

# The EU's promotion of transitional justice: external and internal dimensions of a patchwork of policies

*James A. Sweeney*

Professor of International Law, Lancaster University, UK

[j.sweeney@lancaster.ac.uk](mailto:j.sweeney@lancaster.ac.uk)

ORCID: 0000-0002-5369-382X

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## Abstract

This article presents a qualitative analysis of the EU's approaches to human rights violations in selected states' 'troubled pasts', employing insights from and critiques of the interdisciplinary field of 'transitional justice'. By viewing the EU's approaches to troubled pasts through the lens of transitional justice it is possible to trace a complex web of external and internal policies that have been invoked to address them. Whilst in the Common Foreign and Security Policy there is express engagement with the notion of transitional justice, its engagement with its own Member States' troubled pasts is more obscure, involving creative use of its 'competences' on citizenship to pursue policies of 'remembrance' as well as contestation over symbolic measures by the European Parliament. That these policy areas would be invoked in the way that they have been is not self-evident, and so by employing a comprehensive understanding of the EU's complex institutional structure, the article explains both how they were identified and, then, the range of measures adopted through them. This then facilitates a novel and extensive appraisal of the EU's measures to address the selected states' troubled pasts through its patchwork of transitional justice interventions.

## Disclosure of Interest

The author reports there are no competing interests to declare.

### 1. Introduction

This article presents a qualitative analysis of the EU's approaches to human rights violations in selected states' 'troubled pasts', employing insights from the interdisciplinary field of 'transitional justice'.<sup>1</sup> The project underpinning it had as its geographical focus Bosnia-Herzegovina, Cyprus, Germany, Greece, the island of Ireland, Kosovo, Poland, and Spain. These states were selected for their very diverse pasts that might be considered 'troubled'.<sup>2</sup> They take in a combination of experiences of armed conflict, terrorism and authoritarian rule both historical, more recent, and unresolved.<sup>3</sup> The focus of this piece is less on the selected states themselves, and more on the EU's role in connection to them. Nevertheless, in analysing the approach of the EU to 'troubled pasts', it is important to note that the states selected include both EU Member States and non-Member States. The significance of this is discussed further below.

The UN has defined transitional justice as,

the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.<sup>4</sup>

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The notion of transitional justice as a label for how large-scale past abuses have been or should be<sup>5</sup> addressed emerged during what Samuel Huntington memorably identified as the ‘third wave’ of democratisation, between 1974 and 1990.<sup>6</sup> It has since been employed also in relation to transition out of armed conflict<sup>7</sup> – although some would argue that is to conflate two very different forms of transition.<sup>8</sup>

The four core categories of transitional justice ‘processes and mechanisms’ have been said to be criminal prosecutions, truth telling and other forms of historical accounting or memorialisation, reparations programs, and various kinds of institutional reforms.<sup>9</sup> For Ruti Teitel, these processes bring with them such significant compromises in rule of law standards that ‘transitional justice’ should be seen as different to ‘ordinary’ justice, in that it is a qualified manifestation of ‘justice’ that is both ‘partial and non-ideal’.<sup>10</sup> For example, prosecution for actions that were lawful under a previous regime displays hints of retroactivity. At the other end of the extreme, amnesties granted in return for testimony to a truth commission implicate victims’ right to a remedy. At least, though, in its early incarnation the ‘transitions’ in question were seen as connected to a particular, confined, moment in time, to be followed subsequently by a peaceful and democratic future with stricter adherence to the rule of law.<sup>11</sup>

Even if there ever was a consolidated ‘field’ of transitional justice as such,<sup>12</sup> it has arguably both expanded and contracted over time. It has *contracted* in at least two, related, senses. First, a ‘standardised’ approach to it is emerging, centred upon the transitional justice processes and mechanisms deemed core above, and within *them* upon international criminal justice - potentially to the exclusion of other types of intervention.<sup>13</sup> Ní Aoláin expressed this notably as the, ‘seepage of impunity discourses into transitional justice practice’.<sup>14</sup> Second, there seems to have been a move toward the ‘normalisation’ of transitional justice.<sup>15</sup> That is to say, a tendency to downplay those elements of transitional justice that are more difficult to reconcile with our understanding of non-transitional justice and which, for Teitel and others, manifested as the rule of law dilemmas that warranted identifying the phenomenon of ‘transitional justice’ in the first place.

The idea of transitional justice has *expanded* in the sense that practices that are said to embody it have been employed for potentially a very long time after the ‘transition’ in question began; and even in consolidated democracies and other situations that are not characterised by liberalising transition or the end of armed conflict. This expansion has been described as the application of typical transitional justice measures in ‘aparadigmatic’ contexts.<sup>16</sup> In what follows we shall be alert to the EU’s appreciation, or not, of standardisation, normalisation, and the deployment of transitional justice processes and mechanisms in aparadigmatic contexts.

It should be emphasised, therefore, that this piece does not advocate for ‘doing’ transitional justice as a self-evident and uncritical plan of action that will inevitably lead to positive outcomes regarding

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the selected states' troubled pasts. Instead, it is invoked here as a contested concept and an area of scholarship that can help first to identify and second to form a critical perspective upon the EU's attempts to address the troubled pasts of the states studied here.

The method began with undertaking the identification of the EU's approaches to troubled pasts by searching within documented EU activities for relevant law, policies and practices. This involved searching through the copious online databases of EU law and policy, such as 'Eur-Lex', for evidence of relevant activities. Traces of relevant activities in announcements, press releases, and other publications were also sought. For reasons that will become clear, this process of identification was by no means straightforward.

The findings thus far were then cross-referenced with pre-existing academic analyses of the EU and transitional justice, not only from mainstream legal scholarship but also politics, international relations, and memory studies. There is plenty of academic research into the separate national approaches to transitional justice, and likewise into the Council of Europe and its European Court of Human Rights.<sup>17</sup> However, by contrast, research into the EU and transitional justice is comparatively less developed.<sup>18</sup> This piece is a contribution to filling that gap in the literature. It distinguishes itself from the few previous analyses of the EU's role in this regard by employing a comprehensive understanding of the EU's complex institutional structure. This helps to identify the root causes of certain apparent anomalies that others have identified in the EU's approach to troubled pasts.

Ultimately, by viewing the EU's approaches to troubled pasts through the lens of transitional justice it is possible to trace a complex web of external and internal policies that have been invoked to address them. Whilst in the Common Foreign and Security Policy there is express engagement with the notion of transitional justice, its engagement with its own Member States' troubled pasts is more obscure, involving creative use of its 'competences' on citizenship to pursue policies of 'remembrance' as well as contestation over the focus of, or 'memory frames'<sup>19</sup> employed in, symbolic measures adopted by the European Parliament. That these policy areas would be invoked in the way that they have is far from obvious, and so, taking into account the EU's institutional structure, the article explains both how they were identified and, then, the range of measures adopted through them. This facilitates a novel and extensive appraisal of the EU's measures to address the selected states' troubled pasts.

## **2. A note on the EU's institutional structure and powers**

The EU today<sup>20</sup> is granted power, or 'competence', to act in certain policy areas by the Treaty on the Functioning of the European Union (TFEU) and the Treaty on European Union (TEU).<sup>21</sup> The EU's competences are finite, and they are different internally and externally (i.e. within and outside its

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borders). This is significant because, as already noted, the states studied in this project included both Member States and non-Member States of the EU. The states in the latter group are Bosnia-Herzegovina and Kosovo and, since 'Brexit', Northern Ireland (as part of the United Kingdom of Great Britain and Northern Ireland (UK)). Note also that a measure that is deemed to have gone beyond the EU's existing competences can be annulled by the Court of Justice of the EU.

The way that the EU 'exercises' its competences is not especially straightforward. For instance, the European Parliament is not, as the name might suggest, the legislature of the EU. Instead, there is a 'legislative triangle' where each of three principal legislative actors represents a different, and often oppositional, set of interests: the appointed European Commission promotes European integration and is normally the initiator of legislative proposals; the Council of the EU, comprised of national politicians at ministerial level, represents the Member States' interests (both collectively, and often separately); and the directly-elected European Parliament represents the people of Europe. The EU's 'ordinary legislative procedure'<sup>22</sup> requires input from all three.<sup>23</sup>

### **3. External Action: the EU's Common Foreign and Security Policy**

The EU's Common Foreign and Security Policy (CFSP) is where it has engaged most expressly with transitional justice: in 2015 the Council of the EU, which in relation to CFSP matters sits as the 'Foreign Affairs Council', adopted the 'EU Policy Framework on Support to Transitional Justice'.<sup>24</sup> Before we analyse the Framework, some more institutional features of the EU that are peculiar to the CFSP need to be appreciated.

CFSP is an element of the EU's wider 'external action' as set out in Article 21 TEU. By external action, we mean the totality of the EU's engagement with non-Member States and other international organisations. External action *outside* CFSP includes the EU's various policies on international development cooperation, which have recently been consolidated into one overarching Regulation: Regulation (EU) 2021/947 of the European Parliament and the Council 'establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe' (hereafter NDICI Regulation).<sup>25</sup> Put simply, the NDICI Regulation entrusts the European Commission with allocating some EUR 79,462,000,000 of funding for development cooperation activities from its adoption up to the year 2027.

Non-CFSP EU external action also includes the enlargement process. Bosnia-Herzegovina formally applied for EU membership in 2016, and Kosovo followed in 2022. They were selected for study here in view of the legacy of the violent disintegration of the former Yugoslavia in the 1990s. Both remain very divided, on ethnic grounds. There is currently no outright armed conflict, but there are still frequent violent clashes between rival ethnic groups.

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As an absolute condition for EU membership both Bosnia-Herzegovina and Kosovo have been required to cooperate with the International Criminal Tribunal for the Former Yugoslavia (ICTY)<sup>26</sup>. However, such cooperation has been demanded to the exclusion of other more restorative approaches to transitional justice; and the ICTY's intended contribution to reconciliation has been minimal: as Olivera Simić noted, although conditionality did result in the eventual surrender of suspects for trial in The Hague, 'it failed to engage the governments of Serbia, Croatia and Bosnia and Herzegovina (BiH) in genuine remorse and concerns for the victims of war'.<sup>27</sup> We shall see that the dominance of transitional criminal justice within the EU's responses to the troubled pasts of Bosnia-Herzegovina and Kosovo is also a feature of the CFSP.

The CFSP element of the EU's external action is, as the name suggests, more focused upon security than development. Since the 2007 'Treaty of Lisbon', the EU has had its own diplomatic service known as the European External Action Service (EEAS).<sup>28</sup> The EEAS supports the EU-appointed High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the Commission (HR/VP), who represents the EU internationally. The main EU institutional actors in the CFSP are the European Council, which meets regularly as a summit of heads of government; and the Council of the EU (as the aforementioned Foreign Affairs Council). This is a remnant of the pre-Lisbon pillar structure of the EU, and because both institutions are comprised of *national* politicians it ensures that Member States - and in particular their executive branches - retain very significant control over the CFSP. The European Commission, European Parliament, and Court of Justice play very minimal roles in the CFSP.

The EU is not permitted to adopt legislative acts in relation to CFSP matters: instead, it is implemented by the communication of various non-binding policy documents and unanimous Decisions of the Foreign Affairs Council. Thus, the current aims and objectives of CFSP are set out in the non-binding document, 'A Global Strategy for the European Union's Foreign and Security Policy' (EUGS), which was endorsed by the European Council at its 28 June 2016 summit.<sup>29</sup> The EUGS superseded the 2003 'European Security Strategy' (ESS).<sup>30</sup> The EUGS was augmented in 2022 when the Council of the EU adopted the 'Strategic Compass for Security and Defence'.<sup>31</sup> That, too, is a non-legislative document. It also further points to increased concern for European security within CFSP. Both are more focused upon the internal security of the EU than the ESS was, reflecting contemporary global uncertainties.<sup>32</sup>

### **3.1 The 2015 'EU Policy Framework on Support to Transitional Justice'**

The next section analyses the content of the Framework as adopted. This is followed by an examination of how it has been implemented and monitored.

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### 3.1.1 The Content of the EU Policy Framework on Support to Transitional Justice

In 2015 the Foreign Affairs Council adopted the ‘EU’s policy framework on support to transitional justice,’ which had been presented to it by the HR/VP as a Joint Staff Working Document. It is yet another non-legislative policy document.

The Framework adopts the definition of transitional justice proposed in 2004 by the UN Secretary General, which was noted in the introduction above.<sup>33</sup> It thus sets out the ‘four essential elements of transitional justice’ as:

- criminal justice;
- truth;
- reparations; and
- guarantees of non-recurrence/institutional reform.

Whilst furthering a sense that the UN approach to transitional justice has become the *de facto* standard, the Framework goes on to enshrine amongst its ‘guiding principles’ that its approach should be ‘flexible’ and based upon ‘a genuine understanding of specific contexts and needs’. Transitional justice should be, it states, ‘nationally-owned, participative, consultative and include outreach’. There is, it continues, ‘no “one-size-fit-for-all” approach to transitional justice.’<sup>34</sup> However, concepts such as ‘local ownership’ and similar remain ‘complex, hotly contested, and poorly understood,’<sup>35</sup> and the Framework, in substance, follows the increasingly standardised emphasis on criminal justice noted above.

Within the text of the Framework, for instance, when it notes that the EU is already an ‘important player’ in the field of transitional justice, its very first example is its strong policy in support of the International Criminal Court.<sup>36</sup> Likewise, the Framework recalls how, as an element of the CFSP, the EU’s Common Security and Defence Policy (CSDP) missions and operations have already involved engagement with, ‘the legacies of war crimes, genocide, [and] crimes against humanity [...]’ – namely the ‘core’ crimes in international criminal law.<sup>37</sup>

The CSDP missions in respect of Bosnia-Herzegovina are, or were, the European Union Police Mission in Bosnia and Herzegovina (EUPM), from 2003 to 2012; and the EU Military Operation in Bosnia and Herzegovina (EUFOR-Althea BiH), starting in 2004 and ongoing. EUPM was the very first CSDP mission. As for EUFOR-Althea BiH, it was mandated to train local troops to NATO standards, but its dominant operational focus has been to support the ICTY, and Bosnian authorities, to detain persons suspected of international crimes under the jurisdiction of the ICTY.<sup>38</sup>

The European Union Rule of Law Mission in Kosovo (EULEX KOSOVO) was established in 2008 and remains the largest CSDP mission.<sup>39</sup> It, too, has again put the focus on transitional criminal justice

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through EULEX-led war crimes prosecutions in Kosovo, compulsion to cooperate with the ICTY, and most recently with the establishment of the controversial Kosovo Specialist Chambers.<sup>40</sup> The controversy stems from them being exclusively tasked with addressing the alleged crimes of the Kosovo Liberation Army as set out in a 2011 Council of Europe Parliamentary Assembly Report.<sup>41</sup>

The Framework further states that, ‘The obligation of states to investigate and prosecute “serious crimes under international law” is today firmly established under treaty law’,<sup>42</sup> and also sets out its absolute opposition to amnesties for war crimes, crimes against humanity, genocide and gross violations of human rights, including in the context of peace negotiations.<sup>43</sup> Verovšek has made the important point that,

This emphasis on trials [...] raises the spectre of Eurocentrism and accusations of neo-colonialism, as local communities outside of Europe are forced to adopt the principles of Western legalism in their tribunals in order to be able to access EU funding.<sup>44</sup>

Moreover, the Framework’s emphasis on transitional criminal justice is a policy preference that is not, in fact, strictly required by international law. It is true that, for example, the 1948 Genocide Convention, the 1949 Geneva Conventions (and the first Additional Protocol thereto), and the 1984 UN Torture Convention all impose duties on state parties to investigate and prosecute the crimes specified in them, but no such obligation arises from human rights treaties of broader application. To be sure, there are significant positive investigative obligations that might even amount to a ‘right to the truth’,<sup>45</sup> but there is no absolute requirement that violations of, for example, the International Covenant on Civil and Political Rights must lead to the criminal conviction of an alleged perpetrator.<sup>46</sup> Likewise, it is not universally accepted that amnesties for serious international crimes are absolutely forbidden.<sup>47</sup>

Further, the scope of international criminal law does very little to address economic violence. The Framework’s focus on serious crimes under international law therefore could compound the problem that transitional justice has been rightly criticised for focusing on physical violence over economic or structural violence.<sup>48</sup> Indeed, the omission of economic or structural violence is one of the principal ‘internal’ critiques of transitional justice (i.e. critiques of how it has been implemented, rather than of the very notion itself), with perhaps only the, partially overlapping, feminist critique of it gaining more recognition.<sup>49</sup> The Framework does, however, at least partially address economic issues when it recognises the link between transitional justice and its non-CFSP external development cooperation activities.<sup>50</sup> However, it is still disappointing that the Framework sees addressing the legacy of economic or structural violence as external to transitional justice *per se*.

Along with standardisation the Framework also shows a tendency toward ‘normalisation,’ as introduced above.<sup>51</sup> In the Framework, the rule of law dilemmas that for Teitel and others are inherent to the concept of transitional justice are either unilaterally resolved or, at best, wilfully obscured when the Framework claims to take a fully ‘rights-based approach’ to transitional justice.<sup>52</sup> Recall, we noted above that many measures commonly associated with transitional justice pose

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significant challenges to the rule of law. Indeed, it has been observed that they may also impact international human rights law, leading to arguments over whether human rights enforcement bodies may justifiably relax their standards to accommodate such measures.<sup>53</sup>

### *3.1.2: Implementation and Monitoring of the EU Framework on Support to Transitional Justice*

The Framework states that its implementation will be monitored principally through the HR/VP's Annual Report on Human Rights and Democracy.<sup>54</sup> The Annual Report is also the principal tool by which progress towards achieving the goals set out in successive iterations of the EU's 'Action Plan on Human Rights and Democracy' is measured. It was the 2015-2019 Action Plan that called for the adoption of the Framework. That has now been superseded by the EU Action Plan on Human Rights and Democracy 2020-2024,<sup>55</sup> which in May 2024 was extended to 2027.<sup>56</sup> The 2020-2024/27 Action Plan does not refer expressly to the Framework, but it does have a sub-heading on, 'Closing the accountability gap, fighting impunity and supporting transitional justice'.

The HR/VP Annual Report on Human Rights and Democracy is actually comprised of two types of document: a general annual report on 'Human Rights and Democracy in the World' and a series of 'Country Updates', which contain a short summary about the situation in each non-Member State that the EU is monitoring.<sup>57</sup> The Annual Report follows the structure of the applicable Action Plan.

Strangely, given the terms of the Framework itself, the 2023 Annual Report (published 2024),<sup>58</sup> like the most recent Action Plan, does not mention the Framework at all. In previous years, after the Framework was adopted, the 'Closing the accountability gap [...]' section of the Annual Report began by stating that 'the EU continued to implement its policy framework on support to transitional justice' (absence of capitalisation per the original).<sup>59</sup> The failure to mention the Framework in the 2023 Report is not explained, but the section on 'Closing the accountability gap [...]' remains (although without any information about transitional justice interventions in respect of the states studied here).

Turning now to the 2023 Country Updates, they *still* do not refer to the Framework. However, they *do* refer frequently to EU support for transitional justice in a wide range of contexts including in the selected states.

In respect of Bosnia-Herzegovina the Country Update notes limited progress in bringing ethnically divided education to an end, including the practice known as 'two schools under one roof'. This is a legacy of the Croat versus Bosniak armed conflict of 1992-1994, during which at one point there was an attempt to create a Croat-only entity (Herzeg-Bosnia) within the territory of what is now Bosnia-Herzegovina. In the former putative Herzeg-Bosnia many schools are still literally divided on ethno-linguistic grounds, with different entrances and even different playgrounds for each group. Inevitably, they do not share the same curriculum. The Country Update also notes that within the

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integration process, strengthening non-discrimination and promoting an environment ‘conducive to reconciliation’ are key areas of EU action.<sup>60</sup>

The 2023 Country Update on Kosovo is dominated by concern about ‘non-majority communities’. By this, of course, it means predominantly the minority ethnic Serbs that have remained on the territory of Kosovo after the conflict of the late 1990s and its declaration of independence from Serbia in 2008. Many are concentrated north of the river Ibar, which divides the city of Mitrovica. The Country Update laments the lack of decisive steps by Kosovo to de-escalate tensions in the north. Indeed, the Update notes that as a result of violence during the summer of 2023 the HR/VP has announced measures that reduce the EU’s financial support to Kosovo, although it is said that those measures are ‘temporary and fully reversible’. The Update also acknowledges that through the non-CFSP NDICI Regulation, several new projects were contracted to support transitional justice, including resolving the fate of missing persons.<sup>61</sup>

The 2023 Country Update on the UK and Northern Ireland is fairly brief because a ‘Human Rights and Democracy Country Strategy’ for it, as no longer a Member State, is yet to be elaborated. Likewise, there are no EU projects or programmes related to human rights currently covering the UK and Northern Ireland. The Update does, however, note the adoption of the controversial Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, which provides a conditional exemption from prosecution for offenses related to the Troubles for individuals who collaborate with a new state-run organisation focused on truth and reconciliation.<sup>62</sup> It was opposed by all the political parties in Northern Ireland, and has prompted an inter-state complaint by Ireland, against the UK, to the European Court of Human Rights in Strasbourg.<sup>63</sup> The Labour government that came to power in the UK in 2024 have pledged to repeal the Act.<sup>64</sup>

### *3.1.3 Interim Conclusion on External Action*

In summary, the Framework presents a standardised, normalised, vision of transitional justice in which anti-impunity is the dominant theme, and which has not benefitted from the strides in self-reflective practice in the field. This is particularly noticeable in relation to the prioritisation of criminal justice responses and the exclusion of economic or structural violence. Moreover, it is fair to say that the Framework omits any discussion of transitional justice in aparadigmatic contexts such as those that are fragile or unresolved, which could apply to both Bosnia-Herzegovina and Kosovo.

Others have criticised not only the Framework’s exclusion of economic violence but also its geographical focus: Fernandez-Torne and Young ask,

[W]hy does the EU framework to support transitional justice processes not refer to the need for European countries to deal with their own past of human rights violations, but rather only

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promotes such processes within countries in the Global South. Such double standards deride universal principles around which liberal notions of rights and the rule of law are based.<sup>65</sup>

The approach taken in this article, cognisant as it is of EU constitutional law, answers this question: The Framework does not deal with EU Member States' own troubled pasts because it is an instrument adopted within the EU's Common Foreign and Security Policy. This does not mean that the EU and its Member States should ignore their own troubled pasts, especially in respect of colonialism, but the Framework could never have been the instrument to address them. It should also be noted that there is considerable debate about whether transitional justice is an appropriate concept to attempt to apply within the process of decolonisation (not least because injustices arising from colonialism are ongoing) and, to the extent that it *has* been, whether it has yielded positive results.<sup>66</sup>

Whatever its legal, conceptual, and geographical limitations, the implementation of the Framework is also puzzling. The absence of express references to it in the most recent HR/VP Annual Report on Human Rights and Democracy may be a symptom of the increased focus of CFSP on internal security, with the replacement of the 2003 European Security Strategy with the 2016 European Global Security Strategy, combined with the 2022 Strategic Compass for Security and Defence'. Time will tell.

#### **4. Internal Action: EU Membership, Citizenship and 'Remembrance'**

We have seen so far that the EU has expressly addressed transitional justice in the CFSP, albeit without any legislative powers. The picture internally is more clouded due to yet more quirks of the EU's institutional structure, but in the following sections we identify and assess a range of legislative and non-legislative measures that have in fact engaged with the selected states' troubled pasts, and which plausibly fall within the definition of transitional justice.

The EU Member States selected for this project were Germany (due to World War II and reunification); Greece (for the legacy of the Colonels' regime, from 1964-1967); Spain (for its approach to the legacy of the Francisco Franco regime, from 1939 to 1975); Poland (for its experiences under communism, from the end of World War II to 1989); Ireland (for its close connection to and interest in the sectarian violence in Northern Ireland, which remains a part of the UK); and Cyprus (due to its continuing partition dating from the Turkish invasion of 1974).<sup>67</sup>

To begin with, it needs to be acknowledged that the whole idea of European integration is rooted in the transition to, and maintenance of, peace in the aftermath of World War II. The initially 'functionalist' *raison d'être* of European integration was to force France and Germany to cooperate in the production of coal and steel, which had been essential to waging both World Wars.<sup>68</sup> Thus, whilst the EU is expressly involved in peacekeeping externally through the CFSP it can, itself, be seen

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as a peace project for its Member States. Indeed, in recognition of its achievements in this regard the EU won the Nobel Peace Prize in 2012.<sup>69</sup> We shall see below that the origins of the EU still have a profound influence on attempts at remembrance and, ultimately, on the search for or promotion of a European identity.

In addition to the connection between the very founding of the EU and the transition to peace after World War II the EU has, more recently, employed legal bases connected to socio-economic development to allocate substantial funding to those Member States that are recovering from the impact of authoritarianism or armed conflict, and thereby to address that element of their troubled pasts. For example, there is a treaty commitment to, 'reducing disparities between the levels of development of the various regions [of the EU].'<sup>70</sup> In terms of the selected states for this project, this has involved the EU attempting to reduce the post-reunification disparity in living standards between the former West and East Germany; and also amongst the then less highly-developed states that have subsequently joined the EU in the various waves of enlargement, which includes Greece, Spain, Poland, Ireland and Cyprus. Socio-economic development policies have also underpinned attempts by the EU to promote the re-unification of Cyprus;<sup>71</sup> and to assist in the Northern Ireland peace process.<sup>72</sup>

Aside from these very general ways in which the EU has addressed its Member States' troubled pasts, it becomes more difficult to identify specific policies. The problem is that the Member States have not directly conferred upon the EU the 'competence' to pursue such an activity.<sup>73</sup> Therefore, its engagement with Member States' troubled pasts has had to be somewhat indirect. We shall see in the following sections that the EU has shown high-level support for harnessing the idea of a common heritage to forge a European identity and, to that end, then used its competences on EU citizenship to fund a range of initiatives on 'remembrance'.

#### ***4.1 From a common heritage to a European identity***

Ruti Teitel has observed that, 'transitions are vivid instances of conscious historical production'.<sup>74</sup> In times of transition, she continues, it is 'historical production in a heightened political context and driven by political purposes'.<sup>75</sup> Teitel was commenting upon the different ways that particular individual states have broken with the past and sought to forge a new political and historical consensus, but we can also see that the EU has done something similar: it has instrumentalised the conscious construction of a shared truth about the past as part of an attempt to foster a common European identity for Europeans to recognise and to share. Littoz-Monnet has labelled this as the EU attempting to invoke remembrance as a 'vector of identification' between itself and its populace.<sup>76</sup>

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It is worth noting from the outset that whilst it is argued here that there are legitimate comparisons to be made between Teitel's observations about 'historical justice' and the EU's approach to constructing its common heritage, and to its remembrance activities, we are at quite some temporal distance to the events that underpin them. Thus, even if it is accepted that transitional justice is an appropriate lens to employ here, it is very much a case of transitional justice in aparadigmatic contexts<sup>77</sup> - namely in consolidated democracies (Germany, Greece, Poland, and Spain) or situations that are fragile or ongoing (the latter arguably including Bosnia-Herzegovina, Kosovo, Cyprus and Ireland).

The first major concerted attempt to promote a European identity through common approaches to heritage and history was the Copenhagen Declaration on European Identity of 1973.<sup>78</sup> The Declaration was promulgated by the Heads of State of the then nine Member States. In it they proclaimed that defining 'European identity' involves, 'reviewing *the* common heritage' (note the singular) of its current Member States.

More recently, in 2009, the European Council adopted 'The Stockholm Programme – An open and secure Europe serving and protecting the citizens'.<sup>79</sup> The Programme contained the following passage:

The Union is an area of shared values, values which are incompatible with crimes against humanity, genocide and war crimes, including crimes committed by totalitarian regimes. Each Member State has its own approach to this issue but, in the interests of reconciliation, the memory of those crimes must be a collective memory, shared and promoted, where possible, by us all. The Union must play the role of facilitator.<sup>80</sup>

The question for the EU would be how to play that facilitative role without clear legislative competences available.

#### **4.2 Citizenship and Remembrance**

The answer was to stress the linkage between a common heritage or collective memory and the fostering of greater identification between the EU and its populace, in order to be able to rely on legal bases connected to EU citizenship to address the selected EU states' troubled pasts.

The notion of EU citizenship, introduced by the Maastricht Treaty, carries with it an increasingly important range of rights for EU citizens such as, for example, in relation to standing for and voting in elections to the European Parliament.<sup>81</sup> It also allows for the EU to engage in various activities *for* citizens, such as adopting 'incentive measures' to 'contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing

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the common cultural heritage to the fore'.<sup>82</sup> In this way, in 2006 the Council and European Parliament adopted under ex Article 151 TEC (now Article 167 TFEU) the 2006 Decision of the Council and European Parliament 'establishing for the period 2007 to 2013 the programme "Europe for Citizens" to promote active European citizenship'.<sup>83</sup> It included an 'Action' on 'Active European Remembrance' directed at both Nazism and the Holocaust, and Stalinism.<sup>84</sup> Support for 'European Remembrance' was continued by Council Regulation (EU) No 390/2014 of 14 April 2014 'establishing the "Europe for Citizens" programme for the period 2014-2020'.<sup>85</sup>

The current most relevant legislative act is Regulation (EU) 2021/692 of the European Parliament and of the Council of 28 April 2021 establishing the Citizens, Equality, Rights and Values Programme (CERV).<sup>86</sup> The CERV provides for the Commission to administer funding from an initial financial envelope of some EUR 641,705,000,<sup>87</sup> to which a further EUR 800,000,000 can be added at a later date.<sup>88</sup> Echoing the Copenhagen Declaration and the Stockholm Programme, the preamble to the Regulation refers to fostering, 'a sense of belonging to the Union and of a common citizenship under a European identity, based on a shared understanding of our common European values, culture, *history and heritage* [emphasis added].' More specifically, it continues:

Remembrance activities should reflect on the causes of totalitarian regimes in Europe's modern history, in particular Nazism, which led to the Holocaust; fascism; Stalinism and totalitarian communist regimes, and should commemorate the victims of their crimes. They should also encompass activities concerning other defining moments and reference points in recent European history. The relevance of historical, social, cultural and intercultural factors should also be taken into account *in order to create a European identity* based on common values and a sense of common belonging. [emphasis added]

Recipients of the funding must be public or private non-profit bodies established in an EU Member State, or in a non-Member States 'associated' to the CERV Programme. Since 1 January 2023 the latter includes Bosnia-Herzegovina and Kosovo, meaning that projects emanating from all the states studied in this project have, at some point, been eligible for CERV funding).<sup>89</sup>

#### 4.2.1 *Types of Remembrance Projects Funded*

Having now established that the EU has been able to provide funding for remembrance projects, the types of projects that have, in fact, been funded so far are analysed. The section following this looks at the changing focus of exactly what has been the subject of remembrance.

The projects funded have been extremely diverse in their activities, and arguably conform less to the standardised, normalised, approach to transitional justice seen in the CFSP. They have involved, amongst others, training, publications, the creation of digital tools, and the creative arts. Indeed,

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many projects have included multiple activities of different types. Space precludes going into great detail in this piece, but a couple involving the states studied here can be summarised to give a sense of what has been funded.

The project, 'Police and the Holocaust. Facing the Role of Police in the Holocaust and learn to confront Holocaust distortion in service today' (sic.) is designed to include new 'target groups' in memorial events (namely the German and Austrian police) and to explore 'overlooked' sites of the Holocaust. It is coordinated by a German NGO, and seeks to create a 'transnational network' to connect law enforcement bodies and educational institutions. There are to be workshops in Poland, Germany, Austria, and the Netherlands. It was funded in 2022-2023 and will continue until November 2025.

The 'Multidirectional Memory: Remembering for Social Justice' project is designed to promote active remembrance in public spheres across Europe, but cognisant of, 'the need to stand up to contemporary practices of violence and exclusion'. The project focuses specifically on the legacy of WWII in East Central Europe, especially 'sites of multiple exclusion' connected both to the Nazis and communism. It employs a 'multidisciplinary, intersectional approach to heritage community building, combining civic activism, academia, arts and urbanism'. It was coordinated by a Polish NGO, which also gained the funding in 2022-2023. Its end date was February 2025.

#### 4.2.2. Competing 'Memory Frames' within Remembrance Projects

We have already noted the observation by Littoz-Monnet that the EU has pursued remembrance policies as a way to try to forge a 'vector of identification' with the EU.<sup>90</sup> It did so by promoting particular 'memory frames', defined as, 'interpretative lenses through which certain actors make sense of the past'.<sup>91</sup> This began with the focus upon European heritage, noted above. When these proved less successful than expected, Littoz-Monnet observed that from the 1990s EU elites instead began to promote a memory frame rooted in the Holocaust, stressing it both as unique in its horrors and as the antithesis of everything that European unity stood for.<sup>92</sup> However, as the EU expanded eastwards it sought to be more inclusive in its memory politics by Europeanising the remembrance of both Nazi and Stalinist crimes.<sup>93</sup> However, instead of harmony this seems to have resulted in what Michael Rothberg would criticise as an understanding of collective memory as *competitive* memory.<sup>94</sup> That is to say, there has been competition between political blocs seeking to preserve a memory frame rooted in the 'uniqueness of the Holocaust' and political blocs promoting a memory frame that sees 'Nazism and Stalinism as equally evil'.<sup>95</sup>

As to who was 'winning' in this ill-advised competition, Littoz-Monnet found in 2009 that just 25% of the funding awarded under the 2006 Action on 'Active European Remembrance' had gone to projects that examined the crimes of Stalinism (or both Stalinism and Nazism).<sup>96</sup>

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The research for this article found that the allocation of funding has continued to be influenced by a memory frame largely rooted in the ‘uniqueness of the Holocaust’.<sup>97</sup> The 2014 Regulation provided funding for 321 projects connected to European Remembrance, out of a total of 2588 ‘Europe for Citizens’ projects. Those projects’ summaries mention ‘Holocaust’ 68 times, and 57 mention ‘Nazi\*’ (the asterisk is a ‘wildcard’ that allows the detection of words derivative of ‘Nazi’ such as ‘Nazis’ or ‘Nazism’). By comparison, words connected to communism (i.e. containing the letters ‘communis\*’) appear 39 times and ‘Soviet’ appears 13 times. 27 mention ‘\*Yugoslav\*’. There are just four mentions of words deriving from ‘colonial’ (i.e. containing the letters ‘\*colon\*’). Of the states studied here, the most were led by entities from Germany, Spain, and Poland (23 projects each).

This continued influence is reflected also in the current CERV programme, initiated by the 2021 Regulation noted above.<sup>98</sup> 1846 CERV projects have been funded in total. Of these, 27 were funded under the heading of ‘remembrance’ in 2021, with another 36 in 2022, 37 in 2023, and another 53 in 2024. Across the four years, the Holocaust is mentioned 123 times within the project summaries, and there were another 30 mentions of ‘Nazi’ and related words. There were eight mentions of words connected to communism, and three mentions of ‘Soviet’. ‘Yugoslav\*’ appeared seven times, and ‘\*colon\*’ 16 times. Again, entities from Germany, Spain, and Poland gained the most funding (amounting to 16, 14, and 12 projects, respectively).

The particular history of Germany and Poland, in particular, may account for the continued dominance of the Holocaust within the CERV projects that have gained funding. Notably, only three CERV projects led by an entity from Spain were directed at the Franco regime – although the description of one of them notes correctly that people in Spain have only relatively recently begun to address its legacy (not least due to legal restrictions imposed through the ‘Pact of Forgetting’).<sup>99</sup> Thus, the focus of the projects funded is not exclusively linked to which projects the EU selected. It must also have been affected by which projects were submitted for funding in the first place. Unfortunately, data on the rate of remembrance project applications per state is not presently publicly available in the same way as data on successful applications.

Interestingly, the 2024 call for remembrance proposals under CERV sets out four distinct call priorities: democratic transition after WWII and 1989; the Holocaust, war crimes, and crimes against humanity; migration de-colonisation and multicultural European societies; and European integration and its defining achievements.<sup>100</sup> This shows an express attempt to encourage applications reflecting a wider range of memory frames. Yet, the second topic, formally entitled, ‘Topic 2 — CERV-2024-CITIZENS-REM-HOLOCAUST’ has been allotted more funding alone (Eur 8,880,000) than the other three priorities combined. With more funding for it available, more projects addressing this priority

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will be funded. This is borne out by the latest available data, which show that of the 53 CERV projects funded pursuant to this call so far, 31 have been on 'Topic 2'.<sup>101</sup>

It is not suggested here that the EU is completely blind to alternative memory frames that might understandably be promoted by newer Member States. There is therefore potential for what Rothberg would identify as 'multidimensional' rather than 'competitive' memory.<sup>102</sup> However, whilst through European Remembrance the EU has funded a diverse range of projects, including many connected to the legacy of communism in the newer Member States, a considerably greater number were connected to the Holocaust and WWII. Given the 2024 allocation of funding, it would seem that this is set to continue. It is also interesting, given the criticism of the EU Framework to Support Transitional Justice, noted above, that the EU has in fact funded *some* remembrance activities connected to colonialism. In the next section we shall see that there have been very public attempts at the political level, in the European Parliament, to influence the EU's dominant memory frame in a way that confirms a degree of competition around issues of European remembrance.

##### **5. Internal Action: Remembrance at the European Parliament (EP)**

'Competitive memory' has manifested at the EP in the way that MEPs have proposed and voted for or against various Resolutions on the remembrance of particular historical events. However, before we progress, it is worth taking a moment to keep the nature of EP Resolutions in perspective: they are non-legislative; and they represent the views only of the simple majority of MEPs that voted in favour of their adoption. They should not be taken as amounting to the 'official' view of the EU, or indeed even the EP as an institutional component of it.

EP remembrance activity connected to World War II can be seen well into the 1980s with the EP adopting Resolutions in 1985 on 'Commemorating the 40th Anniversary of the Cessation of Hostilities in Europe,' and on the 'Commemoration of 8 May 1945'.<sup>103</sup> Then in 1993 the EP adopted a Resolution on, 'European and International Protection for Nazi Concentration Camps as Historical Monuments'.<sup>104</sup> Relatedly, in 1995 the EP adopted a Resolution that proposed the establishment of a European Holocaust Remembrance Day.<sup>105</sup>

Just as we noted in respect of the allocation of 'European Remembrance' funding, the 'uniqueness of the Holocaust' memory frame has been challenged somewhat by a 'Nazism and Stalinism as equally evil' memory frame in debates at the EP.<sup>106</sup> An early sign of the challenge was the reaction to a proposal to ban, within the EU, the display of the swastika Nazi symbol. Using the law to ban certain symbols, or to prohibit the denial of certain events, such as the Holocaust, is another manifestation of historical justice frequently seen during or after a change of regime.<sup>107</sup> Mano Toth identified that a group of mostly Eastern European MEPs sought to enlarge the swastika ban to

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include display of the red star and the hammer and sickle (i.e. key Soviet or communist symbols), lest there be an appearance of double standards.<sup>108</sup> No agreement was reached, and the proposal had to be abandoned.<sup>109</sup>

Outside the formal structures of the EU, a group of influential politicians including the first post-communist democratic leader of then-Czechoslovakia, Václav Havel, adopted the 2008 Prague Declaration on European Conscience and Communism.<sup>110</sup> The Declaration proposed 23 August, the anniversary of the signing of the 1939 Molotov–Ribbentrop Pact between the Hitler and Stalin regimes as, ‘a day of remembrance of the victims of both Nazi and Communist totalitarian regimes, *in the same way* Europe remembers the victims of the Holocaust on January 27’ [emphasis added].<sup>111</sup> This clear challenge to the ‘Holocaust as unique’ memory frame was subsequently signed by several MEPs.

Back in the EP itself, a collection of like-minded MEPs subsequently established the ‘Reconciliation of European Histories Group’.<sup>112</sup> The Group lobbied for the adoption of an EP Resolution to match the Prague Declaration, and in 2009 the EP adopted ‘European Parliament resolution of 2 April 2009 on European conscience and totalitarianism’.<sup>113</sup> This was an important step towards broadening the EP’s accepted memory frame but it can be seen immediately that the reference to ‘communism’ in the full title of the Declaration has been replaced by ‘totalitarianism’ in the EP Resolution. Moreover, whilst the Resolution does state that, ‘Europe will not be united unless it is able to form a common view of its history, recognises Nazism, Stalinism and fascist and Communist regimes as a common legacy’,<sup>114</sup> it pointedly does not propose equivalence between the horrors of those regimes. In fact, the preamble states that:

whereas millions of victims were deported, imprisoned, tortured and murdered by totalitarian and authoritarian regimes during the 20th century in Europe; *whereas the uniqueness of the Holocaust must nevertheless be acknowledged* [emphasis added]<sup>115</sup>

This preambular text would seem expressly to reaffirm the ‘Holocaust as unique’ memory frame and to reject that any other events have been equivalent to the Holocaust. Nevertheless, in the operative part of the Resolution, as adopted, the EP proclaimed 23 August as ‘a Europe-wide Day of Remembrance for the victims of all totalitarian and authoritarian regimes’. Yet, whilst keeping the same date set out in the Declaration, the EP Resolution dropped the reference to remembering the regimes’ victims, *‘in the same way Europe remembers the victims of the Holocaust on January 27’*.<sup>116</sup>

Where the 2009 Resolution follows the Prague Declaration more closely is by calling for the creation of a ‘Platform of European Memory and Conscience’ in order to coordinate pan-European research into all totalitarian regimes.<sup>117</sup> The Platform was legally established in Czechia in 2011 as a non-profit

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international NGO linking together currently 72 public and private organisations across 24 states, including 15 from the EU.<sup>118</sup>

The Platform's founding agreement stated that the organisations it will support will specialise in, 'the subject of the history of totalitarian regimes, with special emphasis on National socialism, Communism and other totalitarian ideologies'.<sup>119</sup> It is, therefore, on the face of it, like the CERV, neutral as to its focus upon a particular form or era of totalitarianism. However, the Platform has been, in fact, much more concerned with the legacy of communism and Stalinism than any other form of totalitarianism. Indeed, of the 15 participating EU Member States only Sweden, the Netherlands, France and Italy are not former communist or Stalinist states (we include Germany as a former communist state due to the pre-unification regime of the GDR). At work here again is the tussle for dominance between competing memory frames.

As already noted, the attempt to promote the 'Nazism and Stalinism as equally evil' memory frame has been linked to the influx of new Member States to the EU with post-WWII experiences that differ significantly from the older Member States.<sup>120</sup> As Verovšek put it, there is internal division, 'between Western memory culture, which is based on the experience of fascism and the 'zero hour' [...] of 1945, and the dominant culture of remembrance in Central and Eastern Europe, which emphasizes the renewed communist occupation that followed the initial Nazi invasion and is therefore organized around the key date of 1989'.<sup>121</sup>

A decade after it adopted the Resolution on 'European conscience and totalitarianism', the EP adopted 'European Parliament resolution of 19 September 2019 on the importance of European remembrance for the future of Europe'.<sup>122</sup> This Resolution begins by pointing to the Molotov-Ribbentrop Pact, whereby 'two totalitarian regimes that shared the goal of world conquest divided Europe into two zones of influence,' as starting World War II. It then recalls,

that the Nazi and communist regimes carried out mass murders, genocide and deportations and caused a loss of life and freedom in the 20th century on a scale unseen in human history, and recalls the horrific crime of the Holocaust perpetrated by the Nazi regime; condemns in the strongest terms the acts of aggression, crimes against humanity and mass human rights violations perpetrated by the Nazi, communist and other totalitarian regimes.

In this way, whilst still drawing particular attention to the Holocaust, the two regimes are initially presented side by side. The Resolution states that it seeks to promote, 'a common culture of remembrance that rejects the crimes of fascist, Stalinist, and other totalitarian and authoritarian regimes of the past,' and specifically calls for the allocation of adequate funding under the CERV 'Europe for Citizens' programme, introduced above, to support remembrance of the victims of

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'totalitarianism' – again therefore not exclusively the victims of Nazism. Be that as it may, we have already seen that in the subject-matter of projects actually funded, the legacy of the Holocaust is still pre-eminent in the EU's concerns. Likewise, the 2019 Resolution still failed to address colonialism at all. At this point in time, Sierp observed that, 'European Union strategies for dealing with the colonial past of its member states can be best described as a mixture of amnesia, redirection and atonement, with amnesia and redirection clearly being the dominant mode'.<sup>123</sup>

The 2019 Resolution was followed by 'European Parliament resolution of 17 January 2024 on European historical consciousness'.<sup>124</sup> This Resolution is very different in tone to those that preceded it. It opens by conceding that, 'the diverse and often conflicting histories of European nations and states make any effort to deal with history at a political level a difficult and potentially dangerous endeavour'. It expresses concern that, 'there continues to be a latent competition and partial incompatibility between different memory frames and remembrance cultures in Europe'. And most strikingly of all it, 'acknowledges the crimes committed by Nazi, fascist and communist totalitarian regimes *as well as under colonialism*' (emphasis added). It continues by setting out a noticeably scholarly and nuanced pathway towards 'an historical consciousness in Europe'. This new approach is to be welcomed.

Wider conclusions on the EU's internal action are addressed in the main conclusion immediately below.

## 6. Conclusions

There is no doubt that the history of the EU is intricately intertwined with the post-World War II transition to relative peace within and between its Member States. Yet, this article has identified that the EU's engagement with troubled pasts has engaged inconsistently with a patchwork of external and internal policies connected to what can be termed transitional justice.

Moreover, despite its engagement more directly with transitional justice coming rather late in the day, it has not benefited obviously from the great amount of critical work that has emerged about it, neither at the practical level of what works in terms of lasting reconciliation nor at the theoretical level of acknowledging and theorising around the rule of law 'dilemmas' that are characteristic of it. Likewise, it has not grappled meaningfully with the deployment of transitional justice-style measures in 'aparadigmatic' contexts. This lack of critical engagement has impeded its ability to address coherently the selected, and other, states' troubled pasts.

To recap, we saw that in the CFSP the Framework to Support Transitional Justice has adopted a standardised, normalised, version of transitional justice that tends to prioritise internationalised

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criminal justice, especially regarding the Western Balkans (including Bosnia-Herzegovina and Kosovo). Before the EU continues to prioritise transitional criminal justice, it should consider its goals and whether they can be achieved. This should also include engaging with the debate about transitional justice after armed conflict. These activities could be at least partially facilitated by addressing the Framework more directly and in more detail in the HR / VP Annual Reports on Human Rights and Democracy. Its disappearance from them is regrettable, and is perhaps connected to the reorientation of the CFSP after the adoption of the 2016 EU Global Strategy and 2022 Strategic Compass for Security and Defence. If the Framework is, however, still 'in play' even after these developments, then serious consideration should be given to addressing the legacy of economic violence.

We have also seen that through its use of legal bases connected to citizenship, and in particular by developing 'remembrance', the EU has spent hundreds of millions of Euros toward promoting something akin to what Ruti Teitel termed 'historical justice'. It is accepted that viewing these activities as manifestations of transitional justice requires allowing that the practices associated with it have spread to paradigmatic contexts. Yet, a transitional justice perspective, though, unlocks concerns about whether the EU has been, ever could be, or even *should be* successful in creating a collective 'European memory' as a foundation for a consolidated 'European identity'. Whilst promoting European remembrance is intended to serve a legitimising function through its impact upon European identity, it is difficult not to agree that at the same time it, 'corresponds to a top-down attempt at polity-building'.<sup>125</sup> Indeed, the 2024 EP Resolution stresses the importance of 'moving away from' a European remembrance culture that is 'predominantly top-down,' thereby implicitly conceding that is how some previous initiatives could have been described.<sup>126</sup> Teitel, albeit at the national level, cautioned that the, 'attempt to entrench an identity based on a particular historical view for all time is [...] an illiberal vision [...].'<sup>127</sup> The EU should be alert to *this* point, regardless of whether it is accepted that its remembrance activities are manifestations of transitional justice properly so-labelled.

With that in mind we saw that, on the face of it, and following the 2024 EP Resolution, the most recent call for proposals for remembrance projects under CERV at least acknowledges a diversity of memory frames. It is hoped that this will help the move away from 'competitive memory'. However, we also saw that the pre-allocation of funding for the four new priority areas still devotes more to the one that includes remembrance of the Holocaust.

Finally, in the treaties, legislation, and myriad non-legislative policy documents as they are today, there is a notable lack of coherence in the way that transitional justice appears or is even labelled (or is indeed acknowledged at all). This observation is not new: both Avello<sup>128</sup> and Crossley-Frolick<sup>129</sup> arrived at the same conclusion. Davis, likewise, sought to 'piece together' an implicit EU transitional

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justice policy from existing measures that did not necessarily refer to transitional justice explicitly.<sup>130</sup> Of course, since those studies were published the EU Council has at least adopted the 2015 'EU's Framework on Support to Transitional Justice' – but, as we saw, that document is non-legislative in nature, and applies only in the context of CFSP. The term 'transitional justice' is not without its critics, but given its use in the Framework it could be applied more consistently. This is not to advocate for further standardisation, but rather for the EU to identify more consistently when or whether it is engaged in transitional justice-related activity, whether internally or externally, and to draw on critical thinking about it such as its relevance to aparadigmatic contexts and addressing colonialism.

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<sup>1</sup> This underpinning project was, 'Strengthening European Integration through the Analysis of Conflict Discourses: Revisiting the Past, Anticipating the Future' (hereafter 'RePAST'). EU Horizon 2020 Research and Innovation Programme, Grant Agreement no 769252. The primary investigator was Dr Dimitra Milioni, Cyprus University of Technology. Legacy details of the project are available via the CORDIS EU Research Results website: <https://cordis.europa.eu/project/id/769252> (accessed 11 July 2025). Research assistance for the RePAST deliverable from which this piece is partly derived was provided by Claire Bradley, Lancaster University (UK). Thank you to Peter J. Verovšek for allowing me to read an early version of his 'A Burgeoning Community of Justice' article (see n. 17 below); and to Prof. Steven Wheatley for looking over a draft of this piece. Thanks also to the anonymous reviewers for their valuable feedback.

<sup>2</sup> The author of this piece joined the project after the geographical focus of RePAST was already decided.

<sup>3</sup> The precise reason why each state was selected is elaborated in the body of the discussion.

<sup>4</sup> Report of the Secretary General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Situations (2004) UN Doc S/2004/616, 4.

<sup>5</sup> The textual ambiguity expressed here as to whether the term is descriptive or normative in character is intentional.

<sup>6</sup> Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1991), xiii.

<sup>7</sup> See Thomas Obel Hansen, 'The time and space of transitional justice' in Cheryl Lawther et al, *Research Handbook on Transitional Justice* (Cheltenham, Edward Elgar:2017).

<sup>8</sup> Fionnuala Ní Aoláin and Colm Campbell, 'The Paradox of Transition in Conflicted Democracies' *Human Rights Quarterly* 27, (2005): 172-213, 183. See also Dustin Sharp, 'Emancipating Transitional Justice from the Bonds of the Paradigmatic Transition' *International Journal of Transitional Justice* 9, no. 1 (2015): 150-169.

<sup>9</sup> Report of the Secretary General, n4. See also International Centre for Transitional Justice, 'What is Transitional Justice?' <https://www.ictj.org/what-transitional-justice> (accessed 5 July 2025).

<sup>10</sup> Ruti Teitel, *Transitional Justice* (Oxford, OUP: 2000), 215.

<sup>11</sup> See Thomas Obel Hansen, 'The time and space of transitional justice' (2018), n7, 34.

<sup>12</sup> Christine Bell, 'Transitional Justice, Interdisciplinarity and the State of the "Field" or "Non-Field"', *International Journal of Transitional Justice* 3, no. 1 (2009):5-27.

<sup>13</sup> Line Engbo Gissel, 'The standardisation of transitional justice', *European Journal of International Relations* 28, no. 4 (2022): 859-884.

<sup>14</sup> Fionnuala Ní Aoláin, 'After Things Fall Apart: Challenges for Transitional Justice Futures', *Human Rights & International Legal Discourse* 11, no. 1 (2017): 23-40, 25.

<sup>15</sup> Line Engbo Gissel, 'Contemporary Transitional Justice: Normalising a Politics of Exception', *Global Society* 31, no. 3 (2017): 353-369; see also Gissel, 'The standardisation of transitional justice' (2022), n13.

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<sup>16</sup> Tine Destrooper, Line Engbo Gissel, and Kerstin Bree Carlson (eds.), *Transitional Justice in Aparadigmatic Contexts: Accountability, Recognition, and Disruption* (Abingdon, Routledge: 2023). See also Thomas Obel Hansen, 'The Vertical and Horizontal Expansion of Transitional Justice: Explanations and implications for a contested field' in Buckley-Zistel et al. (eds), *Transitional Justice Theories* (Abingdon, Routledge: 2014); Sharp 'Emancipating Transitional Justice from the Bonds of the Paradigmatic Transition', n8; Stephen Winter, *Transitional Justice in Established Democracies: A Political Theory* (New York and Hampshire, Palgrave Macmillan: 2014).

<sup>17</sup> Peter J. Verovšek, 'A Burgeoning Community of Justice? The European Union as a Promoter of Transitional Justice', *International Journal of Transitional Justice* 15 no. 2 (2021):351-369, 353 makes the same point about there being much more written about the Council of Europe than the EU. On the Council of Europe and its European Court of Human Rights see e.g. Eva Brems, 'Transitional justice in the case law of the European Court of Human Rights', *International Journal of Transitional Justice* 5, no. 2 (2011):282-303; Maria A. Sanchez, 'Admitting (to) the past: transitional justice in the European and Inter-American courts of human rights', *International Journal of Human Rights* 27, no. 8 (2023):1244-1266; James A. Sweeney, *The European Court of Human Rights in the Post-Cold War Era: Universality in Transition* (Abingdon: Routledge, 2012).

<sup>18</sup> Significant contributions include Maria Avello, *European Efforts in Transitional Justice* (Madrid: FRIDE, 2008); Katy A. Crossley-Frolick, 'The European Union and Transitional Justice: Human Rights and Post-Conflict Reconciliation in Europe and Beyond', *Contemporary Readings in Law and Social Justice* 3, no. 1 (2011): 33-57; Laura Davis, *The European Union and Transitional Justice* (Institute for Peacebuilding, 2010); Laura Davis, *EU Foreign Policy, Transitional Justice and Mediation* (Abingdon, Routledge: 2014); Iavor Rangelov et al, *EU Approaches to Justice in Conflict and Transition* (London: Human Security Study Group, 2016); Thomas Unger, 'The European Union and Peacebuilding: Policy and Legal Aspects', in S. Blockmans, J. Wouters and T. Ruys (eds.), *The European Union and Peacebuilding* (The Hague, T.M.C. Asser Press: 2010); Verovšek (*ibid.*).

<sup>19</sup> The term is more fully explained in the text at n90 below.

<sup>20</sup> What follows is a very brief outline. For more detail see e.g. Paul Craig & Gráinne de Búrca, *EU Law: Text, Cases, and Materials*, 8<sup>th</sup> ed. (Oxford, OUP: 2024).

<sup>21</sup> European Union, Consolidated Versions of The Treaty on European Union and The Treaty on the Functioning of the European Union, of 13 December 2007, OJ C 202 (7 June 2016) 13.

<sup>22</sup> The procedure is set out at Article 289 TFEU, n21. There are other 'extraordinary' legislative processes on especially sensitive topics, but space precludes discussion here: see Craig and De Búrca, n20.

<sup>23</sup> Space also precludes discussion of the various theories of European integration and the extent to which its legislative processes establish 'institutional balance' or result in a 'democratic deficit'. See Dimitris C. Chrysochoou, *Theorizing European Integration*, 2<sup>nd</sup> ed. (Abingdon, Routledge: 2008).

<sup>24</sup> European External Action Service, 'The EU's Policy Framework on support to transitional justice' (2015).

<sup>25</sup> Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU and repealing Regulation (EU) 2017/1601 and Council Regulation (EC, Euratom) No 480/2009 OJ L 209 (14 June 2021) 1.

<sup>26</sup> The conditions are set out in the 'Copenhagen Criteria': European Council in Copenhagen, Conclusions of the Presidency, (21-22 June 1993, SN 180/1/93).

<sup>27</sup> Olivera Simić, 'The European Union and the Western Balkans: Time to move away from retributive justice?' in S. Keil & Z Arkan eds., *The EU and Member State Building: European foreign policy in the Western Balkans* (Abingdon, Routledge: 2015), 265.

<sup>28</sup> See Art. 27 TEU, n21.

<sup>29</sup> European Council, Conclusions (28 June 2016, EU CO 26/16).

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<sup>30</sup> Council of the European Union, 'A Secure Europe in a Better World: European Security Strategy' (13 December 2003) available at <https://data.europa.eu/doi/10.2860/1402> (accessed 11 July 2025).

<sup>31</sup> Council of the EU, 'A Strategic Compass for Security and Defence - For a European Union that protects its citizens, values and interests and contributes to international peace and security Compass' (2022) available at [https://www.eeas.europa.eu/eeas/strategic-compass-security-and-defence-0\\_en](https://www.eeas.europa.eu/eeas/strategic-compass-security-and-defence-0_en) (accessed 11 July 2025); See Simon Sweeney & Neil Winn, 'Understanding the ambition in the EU's Strategic Compass: a case for optimism at last?', *Defence Studies* 22, no. 2 (2022): 192:210.

<sup>32</sup> Nathalie Tocci, 'From the European Security Strategy to the EU Global Strategy: explaining the journey', *International Politics* 54 (2017): 487-502, 497.

<sup>33</sup> Report of the UN Secretary General (2004), n4.

<sup>34</sup> All quotations from EU Framework (2015), n24, 8.

<sup>35</sup> Dustin N. Sharp, 'Interrogating the Peripheries: The Preoccupations of Fourth Generation Transitional Justice', *Harvard Human Rights Journal* 26 (2013): 149-178, 162. Sharp's core argument in this piece is addressed further below.

<sup>36</sup> EU Framework (2015), n24, 3.

<sup>37</sup> EU Framework (2015), n24, 4.

<sup>38</sup> Crossley-Frolick n18, 46.

<sup>39</sup> Information about all past and current CSDP missions can be found at [https://www.eeas.europa.eu/\\_en](https://www.eeas.europa.eu/_en) (accessed 11 July 2025).

<sup>40</sup> Details available at Kosovo Specialist Chambers & Specialist Prosecutor's Office, <https://www.scp-ks.org/en> (accessed 11 July 2025).

<sup>41</sup> Law No.05/L-053 (2015) of Kosovo, On Specialist Chambers And Specialist Prosecutor's Office, Article 1. Note that the UN International Criminal Tribunal for the Former Yugoslavia had already had jurisdiction over the same allegations, and indeed tried and acquitted some of those now on trial at the Specialist Chambers, including former President of Kosovo Hashim Thaçi.

<sup>42</sup> EU Framework (2015), n24, 5.

<sup>43</sup> EU Framework (2015), n24, 10.

<sup>44</sup> Verovšek, 'A Burgeoning Community of Justice? The European Union as a Promoter of Transitional Justice', n17, 368.

<sup>45</sup> See James A. Sweeney, 'The Elusive Right to Truth in Transitional Jurisprudence', *International and Comparative Law Quarterly* 67, no.2 (2018): 353-387.

<sup>46</sup> Ibid.

<sup>47</sup> See e.g. Josepha Close, *Amnesty, serious crimes and international law: global perspectives in theory and practice* (Abingdon, Routledge: 2019).

<sup>48</sup> See Amanda Cahill-Ripley, 'Foregrounding Socio-Economic Rights in Transitional Justice: Realising Justice for Violations of Economic and Social Rights', *Netherlands Quarterly of Human Rights* 32, no. 2 (2014):183-213; Sharp, 'Interrogating the Peripheries: The Preoccupations of Fourth Generation Transitional Justice' (2013), n35.

<sup>49</sup> See the discussion of 'Transitional Justice and Critique' in Catherine Turner, *Violence, Law and the Impossibility of Transitional Justice* (Abingdon, Routledge: 2016) pp 25-45.

<sup>50</sup> EU Framework (2015), n24, 31.

<sup>51</sup> See the text at n15.

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<sup>52</sup> EU Framework (2015), n24, 10. It is conceded that an alternative school of thought holds that the uniqueness of the rule of law 'dilemmas' has been overstated. See e.g. Eric A. Posner and Adrian Vermeule, 'Transitional Justice as Ordinary Justice', *Harvard Law Review* 117, no. 3 (2004): 761-825.

<sup>53</sup> Sweeney, n17.

<sup>54</sup> EU Framework (2015), n24, 17.

<sup>55</sup> European External Action Service, 'EU Action Plan on Human Rights and Democracy' (2020), available at [https://www.eeas.europa.eu/eeas/eu-action-plan-human-rights-and-democracy-0\\_en](https://www.eeas.europa.eu/eeas/eu-action-plan-human-rights-and-democracy-0_en) (accessed 11 July 2025).

<sup>56</sup> European External Action Service, 'The EU extends its Action Plan on Human Rights and Democracy until 2027 (2024), available at [https://www.eeas.europa.eu/eeas/eu-extends-its-action-plan-human-rights-and-democracy-until-2027\\_en](https://www.eeas.europa.eu/eeas/eu-extends-its-action-plan-human-rights-and-democracy-until-2027_en) (accessed 11 July 2025).

<sup>57</sup> The Annual Reports are available at [https://eeas.europa.eu/headquarters/headquarters-homepage\\_en/8437/EU%20Annual%20Reports%20on%20Human%20Rights%20and%20Democracy](https://eeas.europa.eu/headquarters/headquarters-homepage_en/8437/EU%20Annual%20Reports%20on%20Human%20Rights%20and%20Democracy) (accessed 11 July 2025).

<sup>58</sup> The latest at the time of writing.

<sup>59</sup> European External Action Service, '2022 Annual Report on Human Rights and Democracy in the World' (2023), 100, available at [https://eeas.europa.eu/headquarters/headquarters-homepage\\_en/8437/EU%20Annual%20Reports%20on%20Human%20Rights%20and%20Democracy](https://eeas.europa.eu/headquarters/headquarters-homepage_en/8437/EU%20Annual%20Reports%20on%20Human%20Rights%20and%20Democracy) (accessed 11 July 2025).

<sup>60</sup> European External Action Service, 'Annual Report on Human Rights and Democracy in the World – 2023 Country Updates' (2024), 9 et seq, available at [https://eeas.europa.eu/headquarters/headquarters-homepage\\_en/8437/EU%20Annual%20Reports%20on%20Human%20Rights%20and%20Democracy](https://eeas.europa.eu/headquarters/headquarters-homepage_en/8437/EU%20Annual%20Reports%20on%20Human%20Rights%20and%20Democracy) (accessed 11 July 2025).

<sup>61</sup> Ibid., 15 et seq.

<sup>62</sup> Ibid., 34 et seq. On the Troubles more generally, see Elisia Kinder, 'Non-recurrence, reconciliation, and transitional justice: situating accountability in Northern Ireland's oral history archive', *International Journal of Human Rights* 25, no.3 (2021): 509-528.

<sup>63</sup> Registrar of the European Court of Human Rights, 'New inter-State application brought by Ireland against the United Kingdom' (2024) available at <https://hudoc.echr.coe.int/eng-press?i=003-7854820-10910604> (accessed 11 July 2025).

<sup>64</sup> BBC, 'Hilary Benn begins process of repealing Legacy Act' (4 December, 2024) available at <https://www.bbc.com/news/articles/cz9gp8g32v5o> (accessed 11 July 2025).

<sup>65</sup> Carles Fernandez-Torne and Graeme Young, 'Mirroring Truths: How Liberal Democracies are Challenging their Foundational Narratives', *Social Sciences* 12, no. 8. (2023): 438, 7 (note that this article's pages are numbered from 1 to 12, rather than relative to the starting page given in the citation).

<sup>66</sup> See e.g. example Kanyisela Moyo, 'Mimicry, Transitional Justice and the Land Question in Racially Divided Former Settler Colonies' *International Journal of Transitional Justice* 9, no.1 (2015), 70-89; Bill Rolston and Fionnuala Ni Aolain, 'Colonialism, Redress and Transitional Justice: Ireland and beyond' *State Crime Journal* 7, no. 2 (2018): 329. Anne-Marie McAlinden, Marie Keenan, and James Gallen, *Transforming Justice Responses to Non-Recent Institutional Abuses* (Oxford, OUP: 2025).

<sup>67</sup> Full details of the foci of the project can be found at <https://www.repast.eu/> (accessed 4 July 2025).

<sup>68</sup> See e.g. Chryssochou, *Theorizing European Integration* (2009), n23.

<sup>69</sup> Nobel Prize Outreach, 'European Union – Facts', available at <https://www.nobelprize.org/prizes/peace/2012/eu/facts/> (accessed 11 July 2025).

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<sup>70</sup> Article 174 TFEU, n21.

<sup>71</sup> Details of all the EU's Regional Policy activities can be found at, [https://ec.europa.eu/regional\\_policy/home\\_en](https://ec.europa.eu/regional_policy/home_en) (accessed 11 July 2025).

<sup>72</sup> Full details are available at Special EU Programmes Body, 'PEACEPLUS' available at <https://www.seupb.eu/peaceplus> (accessed 11 July 2025).

<sup>73</sup> See also Davis, *The European Union and Transitional Justice* (2010) n18, 7.

<sup>74</sup> Teitel, *Transitional Justice* (2000) n10, 70.

<sup>75</sup> Ibid.

<sup>76</sup> Annabelle Littoz-Monnet, 'The EU Politics of Remembrance: Can Europeans Remember Together?' *West European Politics* 35, no. 5 (2012): 1182, 1182.

<sup>77</sup> In the sense used in the literature referenced at n16.

<sup>78</sup> European Communities, 'Declaration on European Identity', *Bulletin of the European Communities* 12 (1973): 118.

<sup>79</sup> European Union, 'The Stockholm Programme – An open and secure Europe serving and protecting the citizens' OJ C 115 (4 May 2010) 1.

<sup>80</sup> Ibid, para. 2.1.

<sup>81</sup> Article 9 TEU, n21.

<sup>82</sup> Article 167 TFEU, n21.

<sup>83</sup> Decision No 1904/2006/EC of the European Parliament and of the Council of 12 December 2006 establishing for the period 2007 to 2013 the programme 'Europe for Citizens' to promote active European citizenship, OJ L 378 (27 December 2006) 32.

<sup>84</sup> Ibid.

<sup>85</sup> Council Regulation (EU) No 390/2014 of 14 April 2014 'establishing the "Europe for Citizens" programme for the period 2014-2020', OJ L 115 (17 April 2014) 3.

<sup>86</sup> Regulation (EU) 2021/692 of the European Parliament and of the Council of 28 April 2021 establishing the Citizens, Equality, Rights and Values Programme, OJ L 156 (6 May 2021) 1.

<sup>87</sup> Article 7(1) CERV Regulation.

<sup>88</sup> Article 7(2) CERV Regulation.

<sup>89</sup> See the announcement at <https://ec.europa.eu/newsroom/just/items/809343/en> (accessed 10 July 2025).

<sup>90</sup> See the text above at n76.

<sup>91</sup> Littoz-Monnet, 'The EU Politics of Remembrance: Can Europeans Remember Together?' (2012), n76, 1183.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Michael Rothberg, *Multidirectional Memory: Remembering the Holocaust in the Age of Decolonization* (Stanford, Stanford University Press: 2009).

<sup>95</sup> Littoz-Monnet, 'The EU Politics of Remembrance: Can Europeans Remember Together?' (2012), n76, 1183.

<sup>96</sup> Littoz-Monnet, 'The EU Politics of Remembrance: Can Europeans Remember Together?' (2012), n76, 1195.

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<sup>97</sup> Data on EfC is downloadable as a spreadsheet at <https://ec.europa.eu/programmes/europe-for-citizens/projects/efc-projects-compendium/> (accessed 30 June 2025). For this article, the spreadsheet was downloaded and then subject to various analytical formulae.

<sup>98</sup> Raw data on the CERV projects is available at <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/projects-results> (accessed 30 June 2025). This data is not presented as a spreadsheet. Instead, for this article, the author copied the data into a bespoke new spreadsheet in order to run analytical formulae on it.

<sup>99</sup> Known in Spanish as 'Pacto del Olvido', the Pact of Forgetting was an agreement that to move toward democracy in the post-Franco era there should be no investigation into the regime's crimes. It was embodied in the 1977 Amnesty Law, which not only absolved alleged perpetrators of any responsibility for their actions but also outright prohibited even investigating alleged crimes. It has only recently started weaken. See e.g. See e.g. Roldan Jimeno, *Amnesties, Pardons and Transitional Justice: Spain's Pact of Forgetting* (London, Routledge: 2017).

<sup>100</sup> Citizens, Equality, Rights and Values Programme (CERV), Call document (CERV): V1.0 – 05.02.2024.

<sup>101</sup> See data available as at n98.

<sup>102</sup> See Michael Rothberg, *Multidirectional Memory: Remembering the Holocaust in the Age of Decolonization* (2009), n94.

<sup>103</sup> European Parliament Resolution of 14 February 1985 Commemorating the 40th Anniversary of The Cessation of Hostilities in Europe, OJ C 72 (18 March 1985) 66; European Parliament Resolution of 14 February 1985 on the Commemoration of 8 May 1985, OJ C 72 (18 March 1985) 68.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid. See also Mano Toth, 'Challenging the Notion of the East-West Memory Divide' *Journal of Common Market Studies* 57, no. 5 (2019): 1031-1050.

<sup>106</sup> These expressions were coined by Littoz-Monnet, 'The EU Politics of Remembrance: Can Europeans Remember Together?' (2012), n76, 1183, as noted above in the text at n95.

<sup>107</sup> Teitel, *Transitional Justice* (2000), n10, 106.

<sup>108</sup> Toth, 'Challenging the Notion of the East-West Memory Divide' (2019), n105, 1036.

<sup>109</sup> Jurisprudence of the European Court of Human Rights (ECtHR), under the jurisdiction of which all EU Member States fall, would suggest that the ban would have been unlawful in any event. See the discussion of the *Vajnai* case in Sweeney n17, in which the ECtHR ruled that a Hungarian ban on displaying the five-pointed star violated the right to freedom of expression.

<sup>110</sup> Details are available at [https://archive.org/download/2008-06-03\\_Prague-Declaration-on-European-Conscience-and-Communism/080603\\_Prague-Declaration.pdf](https://archive.org/download/2008-06-03_Prague-Declaration-on-European-Conscience-and-Communism/080603_Prague-Declaration.pdf) (accessed 11 July 2025).

<sup>111</sup> Prague Declaration, Ibid.

<sup>112</sup> See Toth, 'Challenging the Notion of the East-West Memory Divide' (2019), n105, 1031.

<sup>113</sup> European Parliament Resolution of 2 April 2009 on European conscience and totalitarianism, OJ C137 E (27 May 2010) 25.

<sup>114</sup> European Parliament Resolution of 2 April 2009 on European conscience and totalitarianism (ibid.), para. K.

<sup>115</sup> The preamble is not numbered therefore no pinpoint is available for this quotation.

<sup>116</sup> Prague Declaration, n110.

<sup>117</sup> The Prague Declaration used the word 'Institute' rather than 'Platform'. See n110.

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<sup>118</sup> Details are available at <https://www.memoryandconscience.eu/> (accessed 11 July 2025).

<sup>119</sup> Statute of the Platform, available at <https://www.memoryandconscience.eu/official-documents-of-the-european-parliament/statute-and-agreement/> (accessed 11 July 2025).

<sup>120</sup> Toth, 'Challenging the Notion of the East-West Memory Divide' (2019), n105.

<sup>121</sup> Verovšek, 'A Burgeoning Community of Justice? The European Union as a Promoter of Transitional Justice', n17, 352.

<sup>122</sup> European Parliament resolution of 19 September 2019 on the importance of European remembrance for the future of Europe, OJ C 171 (6 March 2021) 25.

<sup>123</sup> Aline Sierp, 'EU Memory Politics and Europe's Forgotten Colonial Past', *Interventions: International Journal of Postcolonial Studies* 22 no. 6 (2020): 686-702, 699.

<sup>124</sup> European Parliament resolution of 17 January 2024 on European historical consciousness, OJ C 5721 (17 October 2024).

<sup>125</sup> Oriane Colligaro, 'Legitimation Through Remembrance? The Changing Regimes of Historicity of European Integration,' *Journal of Contemporary European Studies* 23 no. 3 (2015): 330-343, 331.

<sup>126</sup> European Parliament resolution of 17 January 2024 on European historical consciousness, n124.

<sup>127</sup> Teitel *Transitional Justice* (2000), n10, 117.

<sup>128</sup> Maria Avello, 'European Efforts in Transitional Justice' *FRIDE Working Paper* 58 (2008).

<sup>129</sup> Crossley-Frolick, 'The European Union and Transitional Justice: Human Rights and Post-Conflict Reconciliation in Europe and Beyond' (2011), n18.

<sup>130</sup> Davis, 'The European Union and Transitional Justice' (2010), n18, 11.