflects the fact that, although increasingly under pressure, Member States are required to adhere strictly to the Union’s core values—democracy, the rule of law, and respect for human rights—as a fundamental condition of membership. Moreover, the Union’s internal stability reinforces its credibility as an external actor.³⁶

With the entry into force of the Lisbon Treaty, the promotion of the Union’s values in its external relations—including respect for human rights and international law—acquired treaty foundation, as envisaged in Articles 3(5) and 21 of the Treaty on European Union (TEU). Therefore, since R2P rests on the promotion and protection of fundamental rights and values, the EU’s external action provides an appropriate framework for advancing its implementation in third countries that are unable or unwilling to halt and prevent the commission of gross human rights violations.

Among the tools at the EU’s disposal, the Common Foreign and Security Policy constitutes a central pillar of the EU’s efforts to implement the Responsibility to Protect. It enables the EU to adopt both preventive and coercive

³⁰ Chiara de Franco, Christoph Meyer and Karen E Smith, ‘Europe and the European Union’ in Alex Bellamy, Tim Dunne (eds), *The Oxford Handbook of the Responsibility to Protect* (OUP 2016) 395.

³¹ cf Stefan Kadelbach, ‘The European Union’s Responsibility to Protect’ in Peter Hilpold (ed), *The Responsibility to Protect (R2P). A New Paradigm of International Law?* (Brill | Nijhoff 2015) 237.

³² UNSC, Report of the Secretary-General, ‘The role of regional and subregional arrangements in implementing the responsibility to protect’ (28 June 2011) UN Doc A/65/877-S/2011/393.

³³ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Brookings Institute Press 2008) 183-184.

³⁴ Such as the African Union. Constitutive Act of the African Union (adopted 11 July 2000, entered into force 26 May 2001), art. 4(h).

³⁵ De Franco, Meyer and Smith (n 30) 396.

³⁶ Scholars argue that the EU’s internal stability is arguably at stake due to its reluctance to implement the procedure enshrined in art. 7 TEU, which applies when there is “[...] the existence of a serious and persistent breach by a Member State of the values referred to in Article 2”. cf Elin Hellquist, ‘Ostracism and the EU’s contradictory approach to sanctions at home and abroad’ (2018) 25(4) Contemporary Politics 393.

measures within a comprehensive approach to crisis management, covering all phases from early engagement to post-conflict stabilisation. When it comes to CFSP, it is worth recalling that, even though with the Lisbon Treaty the CFSP became “part and parcel of the EU legal order”,³⁷ it still retains a strong intergovernmental character. Decisions in this area generally require unanimity,³⁸ and remain primarily in the hands of the European Council and the Council, the two main institutions shaping this sector. Acting in accordance with the principles and objectives enshrined in the treaties, CFSP measures can significantly contribute to the operationalisation of the Responsibility to Protect, mainly through the use of soft law instruments. These tools, typically employed in this domain, have gained growing importance under both international and EU law,³⁹ and can influence various aspects of the CFSP, including—directly or indirectly—issues related to R2P.

As the ICISS pointed out, the Responsibility to Protect comprises three main elements: the Responsibility to Prevent; the Responsibility to React, and the Responsibility to Rebuild.⁴⁰ Among these, the preventive dimension deserves particular attention, as it represents the most important component of R2P.⁴¹ In the same vein, as discussed above, the European Union places primary emphasis on preventive engagement. Following the “narrow but deep” approach,⁴² it employs a broad range of tools to advance R2P effectively, particularly within the CFSP framework.

Given the importance that the EU places on conflict prevention, it has progressively developed a set of tools to pursue this objective in its external relations. Amongst these, the EU Conflict Early Warning System (EWS) is worthy of note. Fully operational since 2014,⁴³ it serves as a “[...] robust, evidence-based risk management tool that identifies, assesses and helps prioritize situations at risks of violent conflict for non-EU countries”.⁴⁴ Although the EWS is not a

³⁷ Opinion of Advocate General Wahl (7 April 2016) in Case C-455/14 P, ECLI:EU:C:2016:212, para 46.

³⁸ Treaty on European Union (29 July 1992) OJ C 191, 1-112 (hereinafter TEU), art. 24 TEU.

³⁹ For further information see, *inter alia*, Ivan Smyth, ‘The Use of Soft Law Instruments in the European Union’s External Relations. A Delicate Balance between Pragmatism, Transparency and Democratic Oversight’ in Stephan Marquardt and Steven Blockmans (eds), *The European Union’s Contribution to International Peace and Security. Liber Amicorum in honour of Gert-Jan van Hegelsom* (Brill | Nijhoff 2023) 68.

⁴⁰ ICISS (n 9) Annex, XI.

⁴¹ Bellamy and Luck (n 5) 140.

⁴² According to this criterion, the material scope of the Responsibility to Protect is limited to the crimes of genocide, war crimes, crimes against humanity, and ethnic cleansing. At the same time, it envisions a broad range of tools that States and International Organizations can employ to prevent and halt such mass atrocity crimes. See Jennifer Welsh, ‘The “Narrow but Deep Approach” to Implementing the Responsibility to Protect: Reassessing the Focus on International Crimes’ in Sheri P Rosenberg, Tibi Galis and Alex Zucker (eds), *Reconstructing Atrocity Prevention* (CUP 2015) 81.

⁴³ Sofia Palli, *Early Warning Systems as a Conflict Prevention Tool: Recommendations for the Arab Region* (23 May 2017) E/ESCWA/ECRI/2017/WP.3, 20.

⁴⁴ European Commission, Joint Staff Working Document, ‘Conflict Early Warning System: Objectives, Process and Guidance for Implementation - 2020’ (10 March 2021) SWD(2021) 59 final, 3.

predictive tool, it takes into account structural factors and indicators,⁴⁵ which often correlate with potential conflict scenarios. In this way, the EU Conflict EWS can serve as an effective tool for identifying and mitigating conflict risks.⁴⁶

The Early Warning System comprises various steps. After an initial phase of risk scanning, the first component, Prioritisation, identifies early warning priorities to guide resource allocation and political engagement. The second, Shared assessment, brings together geographic and thematic experts to conduct a joint assessment and define preventive or peacebuilding options. The final component, Monitoring, evaluates the actions taken and their impact on reducing conflict risks in priority countries. Over time, the EU has refined the system to strengthen the link between early warning and early action.⁴⁷ A recent addition, Follow-up, allows experts to visit the country concerned, review findings, update risk assessments, and assess how effectively preventive measures have been implemented.⁴⁸

However, one should note that the EWS analytical assessment does not automatically translate into preventive action. Rather, it provides policy recommendations whose implementation ultimately depends on political endorsement by the Council of the European Union through the adoption of CFSP acts. This institutional “translation gap” between risk identification and political decision-making stands as a major constraint of the EU Conflict EWS and inevitably raises questions about its practical effectiveness. As a matter of fact, measures such as preventive deployment, coercive instruments, or accelerated funding remain contingent upon political consensus among EU member States.

Despite the efforts in bridging the gap between early warning and early action, the EU continues to privilege reactive over structural preventive engagement.⁴⁹ For instance, when it comes to funding, it is worth highlighting that most of the funding labelled as preventive does not go into actual prevention, but into managing acute crises. This approach is at stake with the logic of structural long-term preventive engagement, which requires sustained investment in

⁴⁵ Such as the Global Conflict Risk Index. For further information, see European Commission, ‘Global Conflict Risk Index’, (*Disaster Risk Management Knowledge Centre*, 2026) <<https://drmkc.jrc.ec.europa.eu/initiatives-services/global-conflict-risk-index#documents/1435/list>>. See also European Commission: Joint Research Centre, Guy Schvitz, Christina Corbane, Marie Sophie Van Damme, Ioannis Galariotis et al, *The Global Conflict Risk Index 2022 - Revised data and methods* (2022) Publications Office of the European Union.

⁴⁶ Edward Newman and Cristina G Stefan, ‘Normative Power Europe? The EU’s Embrace of the Responsibility to Protect in a Transitional International Order’ (2020) 58(2) *JCMS* 472, 479.

⁴⁷ See, *inter alia*, European Commission, Joint Staff Working Document, ‘Conflict Early Warning System: Objectives, Process and Guidance for Implementation’ (14 January 2016) SWD(2016) 3 final; European Commission, Joint Staff Working Document, ‘Conflict Early Warning System: Objectives, Process and Guidance for Implementation - 2017’ (27 July 2017) SWD(2017) 282 final; European Commission, Joint Staff Working Document, ‘Conflict Early Warning System: Objectives, Process and Guidance for Implementation - 2020’ (10 March 2021) SWD(2021) 59 final.

⁴⁸ Conflict Early Warning System 2020, 2, 5-6.

⁴⁹ Sarah Bressan, ‘The Power and limits of data for peace. Improving the EU conflict early warning system for more effective prevention’ (*EUISS*, January 2024) 6 <<https://www.iss.europa.eu/publications/briefs/power-and-limits-data-peace>>.

addressing underlying vulnerabilities before they escalate into open conflict.⁵⁰ Empirical evidence confirms this trend, according to which the EU's engagement has often followed events rather than anticipating them, revealing a pattern of *ex post* response rather than forward-looking prevention at meaningful scale. For example, the EU undertook no substantial preventive engagement in Mali before the 2012 crisis, nor in Burkina Faso prior to 2015, with investments increasing only from 2016 onwards in the latter case.⁵¹

From a practical perspective, the war in Ukraine illustrates the structural limits of early warning mechanisms when they are not matched by credible rapid-response capacity. This limitation becomes particularly evident when considering the atrocities committed in Bucha in March 2022, where the UN documented widespread civilian killings, summary executions, torture, and sexual violence committed by Russian armed forces against Ukrainian civilians and prisoners of war.⁵² On different occasions, the United Nations Independent International Commission of Inquiry on Ukraine concluded that there were reasonable grounds to believe that war crimes were committed in Bucha by members of the Russian armed forces.⁵³ These events have become emblematic of the broader pattern of core international crimes perpetrated during the conflict. Although significant risks of escalation were already evident prior to February 2022—including unresolved territorial disputes following the 2014 annexation of Crimea, disinformation campaigns, and structural democratic vulnerabilities in the wider region⁵⁴—the Union failed to translate this risk awareness into timely protective measures capable of preventing atrocities on the ground. The situation in Bucha therefore exemplifies a broader structural imbalance within the EU's preventive architecture. While the Union has significantly enhanced its capacity to detect and assess atrocity risks, it remains politically and institutionally constrained in converting early warning into rapid and genuinely proactive action.

As part of the EWS,⁵⁵ the European External Action Service adopted the Atrocity Prevention Toolkit in 2018.⁵⁶ Originally titled, “EU Responsibility to

⁵⁰ Philipp Rotmann, Melissa Li and Sofie Lilli Stoffel, ‘Follow the money: Investing in crisis prevention – What the spending patterns of Germany, the United States, the United Kingdom, and the European Union reveal about strategies and priorities’ (*Global Public Policy Institute*, October 2021) <https://reliefweb.int/attachments/a26efe4a-1562-3549-a610-41bc810bb608/GPPi_2020_crisis-prevention-spending_final.pdf>.

⁵¹ *ibid.*

⁵² For further information, see Neil Renic ‘The Cost of Atrocity: Strategic Implications of Russian Battlefield Misconduct in Ukraine’ (2024) 38(1) *Ethics & International Affairs* 6, 10.

⁵³ UNGA, ‘Report of the Independent International Commission of Inquiry on Ukraine’ (18 October 2022) UN Doc A/77/533, para 109; HRC, ‘Report of the Independent International Commission of Inquiry on Ukraine’ (25 September 2023) UN Doc A/HRC/52/62, para 109.

⁵⁴ See, *inter alia*, European Parliamentary Research Service, ‘Mapping threats to peace and democracy Worldwide. Normandy Index 2021’ (*European Parliament*, July 2021) 50 <[https://www.europarl.europa.eu/RegData/etudes/STUD/2021/690670/EPRS_STU\(2021\)690670_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/690670/EPRS_STU(2021)690670_EN.pdf)>.

⁵⁵ Julia Schmidt, ‘The European Union and the Responsibility to Protect’ (2019) 24(3) *European Foreign Affairs Review* 309, 322.

⁵⁶ EEAS, ‘EU Responsibility to Protect - Atrocity Prevention Toolkit’ (EEAS, September 2018) <https://www.eeas.europa.eu/sites/default/files/eu_r2p_atrocity_prevention_toolkit.pdf>.

Protect - Atrocity Prevention Toolkit”, it represents the EU’s most comprehensive policy document⁵⁷ in advancing “the global commitment of the Responsibility to Protect”,⁵⁸ with a specific focus on preventive engagement.⁵⁹ The Toolkit incorporates structural risk indicators and warning signs that alert to the potential commission of international core crimes. It assists EU practitioners, including EU Delegations—which play a key role in identifying early warning signs and formulating policy responses to prevent atrocity crimes⁶⁰—by providing them with practical, hands-on guidance for identifying and addressing such risks.⁶¹ Despite certain shortcomings,⁶² the Toolkit remains a key instrument that enables the EU to halt and prevent atrocity crimes. Building on the EWS, it represents an additional step toward narrowing the gap between early warning and early action, thereby demonstrating the EU’s commitment to strengthening the implementation of the Responsibility to Protect.⁶³ The Atrocity Prevention Toolkit emphasises proactive rather than reactive responses,⁶⁴ aiming to generate a positive impact at an early stage by reducing or mitigating the risk of atrocity situations. In doing so, it reinforces the EU’s overall engagement within the R2P framework.⁶⁵

Notwithstanding these improvements, as seen before, the EU’s current practice often appears more reactive than preventive. To strengthen its proactive capacity, several reforms could be considered. For instance, EU practitioners—including EU Delegations—should rigorously rely on the structural risk indicators and warning signs provided in the Toolkit that alert to the potential commission of international core crimes. Moreover, the EU could draw lessons from humanitarian aid agencies which, rather than issuing vague and non-binding recommendations for action, link risk forecasts to pre-agreed anticipatory action protocols and pre-committed financing mechanisms.⁶⁶ At a more operational level, preventive deployment options—either CSFP or CSDP missions—should be pre-planned for scenarios identified as high-risk. Absent such reforms, the EU’s preventive architecture—though normatively robust and conceptually aligned with the Responsibility to Prevent—risks remaining politically reactive in practice.

⁵⁷ Newman and Stefan (n 46) 480.

⁵⁸ EEAS, Atrocity Prevention Toolkit (n 56) 4.

⁵⁹ Jan Wouters and Francisca Costa Reis, ‘Localizing the responsibility to protect: European and Brazilian perspectives’ in Michelle Egan, Kolja Raube, Jan Wouters and Julien Chaisse (eds), *Contestation and Polarization in Global Governance. European Responses* (Elgar 2023) 247, 255-256.

⁶⁰ EEAS, Atrocity Prevention Toolkit (n 56) 4.

⁶¹ As already stated by Federica Mogherini. EEAS, ‘Statement by HR/VP Federica Mogherini on the International Day of Commemoration and Dignity of the Victims of the Crime of Genocide and of the Prevention of this Crime’ (EEAS, 9 December 2017) <https://www.eeas.europa.eu/node/37088_en>.

⁶² For instance, as Newman and Stefan observe: “the Toolkit - unlike the Global Strategy - is targeted primarily at EU officials, not international political stakeholders. It is not intended to signal global normative leadership or positioning”. Newman and Stefan (n 46) 480.

⁶³ Schmidt (n 55) 322.

⁶⁴ Considered as one of the major weaknesses of the EU. Wouters and Costa Reis (n 59) 256.

⁶⁵ Newman and Stefan (n 46) 480.

⁶⁶ Bressan (n 49) 7.

Within this framework, it is worth stressing that the European Union also advances the implementation of the Responsibility to Prevent through the Common Security and Defence Policy, an integral component of the Common Foreign and Security Policy. In March 2022, the EU adopted the Strategic Compass: it seeks to provide concrete responses to the increasingly unstable geopolitical landscape—demonstrated, *inter alia*, by the tectonic shift caused by Russia’s war of aggression against Ukraine⁶⁷—and to reaffirm the need for rapid and resolute action to protect civilians.⁶⁸ To face these challenges and strengthen its role in security and defence, the EU committed to establishing a Rapid Deployment Capacity (RDC). The RDC, which became operational in May 2025, enables the swift deployment of up to 5,000 troops into non-permissive environments for different types of crises.⁶⁹ The Strategic Compass indicates that RDC can serve multiple purposes, including initial entry, reinforcement, or acting as a reserve force to secure an exit, with operational scenarios initially focusing on rescue and evacuation missions as well as the early stages of stabilisation operations.⁷⁰ Unlike the fixed structure of the EU Battlegroups, which inspired its creation, the RDC operates as a modular force that integrates land, air, and maritime components along with strategic enablers.⁷¹ Its primary goal is to enhance flexibility in selecting and deploying forces according to the specific operational needs of each crisis scenario. This flexibility also extends to decision-making, particularly through the potential use of Article 44 TEU. Although decisions under this provision still require unanimity, it enables coalitions of EU member States to exercise greater autonomy in planning and conducting EU-led operations.⁷² Funding remains a crucial issue, as it has long hindered the operationalisation of the EU Battlegroups. The Strategic Compass therefore promotes the use of the European Peace Facility (EPF) to cover common costs, thereby encouraging more Member States to contribute actively to a rapid and effective EU response to global crises.⁷³ To further consolidate this view, the EPF financed the live military exercises undertaken before the RDC became fully

⁶⁷ cf Jan Wouters, ‘Enhancing the rule of law in Europe and in the world: mission impossible?’ in Luis M Hinojosa-Martínez and Carmela Pérez-Bernárdez (eds), *Enhancing the rule of law in the European Union’s External Action* (Elgar 2023) 18.

⁶⁸ Christoph O Meyer, Ton van Osch and Yf Reykers, ‘From EU battlegroups to Rapid Deployment Capacity: learning the right lessons?’ (2024) 100(1) *International Affairs* 181, 195.

⁶⁹ Council of the European Union, ‘A Strategic Compass for Security and Defence’ (21 March 2022) 7371/22, 11 <<https://data.consilium.europa.eu/doc/document/ST-7371-2022-INIT/en/pdf>> (hereinafter Strategic Compass).

⁷⁰ *ibid* 25.

⁷¹ Meyer, van Osch and Reykers (n 68) 196.

⁷² Strategic Compass (n 69) 26; Meyer, van Osch and Reykers (n 68) 196.

⁷³ EEAS, ‘European Union rapid Deployment Capacity’ (EEAS, March 2024) <https://www.eeas.europa.eu/sites/default/files/documents/2024/2024-03-EU-Rapid-Deployment-Capacity_EN.pdf>. As for the European Peace Facility, see Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528, OJ L 102, 24.3.2021, 14-62.

operational.⁷⁴ Even though funding under the European Peace Facility continues to operate on a case-by-case basis and according to EU priorities, this development underscores a more consistent commitment to ensuring the financial sustainability of the EU Rapid Deployment Capacity. While a comprehensive assessment of the EPF falls beyond the scope of this work, it is worth noting that, even though the EPF has improved financial flexibility, it remains limited in scope and scale. It operates under predefined financial ceilings and relies partly on voluntary contributions from like-minded partners supporting specific operations or assistance measures.⁷⁵ To date, however, only Norway has made a voluntary contribution—amounting to €36.5 million—thereby underscoring the EPF’s limited capacity to attract sustained external funding.⁷⁶ Institutional constraints further compound these financial limitations. Notwithstanding extensive academic advocacy for extending Qualified Majority Voting,⁷⁷ unanimity continues to govern decision-making in CFSP (and CSDP) matters with military or defence implications. Moreover, even when the Council succeeds in adopting CFSP decisions in this sector, some Member States resort to constructive abstention. Hungary, for instance, has repeatedly abstained from EPF decisions involving the provision of lethal equipment.⁷⁸ Although legally permissible,⁷⁹ such abstentions weaken the Union’s ability to “speak with one voice”⁸⁰ and narrow the collective political weight of EU external action, as abstaining States are not bound to implement the relevant assistance measures.⁸¹

⁷⁴ The first live exercise (LIVEX) of the Rapid Deployment Capacity (RDC) took place in Spain from 16 to 22 October 2023. However, it involved only 19 Member States and mobilised just 2800 soldiers. See Davide Genini, ‘How the war in Ukraine has transformed the EU’s Common Foreign and Security Policy’ (2025) *Yearbook of European Law* 1, 6. See EEAS, ‘Pioneering EU’s First “Live Exercise” and Shaping Rapid Deployment Capacity in 2023’ (EEAS, 31 August 2023) <https://www.eeas.europa.eu/eeas/pioneering-eus-first-live-exercise-and-shaping-rapid-deployment-capacity-2023_en>. The second live exercise took place in Germany from 26 November to 10 December 2024. EEAS, ‘Milex 24’ (EEAS, 2 April 2024) <https://www.eeas.europa.eu/eeas/milex-24_en>.

⁷⁵ Genini (n 74) 10.

⁷⁶ Council of the EU, ‘EU and Norway sign an agreement in support of EUMAM Ukraine’ (*Consilium Europa*, 6 December 2022) <<https://www.consilium.europa.eu/en/press/press-releases/2022/12/06/eu-and-norway-sign-an-agreement-in-support-of-eumam-ukraine/>>; Council of the EU, ‘Norway: second Norwegian financial contribution to the European Peace Facility’ (*Consilium Europa*, 25 July 2023) <<https://www.consilium.europa.eu/en/press/press-releases/2023/07/25/norway-second-norwegian-financial-contribution-to-the-european-peace-facility/>>.

⁷⁷ See, *inter alia*, Karolina Pomorska and Ramses A Wessel, ‘Qualified Majority Voting in CFSP: A Solution to the Wrong Problem?’ (2021) 26 *European Foreign Affairs Review* 351; Ramses A Wessel and Viktor Szép ‘The Implementation of Article 31 of the Treaty on European Union and the Use of Qualified Majority Voting. Towards a More Effective Common Foreign and Security Policy?’ (2022) *European Parliamentary Study* (November 2022).

⁷⁸ Genini (n 74) 10.

⁷⁹ It is worth recalling that art. 31(1) TEU allows dissenting States (no more than one-third) to abstain without preventing the act from being adopted.

⁸⁰ Which is crucial to ensure the EU’s success in foreign policy. See Questionnaire to the Commissioner-Designate Kaja Kallas, High Representative for Foreign and Security Policy <https://hearings.elections.europa.eu/documents/kallas/kallas_writtenquestionsandanswers_en.pdf>.

⁸¹ Genini (n 74) 10.

Through the R2P lens, it is worth noting that the Strategic Compass makes no explicit reference to the Responsibility to Protect. Moreover, the Rapid Deployment Capacity's quantitative and qualitative features suggest a focus on small-scale, rapid interventions—for which the EU is better equipped⁸²—rather than on the large-scale or long-term operations typically associated with R2P scenarios. The Russian war against Ukraine illustrates this structural gap. The conflict has unfolded within a framework marked by an outdated governance structure, operational constraints, and inadequate financial resources, all of which have limited the Union's capacity to respond autonomously to large-scale security crises.⁸³ The RDC's operational ceiling of 5,000 troops further raises questions regarding its suitability to act in R2P scenarios. While such a force may suffice for evacuation, initial stabilisation, or crisis management tasks, it remains quantitatively insufficient for large-scale protection operations in high-intensity conflicts. By way of comparison, Russia has mobilised nearly 1,5 million troops in the context of the war against Ukraine,⁸⁴ illustrating the magnitude of contemporary interstate warfare and the structural mismatch between the RDC's scale and large-scale atrocity scenarios.

Nonetheless, the establishment of the RDC represents a significant step forward in advancing the R2P preventive realm. It aims to ensure more robust, flexible, and modular military action in crisis scenarios,⁸⁵ and to prevent paralysis caused by funding constraints or lack of political will, even in the face of mass atrocity crimes. In addition, actions such as the protection of civilians during evacuation operations can help prevent further escalation that might otherwise lead to atrocity situations. Accordingly, the EU Rapid Deployment Capacity could serve as a key instrument for implementing the R2P preventive pillar—the core element of the Responsibility to Protect. However, unless accompanied by institutional reform tackling core structural constraints affecting the Common Foreign and Security Policy, the RDC risks emerging as a “born old” instrument.⁸⁶ formally innovative, yet structurally constrained from the outset.

4 DUE DILIGENCE OBLIGATIONS AND THE PREVENTION OF INTERNATIONAL CORE CRIMES

When it comes to assessing the legal status of the Responsibility to Protect, one should note that while R2P Pillars I and II push this doctrine towards a normative realm, the uncertainties on its third Pillar hinder its complete endorsement within the international legal framework. Although a detailed discussion of this matter lies beyond the scope of the present analysis, it is worth noting that the framing of

⁸² De Baere (n 21) 102.

⁸³ Genini (n 74) 1.

⁸⁴ Yury Fedorov, ‘Russian Military Manpower After Two and a Half Years of War in Ukraine’ (*IFRI Studies*, November 2024) 6 <https://www.ifri.org/sites/default/files/2024-11/ifri_fedorov_russian_military_manpower_rer48_nov2024.pdf>.

⁸⁵ Strategic Compass (n 69) 26.

⁸⁶ Genini (n 74) 5.

the Responsibility to Protect in the World Summit Outcome,⁸⁷ coupled with the lack of consistent practice and corrective mechanisms tackling the issue of the veto power, prevent R2P from being separated from the political and moral rationales following this concept since its inception. Nor do they allow for a thorough understanding of its legal dimension. For the time being, the Responsibility to Protect should be regarded as an emerging norm of international law,⁸⁸ which encompasses both legally binding elements and soft law provisions.

Despite the challenges in grasping its legal nature, the Responsibility to Protect is grounded on existing international law.⁸⁹ Therefore, as a repository of existing laws, it is crucial to scrutinise it in conjunction with the international legal framework. In fact, the Responsibility to Protect is closely linked with the prohibition of genocide, crimes against humanity, and basic rules of international humanitarian law, which fall within the category of peremptory norms of general international law recognised by the international community as a whole.⁹⁰ Accordingly, considering the Responsibility to Protect as a “multifaceted concept”⁹¹ requires assessing it in light of the mutually reinforcing effects between the R2P discourse and the established regimes of international law.⁹² In other words, since R2P is a doctrine deeply rooted in existing international law it has to be paired together with hard law obligations enshrined in international legal provisions.

Among these provisions, it is worth mentioning Article I of the 1948 Genocide Convention and Common Article 1 of the 1949 Geneva Conventions. The former, beyond highlighting the fact that genocide represents a crime under international law, whether committed in time of peace or war, enshrines States’ obligation to prevent and punish its commission.⁹³ The latter sets out the obligation

⁸⁷ Stahn (n 12) 109.

⁸⁸ *ibid* 118.

⁸⁹ See, *inter alia*, John Heieck, *A Duty To Prevent Genocide: Due Diligence Obligations Among the P5* (Elgar 2018) 3; Laurence Boisson de Chazournes and Luigi Condorelli, ‘De la “responsabilité de protéger” ou d’une nouvelle parure pour une notion déjà bien établie’ (2006) 110 *Revue Générale de Droit International Public* 11, 13-16.

⁹⁰ As regards the prohibition of genocide, see Yearbook ILC, 1966, vol. II, 248; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Provisional Measures) (Order)* [1993] ICJ Rep 325, 339-340. Concerning crimes against humanity, see Yearbook ILC, 2001, vol. II, part two, 85. Regarding basic rules of international humanitarian law applicable in armed conflict considered “intransgressible” in character, see *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226, 257, para 79. These norms are included in the non-exhaustive list of *jus cogens* norms referred in the Annex of the Draft conclusions on peremptory norms of general international law (*jus cogens*). Report of the International Law Commission Seventy-first session (29 April-7 June and 8 July-9 August 2019) UN Doc A/74/10, 207.

⁹¹ Andreas S Kolb, *The Responsibility to Protect in International Law: Rights and Obligations to Save Humans from Mass Murder and Ethnic Cleansing in Light of State Practice and Ethical Considerations* (Kovač 2011) 132.

⁹² Andreas S Kolb, *The UN Security Council Members’ Responsibility to Protect. A Legal Analysis* (Springer 2018) 33.

⁹³ As a matter of fact, it states: ‘The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish’. See art. 1 Genocide Convention.

for State Parties to “undertake to respect and to ensure respect for the Geneva Conventions in all circumstances”.⁹⁴ Crucially, these provisions encapsulate due diligence obligations to employ all necessary means in order to prevent the commission of the crime of crimes,⁹⁵ as well as ensure the respect of international humanitarian law.

As for the notion of due diligence, we consider it as a standard of care that applies to assess whether a certain subject—including States and international organisations—has exercised its best possible efforts or done the utmost to prevent or minimise concrete harm.⁹⁶ Accordingly, due diligence obligations qualify as obligations of conduct, not of result. As Riccardo Pisillo-Mazzeschi observes, while “the obligation of result is an obligation to ‘succeed’, the obligation of diligent conduct is an obligation to ‘make every effort’”.⁹⁷ Due diligence standard also applies to international core crimes, with a specific focus on its preventive engagement. In this regard, the duty to prevent genocide, a legally binding obligation under both the Genocide Convention and customary international law,⁹⁸ illustrates how this standard operates in practice. In the *Bosnian Genocide* case, the International Court of Justice (ICJ) clarified that this duty requires States “to employ all means reasonably available to them, so as to prevent genocide so far as possible”.⁹⁹ The key question, therefore, lies in determining which measures are “reasonably available” to the State to comply with this duty.¹⁰⁰ Because this is an obligation of conduct rather than of result,¹⁰¹ the content of the duty to prevent genocide remains inherently discretionary.¹⁰² Despite the “structural impossibility” in assessing once and for all the conduct required to fulfil this

⁹⁴ 1949 Geneva Conventions, Common Article 1. Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31; Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85; Geneva Convention III Relative to the Treatment of Prisoners of War, (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135; Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287.

⁹⁵ William A Schabas, *Genocide in International Law: The Crime of Crimes* (OUP 2009).

⁹⁶ See Robert Kolb, ‘Reflections on Due Diligence and Cyberspace’ (2015) 58 German Yearbook of International Law 113, 115; Anne Peters, Heike Krieger and Leonard Kreuzer, ‘Due Diligence in the International Legal Order. Dissecting the Leitmotif of Current Accountability Debates’ in Anne Peters, Heike Krieger and Leonard Kreuzer, *Due Diligence in the International Legal Order* (OUP 2020) 1, 5.

⁹⁷ Riccardo Pisillo-Mazzeschi, ‘The Due Diligence Rule and the Nature of the International Responsibility of States’ (1992) 35 German Yearbook of International Law 9, 47-48.

⁹⁸ Serena Forlati, ‘The Legal Obligation to Prevent Genocide: Bosnia v. Serbia and Beyond’ (2011) 31 Polish Yearbook of International Law 189, 205.

⁹⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (Judgment) [2007] ICJ Rep 43, 221, para 430.

¹⁰⁰ Forlati (n 98) 201.

¹⁰¹ *ibid.*

¹⁰² These measures could be, *inter alia*, of diplomatic, social, or economic nature. Larissa van den Herik and Emma Irving, ‘Due Diligence and the Obligation to Prevent Genocide and Crimes Against Humanity’ in Anne Peters, Heike Krieger and Leonard Kreuzer (eds), *Due Diligence in the International Legal Order* (OUP 2020) 200, 208.

obligation¹⁰³—an uncertainty that risks either exceeding the limits of international law or endorsing a completely passive approach¹⁰⁴—the obligation to prevent nonetheless requires States to identify, adopt, and publicly justify the most appropriate course of action to address a concrete situation.¹⁰⁵

This interaction also requires taking into account the *jus cogens* nature of the prohibition of genocide.¹⁰⁶ In fact, since *jus cogens* norms rank at the highest level of the sources of international law, it follows that the level of diligence required to accomplish the duty to prevent serious breaches of obligations arising under this category of norms, including genocide, should be of the highest order.¹⁰⁷ Accordingly, although States may discharge the obligation to prevent genocide through different means, a State that possesses the capacity to influence the source of a risk yet fails to act in a concrete situation may ultimately act in breach of its due diligence obligation to prevent the commission of the crime of crimes. Given the importance of these obligations in ensuring respect for *jus cogens* norms, not only States, as the primary duty-bearers, but also international organisations—whose constituent instruments confer the necessary powers to act in this field—are required to contribute to their implementation.

5 THE EUROPEAN UNION'S DUE DILIGENCE OBLIGATIONS IN PREVENTING SERIOUS BREACHES OF *JUS COGENS*

As a subject of international law endowed with legal personality¹⁰⁸—and therefore falling within the definition of an international organisation under Article 2(a) of the 2011 Articles on the Responsibility of International Organizations (ARIO)—the European Union is likewise called to play a significant role in this field. The entry into force of the Lisbon Treaty set for the Union a series of ambitious objectives, which implicitly include the prevention and cessation of serious violations of *jus cogens* norms. Articles 3(5) and 21 TEU make clear that the EU has to contribute to the strict observance and the development of international law. Consequently, the duty to respect international law constitutes not only an international obligation but also a constitutional principle of the European Union itself.¹⁰⁹

¹⁰³ Forlati (n 98) 201.

¹⁰⁴ Christian J Tams, 'Article I' in Christian J Tams, Lars Berster and Björn Schiffbauer (eds), *Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary* (Hart 2014) 33, 54.

¹⁰⁵ Van den Herik and Irving (n 102) 207.

¹⁰⁶ See n 90.

¹⁰⁷ Rebecca Barber, 'Cooperating through the General Assembly to End Serious Breaches of Peremptory Norms' (2022) 71 ICLQ 1, 24.

¹⁰⁸ Art. 47 TEU.

¹⁰⁹ Gleider Hernández and Ramses A Wessel, 'Expert Legal Opinion on the Implications for the European Union of the July 2024 International Court of Justice Advisory Opinion regarding the Policies and Practices of Israel in the Occupied Palestinian Territory' (*RUG*, 19 June 2025) 32, <<https://research.rug.nl/en/publications/expert-legal-opinion-on-the-implications-for-the-european-union-o>>.

The obligations to prevent international core crimes—including the duty to prevent genocide—are not only codified in treaty provisions but also form part of customary international law. As Advocate General Kokott observed, and in accordance with the case law of the Court of Justice of the European Union,¹¹⁰ the EU is bound by international law “in its entirety, including customary international law, which is binding upon the institutions of the European Union”.¹¹¹ Focusing on the EU’s approach towards customary international law, one should also note that, as a subject of international law, the European Union has become the most active international organisation on the global stage, capable of engaging with the most diverse subfields of customary international law, including the law of the sea, international humanitarian law, diplomatic protection and immunities.¹¹² Therefore, notwithstanding its specific institutional features and acting within the limits of its conferred powers, the European Union can play a meaningful role in implementing the Responsibility to Protect. In doing so, it could contribute to the strict observance and progressive development of international law, by implementing customary obligations relating to the prevention of serious *jus cogens* violations.

As previously discussed, the European Union plays a crucial role in conflict prevention. By strengthening existing instruments, such as the Early Warning System, and developing new tools, including the Atrocity Prevention Toolkit and the Rapid Deployment Capacity, the Union has consolidated its central role in promoting preventive engagement within the CFSP realm. These developments enhance the EU’s capacity to prevent the commission of serious international crimes, particularly by narrowing the gap between early warning and early action. Furthermore, these initiatives enable the European Union both to fulfil its preventive obligations under international law and to give them concrete and substantive content. In doing so, the Union also raises the standard of due diligence applicable in this framework, setting a benchmark from which other States and international organisations may draw guidance in fulfilling their duty to prevent serious *jus cogens* violations. Moreover, the EU’s actions may partially compensate for, though not replace, the United Nations Security Council’s inaction resulting from the threat or use of the veto power, which often prevents the adoption of measures under Chapter VII of the UN Charter.¹¹³ In addition to

¹¹⁰ See, *inter alia*, CJEU, judgment of 16 June 1998, *A. Racke GmbH & Co v Hauptzollamt Mainz*, C-162/96, ECLI:EU:C:1998:293, para 46; CJEU, judgment of 27 February 2018, *C- 266/16, Western Sahara Campaign UK*, ECLI:EU:C:2018:118, para 47.

¹¹¹ Opinion of Advocate General Kokott (19 March 2015) in Case C-398/13, *Inuit Tapiriit Kanatami v Commission*, ECLI:EU:C:2015:190, para 86.

¹¹² Fernando Lusa Bordin, ‘Is the European Union a Sui Generis International Organization? The Challenge of Arguing for Special Treatment in Customary International Law’ in Fernando Lusa Bordin, Andreas T Müller and Francisco Pascual-Vives (eds), *The European Union and Customary International Law* (CUP 2022) 48, 63.

¹¹³ Carmelo Danisi, ‘The European Union’s Global Human Rights Sanctions Regime and the “Role Responsibility” of International Organisations’ in Philip Czech, Lisa Heschl, Karin Lukas, Manfred Nowak and Gerd Oberleitner (eds), *European Yearbook on Human Rights* (Intersentia 2021) 475, 491-492.

that, the EU's increased commitment in preventing international core crimes by acting in conformity with international law might also encourage third countries to undertake similar actions, particularly candidate States seeking to join the Union, as their foreign policy decisions often align with the positions taken by the European Union.¹¹⁴

Nevertheless, there are still a few unresolved issues which prevent the Union from fully achieving these objectives. In particular, the issue of double standards undermines the Union's credibility at the international level and raises concerns regarding its genuine commitment to observing international law. This inconsistency becomes particularly evident when comparing the EU's approaches *vis-à-vis* the Russia-Ukraine conflict, on the one hand, and the Israel-Palestine situation, on the other. Part of this discrepancy also stems from structural constraints embedded in the EU's own constitutional framework. As discussed above,¹¹⁵ and in spite of intensifying reform pressures,¹¹⁶ unanimity continues to govern decision-making in CFSP and CSDP matters. Just as the veto power within the UN Security Council can paralyse collective action at the global level, a single EU member State can obstruct or dilute the adoption of CFSP timely preventive measures. With regard to the EU's response to Russia, the European Union has demonstrated a proactive attitude since 2014, notably through the adoption of restrictive measures in response to the annexation of Crimea.¹¹⁷ The European Union subsequently expanded these initial sanctions through a series of additional measures, adopting nineteen sanction packages targeting more than 2,700 individuals and entities.¹¹⁸ Beyond these measures, and although a comprehensive assessment of the Union's reactive response falls outside the scope of the present work, it is worth mentioning that the EU has also played a meaningful role in supporting accountability efforts. In particular, it has actively contributed to the

¹¹⁴ Marco Gestri, 'Sanctions, Collective Countermeasures and the EU' (2023) 32(1) *The Italian Yearbook of International Law Online* 67, 77.

¹¹⁵ See section 3 of this work.

¹¹⁶ For instance, the European Commission and the European Parliament proposed to switch to qualified majority voting when it comes to adopting restrictive measures in the context of serious human rights violations. European Commission, 'State of the Union Address by President von der Leyen at the European Parliament Plenary' (*European Commission*, 16 September 2020) <https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655>; European Parliament recommendation of 17 February 2022 to the Council and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy concerning corruption and human rights (2021/2066(INI)) P9_TA(2022)0042 1(al).

¹¹⁷ Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, OJ L 78, 17.3.2014, 16-21; Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, OJ L 78, 17.3.2014, 6-15.

¹¹⁸ Council Decision (CFSP) 2025/2032 of 23 October 2025 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L, 2025/2032, 23.10.2025; Council Regulation (EU) 2025/2033 of 23 October 2025 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L, 2025/2033, 23.10.2025.

establishment of a Tribunal for the Crime of Aggression against Ukraine, thereby reinforcing its broader commitment to halt core international crimes.¹¹⁹

When it comes to the situation in the Occupied Palestinian Territory, the European Union's approach has been notably more cautious. Within this context, it is worth recalling that, in its July 2024 Advisory Opinion, the International Court of Justice declared Israel's continued presence in the OPT to be unlawful.¹²⁰ More specifically, the Court affirmed that third parties are under specific legal obligations to cooperate in bringing to an end Israel's unlawful presence in the Territory. These obligations encompass the duty of non-recognition of the illegal situation and the duty to refrain from providing aid or assistance in connection with Israel's internationally wrongful acts.¹²¹ Crucially, these legal obligations bind not only EU member States, but also the EU and its institutions,¹²² which are required to employ all the means at their disposal in order to ensure full compliance. More recently, the Independent International Commission of Inquiry on the Occupied Palestinian Territory found, on reasonable grounds, that the Israeli authorities and security forces have committed, and continue to commit, genocide against Palestinians in the Gaza Strip.¹²³ The Commission further emphasised that, since at least 26 January 2024—when the International Court of Justice indicated its first provisional measures in *South Africa v. Israel*¹²⁴—all State Parties to the Genocide Convention, as well as all other States, have been on notice of a serious risk that genocide was being, or would be, committed. Consequently, the duty to prevent genocide was triggered by both actual and constructive knowledge of the immediate plausibility that genocide was occurring or was about to occur.¹²⁵

¹¹⁹ EEAS, 'Ukraine and Council of Europe Sign Landmark Agreement for Special Tribunal on Crime of Aggression' (EEAS, 1 July 2025) <<https://www.eeas.europa.eu/delegations/council-europe/ukraine-and-council-europe-sign-landmark-agreement-special-tribunal-crime-aggression-en>>. For further information, see Hannah Lobel and Nema Milaninia, 'Building a Special Tribunal for the Crime of Aggression against Ukraine' (EJIL:Talk, 25 July 2025) <<https://www.ejiltalk.org/building-a-special-tribunal-for-the-crime-of-aggression-against-ukraine/>>.

¹²⁰ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Advisory Opinion)* [2024] ICJ Rep 753, para 259 <<https://www.icj-cij.org/case/186>>. For further information, see, *inter alia*, Marko Milanovic, 'ICJ Delivers Advisory Opinion on the Legality of Israel's Occupation of Palestinian Territories' (EJIL:Talk, 20 July 2024) <<https://www.ejiltalk.org/icj-delivers-advisory-opinion-on-the-legality-of-israels-occupation-of-palestinian-territories/>>.

¹²¹ Advisory Opinion of 19 July 2024 (n 120) para 278.

¹²² Hernández and Wessel (n 109) 5.

¹²³ HRC, Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 'Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide' (16 September 2025) UN Doc A/HRC/60/CRP.3, para 252.

¹²⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* (Order) [2024] ICJ Rep 649, para 250. As for the first and second provisional measure orders, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* (Order) [2024] ICJ Rep 3; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* (Order) [2024] ICJ Rep 513. See <<https://www.icj-cij.org/case/192>>.

¹²⁵ HRC (n 123) para 249.

According to the International Court of Justice, whenever States are in a position to contribute to the prevention of genocide, they are required to “employ all means reasonably available to them so as to prevent genocide so far as possible”.¹²⁶ In this regard, international organisations—including the European Union—keeping in mind their subsidiary, and yet important role¹²⁷ under international law, are also required to employ all the means at their disposal to cooperate in halting and preventing the commission of serious breaches of *jus cogens* norms, including genocide. Despite being highly discretionary, specific tools at the disposal of States and international organisations to comply with their duty to prevent genocide might include measures of diplomatic, social, or economic nature. Focusing on the economic dimension, sanctions constitute one of the key instruments through which States and international organisations can fulfil their preventive obligations.¹²⁸

In relation to the situation in Israel and the OPT that has arisen since 7 October 2023, on the one hand, the EU has shown a greater commitment to sanctioning individuals and legal entities linked with Hamas and Palestinian Islamic Jihad;¹²⁹ on the other, at least initially, it adopted a more cautious approach towards Israel. To date, the EU has refrained from adopting any geographic sanctions or thematic restrictive measures against Israel or its leadership. However, in light of the growing evidence of core international crimes allegedly perpetrated by Israel,¹³⁰ coupled with the pronouncements of the International Court of Justice on the situation, the European Union has recently taken a more proactive stance towards this country.

For instance, in May 2025, the Netherlands formally requested an assessment of Israel’s compliance with Article 2 of the EU–Israel Association

¹²⁶ *Bosnian Genocide* (n 99) para 430.

¹²⁷ ILC (73rd Session) ‘Peremptory norms of general international law (*jus cogens*): comments and observations of governments’ (9 March 2022) UN Doc A/CN.4/748, 39.

¹²⁸ Van den Herik and Irving (n 102) 208.

¹²⁹ See, *inter alia*, Council Decision (CFSP) 2024/385 of 19 January 2024 establishing restrictive measures against those who support, facilitate or enable violent actions by Hamas and the Palestinian Islamic Jihad, OJ L, 2024/385, 19.1.2024; Council Regulation (EU) 2024/386 of 19 January 2024 establishing restrictive measures against those who support, facilitate or enable violent actions by Hamas and the Palestinian Islamic Jihad, OJ L, 2024/386, 19.1.2024. On 16 January 2026, the Council decided to extend by one year, until 20 January 2027, the existing restrictive measures against those who support, facilitate or enable violent actions by Hamas and the Palestinian Islamic Jihad (PIJ). Council Decision (CFSP) 2026/122 of 16 January 2026 amending Decision (CFSP) 2024/385 establishing restrictive measures against those who support, facilitate or enable violent actions by Hamas and the Palestinian Islamic Jihad, OJ L, 2026/122, 16.1.2026; Council Implementing Regulation (EU) 2026/123 of 16 January 2026 implementing Regulation (EU) 2024/386 establishing restrictive measures against those who support, facilitate or enable violent actions by Hamas and the Palestinian Islamic Jihad, OJ L, 2026/123, 16.1.2026.

¹³⁰ HRC, Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, ‘Detailed findings on the military operations and attacks carried out in the Occupied Palestinian Territory from 7 October to 31 December 2023’ (10 June 2024) UN Doc A/HRC/56/CRP.4, paras 419-456. The Independent International Commission of Inquiry has also acknowledged that, apart from constituting war crimes, acts of murder, forcible transfer, and inhuman and cruel treatment also amount to crimes against humanity. *ibid*, paras 457-474.

Agreement,¹³¹ arguing that Israel's blockade of humanitarian aid deliveries to the Gaza Strip was incompatible with international humanitarian law.¹³² Following this request, on 20 May 2025, the EU's High Representative Kaja Kallas announced the launch of a review of Article 2 of the Agreement. Nevertheless, pursuant to Article 218(8) and 218(9) of the Treaty on the Functioning of the European Union (TFEU), the full suspension of the EU-Israel Association Agreement requires unanimity within the Council. Considering the high threshold required to trigger the suspension of the entire agreement,¹³³ proposals have been made to halt cooperation in specific sectors. These include suspending the operation of the free trade area or excluding Israel from participation in research funding programmes, including Horizon Europe,¹³⁴ where decisions are adopted by qualified majority voting.¹³⁵ Against this background, in September 2025 the EU Commission proposed the suspension of trade concessions with Israel and sanctions on extremist ministers of the Israeli government and violent settlers.¹³⁶ However, these measures have remained stalled and suspended since October 2025.¹³⁷

When it comes to sanctions, the flexibility and speed provided by the adoption of horizontal sanctions have facilitated the European Union's initial action against Israel through the imposition of restrictive measures under the EU Global Human Rights Sanctions Regime (EUGHRSR).¹³⁸ The EUGHRSR constitutes one of the Union's four fully autonomous horizontal sanctions

¹³¹ Dutch Minister of Foreign Affairs, 'Verzoek om de naleving door Israël van artikel 2 van het EU-Israël Associatieakkoord te evalueren' (*Tweede Kamer der Staten-Generaal*, 7 May 2025) <https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2025Z08773&did=2025D20161>.

¹³² UN news, 'Israel must end "cruel collective punishment" in Gaza, urges UN relief chief' (*UN News*, 1 May 2025) <<https://news.un.org/en/story/2025/05/1162806>>.

¹³³ For recent views in favour of adopting qualified majority voting to suspend the EU-Israel Association Agreement, see, *inter alia*, Merijn Chamon, 'Suspension of EU Association Agreements Does Not Require Unanimity' (*Verfassungsblog*, 19 July 2025) <<https://verfassungsblog.de/suspension-of-eu-association-agreements-does-not-require-unanimity>>.

¹³⁴ 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, OJ L 95, 23.3.2022, 143-157.

¹³⁵ For a more in-depth analysis of the European Union's international legal obligations in relation to research funding agreements with Israel under the Horizon Europe programme, see Hernández and Wessel (n 109) 48-50.

¹³⁶ European Commission, 'Commission proposes suspension of trade concessions with Israel and sanctions on extremist ministers of the Israeli government and violent settlers' (*European Commission*, 17 September 2025) <https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2112>.

¹³⁷ EEAS, 'Foreign Affairs Council: press remarks by High Representative Kaja Kallas after the meeting' (*EEAS*, 20 October 2025) <https://www.eeas.europa.eu/eeas/foreign-affairs-council-press-remarks-high-representative-kaja-kallas-after-meeting-3_en>.

¹³⁸ Council of the European Union, Council Decision (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses. OJ L 410/13, 13-19; Council Regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses, OJ L 410I, 7.12.2020, 1-12.

regimes.¹³⁹ Inspired by other national legislation, in particular the 2016 US Global Magnitsky Act,¹⁴⁰ the EUGHRSR targets individuals and entities responsible for or involved in serious human rights violations or abuses committed worldwide, including genocide. At the time of writing the EUGHRSR has targeted 135 individuals and 37 entities,¹⁴¹ some of which were considered responsible or involved in the commission of serious human rights violations which may amount to R2P crimes, in particular war crimes and crimes against humanity. The EUGHRSR also targets extremist Israeli settlers considered responsible for grave human rights violations against Palestinians. On 19 April 2024, the Council adopted Decision (CFSP) 2024/1175 and Regulation (EU) 2024/1172, imposing restrictive measures on four individuals and two entities allegedly responsible, *inter alia*, for acts of torture and other cruel, inhuman, or degrading treatment or punishment committed during the October attacks.¹⁴² In July 2024, the Council adopted additional restrictive measures under the EUGHRSR targeting extremist Israeli settlers in the occupied West Bank and East Jerusalem, as well as violent activists obstructing humanitarian aid to Gaza.¹⁴³ From an R2P perspective, it is

¹³⁹ The other three are the terrorism (2016), chemical weapons (2018), and cyberattacks (2019) sanctions regimes. As for terrorism, Council Decision (CFSP) 2016/1693 of 20 September 2016 concerning restrictive measures against ISIL (Da'esh) and Al-Qaeda and persons, groups, undertakings and entities associated with them and repealing Common Position 2002/402/CFSP, OJ L 255, 21.9.2016, 25-32; Council Regulation (EU) 2016/1686 of 20 September 2016 imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaeda and natural and legal persons, entities or bodies associated with them, OJ L 255, 21.9.2016, 1-11. Regarding chemical weapons, see Council Decision (CFSP) 2018/1544 of 15 October 2018 concerning restrictive measures against the proliferation and use of chemical weapons, OJ L 259, 16.10.2018, 25-30; Council Regulation (EU) 2018/1542 of 15 October 2018 concerning restrictive measures against the proliferation and use of chemical weapons, OJ L 259, 16.10.2018, 12-21. In relation to cyberattacks, see Council Decision (CFSP) 2019/797 of 17 May 2019 concerning restrictive measures against cyber-attacks threatening the Union or its Member States, OJ L 129I, 17.5.2019, 13-19; Council Regulation (EU) 2019/796 of 17 May 2019 concerning restrictive measures against cyber-attacks threatening the Union or its Member States, OJ L 129I, 17.5.2019, 1-12.

¹⁴⁰ US Congress, Global Magnitsky Human Rights Accountability Act, Public Law 114-328, 130 Stat, 2533. For further information on the Global Magnitsky Human Rights Accountability Act and other national legislation, see Clara Portela, 'The EU human rights sanctions regime: unfinished business?' (2021) 54 *Revista General de Derecho Europeo* 19, 20 ff; Christina Eckes, 'EU global human rights sanctions regime: is the genie out of the bottle?' (2022) 30(2) *Journal of Contemporary European Studies* 255, 262; Carmela Pérez-Bernárdez, 'The human rights sanctions regime and the rule of law: towards a stronger European Union?' in Luis M Hinojosa-Martínez and Carmela Pérez-Bernárdez (eds), *Enhancing the Rule of Law in the European Union's External Action* (Elgar 2023) 132, 135.

¹⁴¹ Council Decision (CFSP) 2025/2469 of 4 December 2025 amending Decision (CFSP) 2020/1999 concerning restrictive measures against serious human rights violations and abuses, OJ L, 2025/2469, 5.12.2025; Council Implementing Regulation (EU) 2025/2471 of 4 December 2025 implementing Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses, OJ L, 2025/2471, 5.12.2025.

¹⁴² Council Decision (CFSP) 2024/1175 of 19 April 2024 amending Decision (CFSP) 2020/1999 concerning restrictive measures against serious human rights violations and abuses, OJ L, 2024/1175, 19.4.2024; Council Implementing Regulation (EU) 2024/1172 of 19 April 2024 implementing Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses, OJ L, 2024/1172, 19.4.2024.

¹⁴³ Council Decision (CFSP) 2024/1967 of 15 July 2024 amending Decision (CFSP) 2020/1999 concerning restrictive measures against serious human rights violations and abuses, OJ L,

particularly significant that, among the five persons and three entities sanctioned, the Council included a member of the far-right political party *Otzma Yehudit* for publicly calling for the ethnic cleansing of Palestinians.¹⁴⁴ Accordingly, the use of the EU Global Human Rights Sanctions Regime to target Israeli settlers represents a significant first step towards enhancing the Union's consistency in applying its sanctioning instruments against those responsible for blatant human rights violations, including mass atrocity crimes. This measure also reflects the Union's effort to act in conformity with international law, including its customary obligations to prevent serious breaches of *jus cogens* norms.

On this latter aspect, it is worth recalling that, from an international law perspective, the European Union qualifies as an international organisation.¹⁴⁵ Therefore, its acts, and omissions, may fall under the International Law Commission's Articles on the Responsibility of International Organizations. Consequently, should the EU fail to adopt the measures at its disposal to contribute to the prevention of serious breaches of peremptory norms of general international law—including genocide—such an omission could give rise to its international responsibility. In that event, the Union would be under an obligation to cease the wrongful conduct and to provide full reparation for the resulting violations.

6 CONCLUSIONS

Strengthening and enhancing the preventive component of the Responsibility to Protect—the single most important element of the doctrine—has become as urgent as ever in today's volatile international environment. Among the regional organisations, the European Union continues to hold the greatest potential to fully operationalise R2P, particularly its preventive dimension, for which it has long demonstrated strong political and institutional commitment. Through its Common Foreign and Security Policy, the EU has developed a wide array of preventive tools that reflect a comprehensive and multidimensional approach to atrocity prevention. The enhancement of the EU Conflict Early Warning System, together with the adoption of the 2018 Atrocity Prevention Toolkit, offers compelling evidence of the Union's progress in embedding R2P principles within its external action. If duly implemented—especially through the active engagement of EU Delegations and CSDP missions already deployed in third countries—these instruments could play a decisive role in closing the gap between early warning and early action in preventing the commission of international core crimes. The establishment of the EU Rapid Deployment Capacity marks another major step toward operationalising the R2P preventive pillar. More flexible than the former Battlegroups, it allows tailored and rapid responses into non-permissive environments for different types of crises, including R2P scenarios. The use of the

2024/1967, 15.7.2024; Council Implementing Regulation (EU) 2024/1960 of 15 July 2024 implementing Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses, OJ L, 2024/1960, 15.7.2024.

¹⁴⁴ *ibid.*

¹⁴⁵ Hernández and Wessel (n 109) 35.

European Peace Facility to finance common costs addresses long-standing funding constraints and strengthens the RDC's sustainability. However, its effectiveness ultimately depends on political will and a uniform commitment among Member States which, together with an outdated governance structure, represent the main challenges in ensuring the EU's proactive engagement along with its reactive responses. If systematically linked to atrocity-risk assessments and supported by coherent and timely decision-making, the RDC could evolve into a pivotal instrument for implementing the preventive dimension of the Responsibility to Protect and translating the EU's normative commitments into tangible action.

The European Union's implementation of the responsibility to prevent also has significant implications for its role as an international actor committed to ensuring the strict observance and progressive development of international law. As a subject of international law, the EU is also bound by the customary obligation to prevent serious breaches of *jus cogens* norms, including the duty to prevent genocide. In fulfilling this duty, the Union has to act in accordance with its due diligence obligation to employ all necessary means reasonably available to avert the commission of core international crimes. Doing so would allow the EU not only to comply with international law but also to uphold its constitutional commitments under Articles 3(5) and 21 TEU. By acting decisively in atrocity-prevention contexts, the EU can further clarify and give substantive content to the obligation to prevent international core crimes, while at the same time partially compensating for the recurrent inaction of the United Nations Security Council in this domain. Yet, structural issues of the EU's machinery—most notably the unanimity requirement in CFSP (and CSDP) decision-making—along with the persistent problem of double standards continues to undermine the Union's credibility and genuine willingness to comply with international law, as illustrated by its contrasting responses against the Russian Federation and Israel. The increased political pressure, the ongoing discussions on suspending economic cooperation with Israel, as well as and the recent imposition of sanctions on extremist Israeli settlers responsible for grave human rights violations under the EU Global Human Rights Sanctions Regime, signal a potential shift towards a more coherent and consistent engagement in this domain. By consolidating this emerging pattern, the EU can adopt a genuinely principled approach to atrocity prevention and reaffirm its commitment to acting in conformity with international law. In doing so, it would not only avoid potential international responsibility for inaction but could also serve as a model for other States—particularly candidate countries—seeking to align their foreign policies with the Union's preventive and rights-based standards in addressing core international crimes.