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General Principles in EU External Relations Law and the EU as a Global Actor
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General Principles of International Law and the EU's Legal Order

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ABSTRACT: General principles of international law (GPIL) occupy a central but underexplored position in the European Union's legal order. Despite their acknowledged role in international law, the definition, origin, and functions of GPIL remain contested. This article examines the interaction between GPIL and the EU legal system, with particular attention to the practice of the Court of Justice of the European Union (CJEU). It first situates GPIL within the EU's constitutional framework, highlighting their ambiguous legal status. It then explores how the CJEU has relied upon, adapted, or resisted GPIL, both as sources of inspiration for general principles of EU law (GPEU) and as constraints within the EU's autonomous legal order. While instances of reluctance or resistance reveal the Court's concern for safeguarding EU autonomy, GPIL continue to provide interpretative guidance, systemic coherence, and bridges between EU and international law. The analysis ultimately demonstrates that the EU's engagement with GPIL contributes to both the development of its own legal order and the broader coherence of international law.

KEYWORDS: general principles of international law – general principles of EU law – Court of Justice of the European Union – autonomy of EU law – coherence of legal orders – International Law Commission.

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1. Introduction

Although general principles of international law (GPIL)[1] play a crucial role in international law, their very definition, origin, function as well as the methodology for their identification remain nebulous and the subject of controversy.[2] The recent work of the International Law Commission (ILC) on the topic highlights the challenges in identifying and applying these principles as well as in conceptualising their juridical nature and function. At the same time, thus far, the ILC, in its work on the topic, has primarily focused on the practice of States and international courts and it has largely ignored relevant practice stemming from the EU, and from the Court of Justice of the European Union (CJEU).[3] However, the coming of age of the EU as a global actor has led to a significant increase in the number of cases with international law aspects appearing on the docket of the CJEU.[4] Thus, the study of GPIL would not

[1] We consider that the term 'general principles of international law' refers not only to principles derived from municipal legal systems but that it also includes general principles formed within the international legal system. See for example Malgosia Fitzmaurice, arguing that '[g]eneral principles of law recognized by States within their domestic context, as postulated by the Committee, represent the past. The present is characterized by the emergence of general principles of international law sensu stricto, which derive from the international legal order and are fundamental to it', M Fitzmaurice, 'The History of Article 38 of the Statute of the International Court of Justice: The Journey from the Past to the Present' in J d'Aspremont, S Besson and S Knuchel (eds), *The Oxford Handbook of the Sources of International Law* (OUP 2017)179, 197. For discussion see C Redgwell, 'General Principles of International Law', in S Vogenauer and S Weatherill (eds), *General Principles of Law, European and Comparative Perspectives* (Hart Publishing 2017) 5, 9-11; E Bjorge, 'General Principles of Law formed within the International Legal System' (2023) 72 *International and Comparative Law Quarterly* 845–867; ILC, 'Fourth Report on General Principles of Law by M Vásquez Bermúdez, Special Rapporteur' (18 February 2025) UN Doc A/CN.4/785, 8-14; ILC, 'ILC Report on its work of the 74th session' (24 April–2 June and 3 July–4 August 2023) UN Doc A/78/10, Conclusion 3 11. For a discussion of the distinction in the context of the case-law of the CJEU, see below.

[2] Redgwell (n 1) 5.

[3] See the 2023 Statement on behalf of the European Union by Stephan Marquardt, Legal Adviser and Deputy Head of the Legal Department, European External Action Service, at the 78th Session of the United Nations General Assembly Sixth Committee on Agenda item 79, cluster I: 'Work of the International Law Commission General principles of law. Reference to the relevant practice of the EU and its courts is only made twice in the reports of the ILC's Special Rapporteur on the topic – and these references pertain to the particular issue of general principles of more limited scope of application. See ILC, 'First Report on General Principles of Law by M Vásquez Bermúdez, Special Rapporteur ' (5 April 2019) UN Doc A/CN.4/732, para 125, and ILC Fourth Report on General Principles of Law (n 1) paras 57–61. More particularly, the ILC SR relied on Art. 340 TFEU which deals with issues of contractual and non-contractual liability of the Union to argue in favour of the existence of general principles of law with a limited scope of application within a regional legal system. In the words of the SR: 'General Principles of law may be 'general' for a particular group of States, namely, those that belong to the relevant legal system'. ILC Fourth Report on General Principles of Law (n 1) para 61.

[4] On the basis of a statistical analysis, Tridimas and Konstantinidis argue that: 'There is a clear upwards trajectory of the engagement of the CJEU, in particular the ECJ, with customary international law.' T Tridimas and M Konstantinidis, 'Customary International Law in the Case Law of the CJEU: In Search of Consistency' in P Merkouris, RA Wessel and IT de Vries-Zou (eds), *The European Union and the Interpretation of Customary International Law* (CLEER Paper Series 2024) 35, at www.asser.nl.

be complete without an exploration of the relevant CJEU jurisprudence. As Advocate General (AG) Ćapeta noted in the latest *Front Polisario* case, while interpretations of international law by the CJEU are binding only within the EU legal order, it remains the case that such interpretations may have broader jurisgenerative effects on the international law plane.[5]

There are further reasons supporting the study of GPIL in the EU law context. While the role and function of international law in the Union's legal order have been studied extensively[6] – including the role of customary international law[7] – this is not the case for GPIL more particularly. In fact, the complexities associated with the legal category 'GPIL' entail that even the few publications that address the issue at hand focus more broadly on the influence of general international law on general principles of law rather than on GPIL proper.[8] As Bin Cheng noted in his seminal work on the topic, general principles of law remain 'the most controversial of the various sources of international law enumerated in Article 38 of the Statue and thus of international law in general'.[9] In a similar vein, Advocate General (AG) Trstenjak has remarked that, despite the centrality of general principles of EU law in the Union's legal order, the topic still remains a thorny one.[10]

Furthermore, quite a few years back, the seminal *Kadi* judgment sparked a vivid debate on the dangers that the development of highly integrated legal orders,[11] such as the EU, may pose to the unity of the international legal system.[12] Part of the literature

[5] Opinion of AG Ćapeta in Joined Cases C-779/21 P and C-799/21 *P Commission and Council v Front Polisario*, EU:C:2024:260, para 55.

[6] See recently, T Molnár and RA Wessel, *Interactions between EU Law and International Law: Juxtaposed Perspectives* (Edward Elgar Publishing 2024); J Odermatt, *International Law and the European Union* (Cambridge University Press 2021).

[7] See F L Bordin, A T Müller and F P Vives (eds), *The European Union and Customary International Law* (Cambridge University Press 2022); as well as Merkouris, Wessel and I T de Vries-Zou (n 4).

[8] See for instance E Castellarin, 'General Principles of Law and General International Law' in M Andenas, M Fitzmaurice and J Wouters (eds), *General Principles and the Coherence of International Law* (Brill 2019) 135; A Orakhelashvili, 'The Use of Substantive International Law by the EU Judiciary' in K Ziegler, PJ Neuvonen and V Moreno-Lax (eds), *Research Handbook on General Principles in EU Law: Constructing Legal Orders in Europe* (Edward Elgar 2022) 62-81; M Klamert, *Structural Principles of EU Law* (Hart 2025) 26–30. The issue at bar has also been discussed indirectly in the context of the discussion on the topic of judicial dialogue between the International Court of Justice (ICJ) and the CJEU. See for example E Kassoti, 'Fragmentation and Inter-Judicial Dialogue: The ICJ and the CJEU at the Interface' (2015) 8 *European Journal of Legal Studies* 21. See for a recent extensive analysis also J Odermatt, 'The International Court of Justice and the Court of Justice of the European Union', in A Skordas and L Mardikian (eds), *Research Handbook on the International Court of Justice* (Edward Elgar 2025) 294–318.

[9] B Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (Stevens and Sons 1953) 15.

[10] Opinion of AG Trstenjak in Case C-282/10 *Dominguez*, EU:C:2011:559, para 92.

[11] Case C-402/05 P, *Kadi and Al Barakaat International Foundation v Council and Commission*, ECLI:EU:C:2008:461.

[12] See for example G de Búrca, 'The European Court of Justice and the International Legal Order After *Kadi'* (2010) 51 *Harvard International Law Journal* 1, 3.

saw general principles as a force of convergence, confirming its systemic nature. For instance, Andenas and Chiussi argue that: 'When conflicts arise between different sub-regimes, the core principles common to them all remain the common language … [O]verarching principles may play the role of a convergent force, bringing a degree of unity and coherence to the sub-systems'.[13] In a similar vein, Besson has stressed that: '[G]eneral principles of international law contribute to resolving antinomies in international law and ensuring its *coherence* […] General principles help structure and unify the legal order through interpretation and by reference to common principles, without, however unifying it formally'.[14] The view that GPIL may fulfil a broader function in the international legal system by ensuring its coherence and systematicity has also found its way in the 2023 ILC draft conclusions on general principles of law.[15] While the fragmentation debate has certainly petered out, the increased interaction between the international and EU legal orders that the *Kadi* case is a paradigmatic example of is here to stay.[16] At the same time, the potential of GPIL to provide (inter-systemic) coherence in the specific context of the interaction between EU and international law remains underexplored. The recent *Commission v Malta* judgment *(Citizenship by Investment)*[17] is a case in point. As it will be discussed in more detail below,[18] the judgment has sparked a vivid debate on whether the CJEU has rejected GPIL on the recognition and acquisition of nationality,[19] while at the same time raising broader questions regarding the compatibility between certain GPIL with the general structure of the EU legal order.

Debates about the role of general principles in European Union law have largely centred around EU principles.[20] While the focus originally was on the role of these principles in the EU's internal (market) activities, their role in the Union's external

[13] M Andenas and L Chiussi, 'Cohesion, Convergence and Coherence of International Law' in Andenas, Fitzmaurice and Wouters (n 8) 16.

[14] S Besson, 'General Principles of International Law – Whose Principles?' in S Besson and P Pichonnaz (eds), *Les principes en droit européen – Principles in European Law* (Schulthess 2011) 50.

[15] ILC, 'Draft Conclusion 10, 'General Principles of law, text of the draft conclusions provisionally adopted by the drafting Committee on first reading', ILC 74th session (12 May 2023) UN Doc A/CN.4/L.982.

[16] J Klabbers and G Palombella, 'Introduction: Situating Inter-Legality', in J Klabbers and G Palombella (eds), *The Challenge of Inter-Legality* (Cambridge University Press 2019) 1, 7.

[17] Case C-181/23 *Commission v Malta (Citizenship by Investment)*, EU:C:2025:283. See in this journal: R O'Neill, 'A Stitch in Time? Mutual Trust as the EU's Fix-All in Case C-183/23 Commission v Malta' (2025) 10 *European Papers* 463–487.

[18] See section 3.3.

[19] See for example M van Den Brink, 'Why bother with legal reasoning?: The CJEU Judgment in Commission v Malta (Citizenship by Investment)' (*Verfassungsblog*, 05 May 2025), at verfassungsblog.de; L Spieker, 'It's solidarity, stupid!: In defence of Commission v Malta' (*Verfassungsblog,* 07 May 2025), at verfassungsblog.de.

[20] See recently, Klamert (n 8) and earlier T Tridimas, *The General Principles of EU Law* (OUP 2006) 4; S Vogenauer and S Weatherill (eds), *General Principles of Law: European and Comparative Perspectives* (Hart 2017); Ziegler, Neuvonen and Moreno-Lax (n 8).

relations has also largely been acknowledged.[21] Despite the general lack of attention in legal scholarship, it is acknowledged that GPIL provide the EU legal order with coherence, foundational values, interpretive guidance, and a connection to the wider international legal system, ensuring that EU law remains grounded in universally recognised legal norms and principles – in line with the EU's own treaty brief. Moreover, GPIL, just as other norms of international law, are situated just below Treaty law but above secondary EU legislation and international treaties concluded by the EU, conferring upon them a key interpretive and supervisory function.[22]

The aim of this contribution is to further assess these various roles GPIL may play in the EU's legal order, with an emphasis on the way in which the CJEU makes use of these principles. Section 2 examines the role and integration of GPIL within the EU legal order, focusing on their definition, recognition, and interaction with EU law, while also addressing the broader relationship between international law and the autonomous EU legal system. It highlights the ILC's approach to defining GPIL, the EU's selective incorporation of international legal principles, and the distinct functions these principles serve in both international and EU law contexts. Subsequently, the main aim of Section 3 is to explore the complex relationship between the CJEU and GPIL, analysing how the Court interprets, applies, and occasionally resists these principles in its jurisprudence. The section examines the Court's inconsistent terminology and selective reliance on GPIL, its tendency to favour equivalent EU legal principles for practical and autonomy-related reasons, and the instances where the CJEU resists applying GPIL – particularly when they conflict with the autonomy, uniformity, or effectiveness of EU law. Section 4 concludes by unravelling the different functions of GPIL within the EU legal order.

2. The position of general principles of international law in the EU legal order

The aim of this section is to briefly revisit the position of international law in the Union's legal order, to allow for a more specific assessment of the legal position of GPIL in that system. Given the abundant literature on the reception of international law in the EU, we will limit ourselves to some key understandings and refer to a few key publications for more extensive analysis.[23]

General principles of law are commonly described on the basis of the definition of the International Law Commission.[24] The ILC, in turn, uses the definition grounded in Article 38(1)(c) of the Statute of the International Court of Justice,

[21] M Cremona (ed), *Structural Principles in EU External Relations Law* (Hart 2018); M Cremona and A Thies, 'Principles of EU External Action' in RA Wessel and J Larik (eds), *EU External Relations Law: Text, Cases and Materials* (3rd edn, Hart 2026); RA Wessel, 'Principles of EU External Action', *Edward Elgar EU Law Encyclopedia* (Edward Elgar 2025); RA Wessel, 'General Principles in EU Common Foreign and Security Policy', in Ziegler, Neuvonen and Moreno-Lax (n 8) 607–624.

[22] Molnár and Wessel (n 6) Chapter 5.

[23] See for recent references Molnár and Wessel (n 6).

[24] ILC, 'Report on the work of the seventy-fourth session' (2023), Chapter 4.

which refers to 'general principles of law recognized by civilized nations'. The ILC's approach analyses this definition in light of state practice, jurisprudence of international courts and tribunals, and scholarly teachings. The ILC's recent draft conclusions (adopted in 2023) specify the following elements: (1) General principles of law are a source of international law; (2) For a general principle of law to exist, it must be 'recognized by the community of nations'. Recognition is shown via objective criteria, generally requiring that the principle is common to the various legal systems of the world and has been transposed to the international legal system. The ILC furthermore recognises two categories of general principles: (1) *Principles derived from national legal systems* (their existence is established by a comparative analysis of national legal systems that must be wide and representative, including different regions of the world); and (2) *Principles formed within the international legal system* (their existence and content require that the community of nations has recognized the principle as intrinsic to the international legal system). The ILC emphasises that general principles of law are not hierarchically subordinate to treaties or customary international law and can operate independently, complement, or serve as a basis for rights and obligations in international law. In short, the ILC's definition centres on recognition by the global community, either through comparative law for domestic-derived principles or their intrinsic nature within the international legal system for principles formed at the international level.[25]

When applying GPIL to the EU's legal order, one thus has to acknowledge the 'multilevel' and 'multidimensional' origin of the principles. GPIL are a combination of principles derived from national legal systems and principles formed within the international legal system. These principles, in turn enter the EU legal order as 'international law' binding upon the EU, and/or through effects they may have on the interpretation and application of principles of EU law. From the perspective of the EU legal framework, the significance lies in the function of these principles concerning the EU treaties. Unlike the application of general international law to assess EU secondary legislation, employing general international law to interpret and implement provisions of the EU treaties creates a distinct connection with the general principles of EU law. In this context, general international law serves as a substantive source for the general principles of EU law, meaning it is one of the methods through which the essence of these principles is established. Essentially, principles of international law are thus utilised as an implicit foundation of EU law. Yet, the application of international law principles in this context does not equate to the recognition of these principles as GPEU. Unlike GPEU, international law principles do not function as primary norms within the EU legal framework. Just like other international

[25] Cf. also M Papadaki, 'General Principles Formed within the International Legal System: Theoretical Debates and Practical Ramifications in Light the Work of the ILC' (Völkerrechtliche Tagesthemen: Spotlight, Episode 41 Völkerrechtsblog, 27 July 2023), at voelkerrechtsblog.org; as well as X Shao, 'What We Talk about When We Talk about General Principles of Law' (2021) 20 *Chinese Journal of International Law* 219.

norms, while they may hold a status above other forms of secondary legislation, they remain subordinate to the EU treaties. Their integration into EU law occurs solely through, and is constrained by, the provisions of the treaties. These rules of general international law are applied in their original form and are not converted into EU primary law. This approach mirrors the way other international legal norms are incorporated into the EU legal system (see further below).[26]

The EU legal order's much-debated autonomy[27] has never implied immunity from the influence of international law. As the European integration project has progressed, the umbilical cord linking EU law to the international legal order as its 'mother legal order' has significantly loosened but has not been severed altogether.[28] Therefore, international law plays – and has always played – a role within the EU legal system, with its role varying according to the sources of international legal norms. Pursuant to Article 38(1) of the Statute of the International Court of Justice (ICJ), these sources include:

1. treaties concluded by the EU with third parties, such as association, partnership, and trade agreements;

2. customary international law, such as numerous generally accepted rules of the law of treaties and the law of the sea; and indeed:

3. general principles of law, such as good faith and the principle of *audiatur et altera pars*.

Another source of international law is formed by the binding decisions of intergovernmental organisations, such as United Nations (UN) Security Council resolutions adopted under Chapter VII of the UN Charter or the International Health Regulations adopted under the aegis of the World Health Organization (WHO).[29]

Although references to international law are more numerous in primary EU law after the Lisbon Treaty than before, the founding treaties – unlike many constitutions of EU Member States – provide almost no guidance on the status, incorporation, and effects of norms emanating from international law within the 'internal' legal order of the EU. In addition to the explicit recognition of the Union's treaty-making powers in the founding treaties (which echoes customary international law concerning international organisations and treaty-making), the sole primary EU law provision in this regard addresses exclusively the status and legal effects of international agreements concluded by the EU (Article 216 TFEU), together with the procedural rules on the negotiation and conclusion of such agreements and the adoption of binding decisions of international bodies set up by agreements to which the EU is a party

[26] Cf. also, and more extensively, Castellarin (n 8) 137.

[27] For many references see in this journal: J Lindeboom and RA Wessel (eds), 'The Autonomy of EU Law, Legal Theory and European Integration' (2024) 8 *European Papers* 3.

[28] Molnár and Wessel (n 6) 105.

[29] RA Wessel and S Blockmans, 'The Legal Status and Influence of Decisions of International Organisations and Other Bodies in the European Union' in P Eeckhout and M Lopez-Escuerdo (eds), *The European Union's External Action in Times of Crisis* (Hart 2016) 233–234.

(Article 218 TFEU). These scarce EU law provisions address only a small fraction of all relevant sources and forms of international law that the EU legal order might encounter. It is thus primarily the CJEU that has shaped the contours of this complex and multifaceted legal relationship. As a result, the CJEU has become the natural 'gatekeeper' of these matters – demonstrating its perception of the EU legal order as a constitutional order which determines internally how to implement international legal obligations, as the relationship between EU and international law is not guided by international law rules.

The general features of how the EU legal order receives international law, may be summarised by the following basic tenets: the European Union must respect the international legal order in the exercise of its functions and powers, and the EU is bound by rules of general international law, including universally accepted customary international law, which are binding on the EU institutions.[30] In addition, EU law must be interpreted in light of the relevant rules and principles of international law and, as far as possible, in a manner consistent with those rules and principles. Sometimes this obligation is expressly set out in the founding treaties, as is the case with the 1951 Geneva Convention relating to the Status of Refugees (see Article 78(1) TFEU). Moreover, rules of international law that bind the EU take precedence over conflicting secondary law, but this primacy does not extend to EU primary law – that is, the founding and amending treaties and the Charter of Fundamental Rights of the EU. The fact that international law binding the EU – either in the form of treaty law or customary law or beyond – is placed below primary EU law but above secondary EU legislation deviates from the horizontal, non-hierarchical interrelationship generally applicable between various sources of international law (save the higher status and invalidating priority of peremptory norms of international law (*jus cogens*)).

The status of GPIL in the EU legal order follows these general starting points. The EU Treaties simply refer to 'international law' (Arts. 3(5) and 21 TEU) and do not make a distinction between the various sources of international law. Similarly, there is no *a priori* reason not to apply the obligation to 'strictly observe and further develop international law' (Art. 3(5) TEU) also to GPIL.[31] At the same time, as noted by Castellarin, 'From a quantitative point of view, international law plays a secondary role as a source of inspiration for general principles of EU law: the discovery of general principles of EU law (GPEU) by the ECJ is mainly inspired by national law and by the spirit of EU treaties themselves'.[32]

[30] Molnár and Wessel (n 6) Chapter 5.

[31] See on the legally binding nature of that provision our earlier analysis: E Kassoti and RA Wessel, 'The Normative Effect of Article 3(5) TEU: Observance and Development of International Law by the European Union' in P García Andrade (ed), *Interacciones entre el Derecho de la Unión Europea y el Derecho Internacional Público* (Tirant lo Blanch 2023) 19.

[32] Castellarin (n 8) 135.

Questions also arise in relation both to the recognition of general principles in EU law (which principles are to be recognised and taken into account?) and to the definition of their substantive content (do general principles mean the same in each and every legal order?). In this context, the concept of 'substantive borrowing' from international law can serve as a method to incorporate norms derived from this external legal framework.[33] The adoption of substantive standards, rules, and principles from international law can be significant in multiple aspects. This ranges from drawing inspiration and wielding persuasive authority to integrating substantive elements into a formal source of EU law, particularly the general principles of law. More broadly, it is noteworthy that in a number of instances international law and EU law share the same values and may thus mutually influence each other via informal ways. This has also been pointed out by AG Pikamäe when he stressed: 'certain legislative parallels between, on the one hand, international law and, on the other, EU law, may be understood to reveal a common legal conviction'.[34]

Yet, the function of general principles in EU law may indeed differ from the function they have in the international legal order. It has rightly been observed that 'Whereas general principles of EU law mainly aim at the protection of the individual, unanimously recognised general principles of law are centred on the overall functioning of the international legal order or on procedural issues'.[35] The difficulties associated with the recognition of the prohibition of abuse of law as a GPEU illustrate this point well. The fact that the general principle in question seeks to restrict the rights of individuals, instead of protecting them contrary to other well-established principles has led part of the literature to consider it as a principle of interpretation, rather than a GPEU.[36] Even after the explicit judicial endorsement of the prohibition of abuse of EU law as a GPEU,[37] authors have labelled it as a 'special' GPEU exactly because it seeks to restrict rather than expand the protection of rights enjoyed by private parties under EU law.[38]

The question then is whether the substantive content of a GPIL can or should be part of the 'substantive borrowing' process mentioned above. For instance, 'the con-

[33] KS Ziegler, 'The Relationship between EU Law and International Law' in D Patterson and A Soderston (eds), *A Companion to EU and International Law* (Wiley-Blackwell 2016) 42.

[34] Opinion of AG Pikamäe in Case C-441/19 *TQ v Staatssecretaris van Justitie en Veiligheid* EU:C:2020:515 (reiterating his Opinion in C-74/19 *Transportes Aéreos Portugueses*, EU:C:2020:135, para 35).

[35] Castellarin (n 8) 134.

[36] See for example A Arnull, 'What is a General Principle of EU Law?' in R De La Feria, S Vogenauer (eds), *Prohibition of Abuse of Law: A New General Principle of EU Law?* (Hart Publishing 2011) 20–21.

[37] Case C-251/16 *Cussens, Jennings, and Kingston v Brosnan*, EU:C:2017:881, para 31.

[38] G Butler, K E Sørensen, 'Prohibition of Abuse of EU Law: A Special General Principle' in Ziegler, Neuvonen and Moreno-Lax (n 8) 412.

cept of rule of law does not have exactly the same meaning in EU law and in international law'.[39] Castellarin rightfully notes that the interpretation of a GPIL in the EU law context is done on the basis of 'constitutional considerations' rather than on the often basis of private law analogies that largely define the international legal order.[40]

3. The Court of Justice of the European Union and general principles of international law

3.1. The concept of general principles of (international) law in the CJEU's case-law

From the outset, it needs to be mentioned that the Court has not made any explicit pronouncements on the topic of GPIL. This is of course understandable. The CJEU is a judicial body of the Union and while it has recourse to GPIL, as well as to international law more broadly, it does so merely to interpret and apply EU law. Furthermore, it seems that, when it mentions 'international law', the Court actually has in mind mainly treaties and customary international law. Thus, it often omits to list GPIL among the sources of international law that the EU is bound to observe when exercising its powers.[41] The CJEU is not alone in doing so. Occasionally, GPIL are also left out from the sources of (applicable) international law mentioned by the ICJ.[42] Despite this, the CJEU has ascertained the applicability of GPIL in its practice. Thus, in *Front Polisario*[43] and in *Western Sahara Campaign UK*,[44] the Court found the principle of the relative effect of treaties to be a GPIL codified in the Vienna Convention on the Law of Treaties.[45] Furthermore, in the latest instalment of the Western Sahara saga, AG Ćapeta expressly included general principles of law as a source of international law binding upon the EU.[46]

[39] Castellarin (n 8) 134.

[40] While this distinction can still be made in general, a certain 'constitutionalisation' has of course also changed the nature of the international legal order; RA Wessel, 'Revealing the Publicness of International Law' in C Ryngaert, E J Molenaar and S Nouwen (eds), *What's Wrong with International Law? – Liber Amicorum A.H.A. Soons* (Martinus Nijhoff Publishers 2015) 449.

[41] For example in *Western Sahara Campaign UK*, the Court stressed that: 'The European Union is bound, ... when exercising its powers, to observe international law in its entirety, including not only the principles of general and customary international law, but also the provisions of international conventions that are binding on it'. Case C-266/16 *Western Sahara Campaign UK*, EU:C:2018:118, para 47; Joined cases C-779/21 P and C-799/21 P *Commission v Front Polisario*, EU:C:2024:835, para 173.

[42] See for instance *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt* (Advisory Opinion) (ICJ, 20 December 1980 para 10; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) (ICJ, 9 July 2004) para 86.

[43] Case C-104/16 P *Council v Front Polisario*, EU:C:2016:973, para 88.

[44] *Western Sahara Campaign UK* (n 43) para 63.

[45] Vienna Convention on the Law of Treaties [1969] (VCLT) .

[46] Opinion of AG Ćapeta in Joined Cases C-779/21 P and C-799/21(n 5) paras 52 and fn 54.

Making any general points regarding the CJEU's reliance on GPIL is a daunting task due to the fact that the terminology used by the Court is far from clear or consistent. In its jurisprudence the Court routinely refers to 'rules and principles of general and customary international law', 'principles of international law' and 'general principles of international law' without elaborating on the terms used,[47] something that needs to be done with reference to the context in which they occur. However, this terminological ambiguity is not uncommon. Both the International Court of Justice (ICJ) and its predecessor, the Permanent Court of International Justice (PCIJ), have used expressions such as 'principles and rules of international law'[48] and 'principles of international law'[49] without any further elucidation. Thus, at a preliminary stage, a number of issues pertaining to the terminology employed by the CJEU need to be resolved. Solving this 'terminological puzzle' also helps us understand how the CJEU's practice fits into a number of broader debates regarding the nature and function of GPIL.

At first, it needs to be stressed that, occasionally, the term 'principles' is used as a shorthand to refer to the (applicable) international law rules and thus, no strict distinction between 'principles' and 'rules' is made in the case-law. For instance, in *Opel Austria*, the Court stated that 'the *principle* of good faith is a *rule* of customary international law whose existence is recognized by the International Court of Justice.[50]' Similarly, in *Front Polisario* the Court explained that self-determination, a customary law principle, is one of the essential principles of international law and as such it 'forms part of *the rules of international law* applicable to relations between the European Union and the Kingdom of Morocco'.[51] In this sense, the use of the term does not necessarily say much about a norm's pedigree. The ICJ also uses on occasion 'principles' as a synonym of 'rules'. In the *Gulf of Maine* case, it was stated that:

> 'The association of the terms "rules" and "principles" is no more than the use of a dual expression to convey one and the same idea, since in this context "principles" clearly means principles of law, that is, it also includes rules of international law in whose case the use of the term "principles" may be justified because of their more general and fundamental character'.[52]

[47] In the case-law of the CJEU, there are also terminological discrepancies when it comes to general principles of EU law. On this, see the Opinion of AG Trstenjak in *Dominguez* (n 10) para 92.

[48] See for example *Case Concerning Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)* (Judgment) (ICJ, 14 February 2002) para 43; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian territory* (Advisory Opinion) (ICJ, 9 July 2004) paras 114 and 120.

[49] See for example *SS Lotus (France v Turkey)* (PCIJ, 7 September 1927) PCIJ Rep Series A No 10, 16.

[50] Case T-115/94 *Opel Austria GmbH v Council of the European Union*, EU:T:1997:3, para 90.

[51] Case C-104/16 P *Council v Front Polisario* (n 43), paras 88–89 (emphasis added).

[52] *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)* (Judgment) (12 October 1984) para 79.

At the international law level, another dimension of the relationship between 'principles' and 'rules' that has attracted significant attention is whether a distinction can be made between the two concepts on the basis of their degree of specificity.[53] For some, GPIL are abstract and indeterminate legal norms by way of contrast to rules which are much more specific.[54] For instance, Gerald Fitzmaurice has written that '[b]y a principle, or general principle, as opposed to a rule, even a general rule, of law is meant chiefly something which is not itself a rule, but which underlies a rule, and explains or provides the reason for it. A rule answers the question 'what'; a principle in effect answers the question 'why''.[55] Others, however, have questioned the merit of distinguishing between 'principles' and 'rules'. Kleinlein has observed that the 'inevitable semantic indeterminacy of any legal norm' casts doubt on whether a norm's specificity can serve as a useful tool for understanding the legal contours of the concept of GPIL.[56] As previously mentioned, the ICJ occasionally uses the terms in question interchangeably and in fact, in its jurisprudence, the Court has ascertained both 'general' and more 'specific' GPIL.[57] As the above dictum from the *Gulf of Maine* case shows, the ICJ seems to use the term 'general principles' in order to denote the general character and fundamental importance of a particular norm.[58] The ILC in its work on general principles of law has also adopted this approach and it has rejected a rigid distinction between 'principles' and 'rules'.[59] The ILC's Special Rapporteur on the topic has underscored that general principles of law contained in Art. 38 (1) (c) ICJ Statute 'are 'general' in the sense that their content has a certain degree of abstraction, and 'fundamental' in the sense that they underlie specific rules or embody important values'.[60]

Similarly, the CJEU's practice shows that no firm conclusions can be drawn from the use of the term 'principles' alone. As seen above, in a similar vein to the ICJ, the

[53] For an overview of the debate see M Doderska, *General Principles of Law Recognized by Civilized Nations (1922-2018): The Evolution of the Third Source of International Law Through the Jurisprudence of the Permanent Court of International Justice and the International Court of Justice* (Brill 2020) 69–82.

[54] Cheng (n 9) 24; Besson (n 14) 32–34; R Dworkin, *Taking Rights Seriously* (Bloomsbury 2013) 40 and 42.

[55] G Fitzmaurice, 'The General Principles of International Law Considered from the Standpoint of the Rule of Law' (1957) 92 *Collected Courses of the Hague Academy of International Law*, 7. See also Besson (n 14).

[56] T Kleinlein, 'Customary International Law and General Principles: Rethinking their Relationship' in B D Lepard (ed), *Reexamining Customary International Law* (Cambridge University Press 2017) 131 and 141–142. See also Doderska (n 53) 71.

[57] Doderska lists the sound administration of justice and the general principle of humanity as more 'general' GPIL ascertained by the ICJ, whereas the general principle that a territorial regime established by a treaty achieves a permanence which the treaty itself does not enjoy and the general principle that rights cannot be derived from the mere fact of membership of the organisation are examples of more 'specific' GPIL. See Doderska (n 53) 68–69.

[58] Kleinlein (n 56) 142.

[59] ILC First Report on General Principles of Law (n 3) para 153.

[60] ILC Fourth Report on General Principles of Law (n 3) paras 31–32.

CJEU has not made a rigid distinction between 'principles' and 'rules' in its case-law.[61] The relevant jurisprudence also attests to the fact that the 'generality' of GPIL does not necessarily correspond to their indeterminacy. In its practice, the CJEU has ascertained both abstract general principles, such as good faith[62] and the *pacta sunt servanda* principle,[63] as well as more specific ones, such as the principle to the effect that a State cannot refuse its nationals the right of entry or residence[64] and the principle of the continuity of treaties.[65] In this light, the observation made by AG Mazák in relation to general principles of EU law also holds true for GPIL.

> '[T]he concept of general principle relates to a particular form of rule rather than to a particular content: it describes a source of law which may embrace rules of widely varying content and degree of completeness, ranging from interpretative maxims to fully fledged norms like fundamental rights or the highly developed body of Community principles of sound administration and procedure'.[66]

In this context too, the 'generality' of GPIL refers to their fundamental importance rather than to their vagueness. In *Racke*, the Court argued that 'the *pacta sunt servanda* principle, [...] constitutes a fundamental principle of any legal order and, in particular, the international legal order'.[67] In *Front Polisario*, the Court declared that self-determination is 'a legally enforceable right *erga omnes* and one of the essential principles of international law'.[68]

Furthermore, in international law, there is disagreement as to the scope of the concept of GPIL. More particularly, it is debated whether the category of GPIL comprises only general principles derived from national legal systems or whether it also includes general principles originating in the international legal order.[69] This disagreement also became apparent in the context of the ILC's work on the topic.[70] As they currently stand, the ILC's Draft Conclusions reflect the broader view that general principles of law also include general principles formed within the international legal order.[71] The

[61] See *Arrest Warrant* (n 48) and *SS Lotus* (n 49).

[62] See for instance Case 203/07 P *Greece v Commission,* EU:C:2008:606, para 64.

[63] See for instance Case C-162/96 *Racke GmbH & Co v Hauptzollamt Mainz*, EU:C:1998:293, para 49.

[64] Case 41/ 74 *Yvonne van Duyn v Home Office*, EU:C:1974:133, para 22; C-165/16, *Toufik Lounes v Secretary of State for the Home Department*, EU:C:2017:862, para 37.

[65] Case C-216/01 *Budejovický Budvar, národní podnik*, EU:C:2003:618, para 152.

[66] Opinion of AG Mazák in Case C-411/05 *Felix Palacios de la Villa v Cortefiel Servicios SA,* EU:C:2007:106, para 134.

[67] *Racke GmbH & Co v Hauptzollamt Mainz* (n 63) para 49.

[68] *Council v Front Polisario* (n 43) para 88.

[69] M C Bassiouni, 'A Functional approach to "General Principles of International Law"' (1990) 11 *Michigan Journal of International Law* 768, 771.

[70] Vázquez-Bermúdez (n 59) paras 80–90.

[71] See Draft Conclusion 3, 'General Principles of law' text of the draft conclusions provisionally adopted by the drafting Committee on first reading' (ILC, 74th session, 12 May 2023) UN Doc A/CN.4/L.982.

ILC Special Rapporteur (SR) defended this choice by highlighting that 'a basic premise to be followed is that international law itself, like any legal system, has the capacity to generate principles specific to it, without the need to borrow from other legal system'.[72] In order to buttress this view, the SR furnished a number of examples of GPIL developed within the international legal order including *inter alia* the principle of sovereign equality, the principle of consent to jurisdiction, the duty to make reparations for an internationally wrongful act and the principle of peaceful settlement of disputes.[73] The CJEU's jurisprudence also reflects the understanding that GPIL are not limited to those developed *in foro domestico* but it also includes general principles of *international law*. Thus, in its practice, the Court has referred to principles originating in the international legal order such as the principle of sovereign equality of States,[74] the principle of peaceful settlement of disputes[75] and the principle to the effect that a breach of an engagement involves an obligation to make reparation in an adequate form.[76] There is further EU practice attesting to the existence of a distinct category of GPIL of international origin. In its written submissions in the context of the *UK-Sandeel* case before the Permanent Court of Arbitration (PCA)[77] regarding the interpretation of the 2021 Trade and Cooperation agreement between the EU and the UK,[78] the EU expressly relied on GPIL regarding the allocation of the burden of proof.[79] Furthermore, in its written statement in the context of the ICJ's advisory proceedings on the *Obligations of States in respect of Climate Change*, the EU argued in favour of considering 'intergenerational equity' 'as a specific articulation of the general principle of equity under international law'.[80]

From the viewpoint of the sources of international law, accepting a broader understanding of GPIL as also encompassing general principles with an international

[72] Vázquez-Bermúdez (n 59) para 81.

[73] Ibid para 84.

[74] Case T-308/18 *Hamas v Council of the European Union*, EU:T:2019:557, para 229.

[75] Case T-293/18, *Latvia v. European Commission*, EU:T:2020:29, para 4, quoting a letter from the European Commission.

[76] Opinion of AG Tesauro in Case C-46/93 *Brasserie du Pêcheur*, EU:C:1995:407, para 38,

[77] Ruling *in the matter of Arbitration pursuant to Article 739 of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community and the United Kingdom of Great Britain and Northern Ireland* (*UK-Sandeel* Case), (*European Union v United Kingdom of Great Britain and Northern Ireland*) (UK-Sandeel Case) (PCA Case No 2024-45, 28 April 2025) ; For analysis, see E Kassoti, 'Small Fry: The *UK Sandeel* Case Before the PCA (*EU vs UK*)', (Verfassungsb log, 6 February 2025) at verfassungsblog.de.

[78] Trade and Co-operation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part [2021].

[79] Written submission of the European Union, in the *UK-Sandeel* Case (PCA Case No 2024-45, 9 December 2024) paras 392, 452 .

[80] Written Statement of the European Union, *Obligations of States in respect of Climate Change* (Request for an Advisory Opinion) (ICJ, 22 March 2024) para 173.

underpinning blurs the dividing line between customary international law and general principles of law as per Art. 38(1)(c) ICJ Statute[81] – a point that has also sparked controversy at the ILC.[82] According to the ILC SR, the difference between these two sources of international law lies in the method for their identification. While for customary international law norms, the two-element test (State practice and *opinio juris*) needs to be satisfied, the determination of general principles derived from the international legal system:

> '[I]nvolves, first, an inductive analysis of the international legal framework itself, conventional and customary, taking into account all available evidence, such as international instruments, and, once the principles are identified, a deductive process, to ascertain whether they are intrinsic to the international legal system, that is, if they reflect and regulate its basic features'.[83]

The ILC does not however explain how to determine that a general principle is *specific* to the international legal system, thereby failing to provide concrete guidance on how to distinguish between these two sources of international law.

The CJEU's case-law demonstrates the practical difficulties of drawing clear boundaries between customary international law and GPIL.[84] In its practice, the Court routinely refers to good faith, the *pacta sunt servanda* principle, self-determination, *rebus sic standibus*, territoriality as 'principles of international law' and it is only through a careful, contextual analysis that one can draw conclusions about their pedigree. For instance, in *Front Polisario,* the Court referred to the principle of the relative effect of treaties (*pacta tertiis*) as a 'general international law principle' which finds particular expression in Art. 34 VCLT[85] without providing more by way of analysis or explanation – apart from a citation to its previous ruling in *Brita*.[86] On its face, the reference does not reveal much about the Court's understanding of the norm's pedigree. The Court could have considered the norm to be either customary international law or a general principle of law, within the meaning of Art. 38(1)(c) ICJ Statute. It is only by reading *Polisario* side by side with *Brita* that it becomes clear that, in the Court's view, the principle of the relative effect of treaties is a customary norm of international law.[87] Moreover, it is not unusual for the Court, once it has determined the legal status and effect of an international law norm within the EU legal order, to refer to its own case-law rather than to relevant international law

[81] R Yotova, 'Challenges in the Identification of "General Principles of Law Recognized by Civilized Nations": The Approach of the International Court' (2017) 3 *Canadian Journal of Comparative & Contemporary Law* 269, 276–277.

[82] Vázquez-Bermúdez (n 59), para 77.

[83] Ibid, para 90.

[84] This point is also made by Castellarin (n 8), 139.

[85] Case C-104/16 P *Council v Front Polisario*, EU:C:2016:677, para 100.

[86] Case C-386/08 *Brita v Hauptzollamt Hamburg-Hafen*, EU:C:2010:91.

[87] Ibid para 42.

sources in subsequent judgments.[88] This, however, provides little clarity as to the relationship between customary international law and GPIL. The jurisprudence of the ICJ[89] as well as of domestic courts[90] also attests to the complexity of drawing clear boundaries between custom and GPIL.

When it comes to the means of identification of GPIL, the CJEU often refers to the UN Charter and the VCLT as international instruments that reflect the wide recognition of the principle in question by the international community.[91] The CJEU also has recourse to ICJ jurisprudence as a shortcut to identify the existence of a GPIL.[92] In the literature, the fact that the Court has shown a great degree of deference to the authority of the ICJ has been criticised since, arguably, it signifies reluctance to engage in depth with international law questions.[93] However, one may wonder whether this criticism has merit in the specific context of GPIL, particularly in light of the conceptual and practical deficits in the theory of GPIL. Thus, and taking into account the formidable difficulties associated with the concept of GPIL, it is perhaps understandable that the EU judiciary relies on 'ready-made' evidence such as ICJ judgments rather than proffering its own theory of GPIL.

As seen above, the Court's case-law shows that the designation of an international legal norm as a 'GPIL' does not say much about its specificity or its place within the list of sources of international law enumerated in Art. 38(1) ICJ Statute. In other words, the use of GPIL by the CJEU does not seem to be intended to make any particular norm-type or source-type differentiations.[94] Overall, it seems that the Court uses 'GPIL' to refer to fundamental principles of general international law and thus, to emphasise their normative scope of application as binding *erga omnes* irrespective of their source. Despite some inconsistency,[95] at the international law level,

[88] Odermatt (n 8) 318.

[89] Dordeska (n 53) 143–153.

[90] O Amman, *Domestic Courts and the Interpretation of International Law. Methods and Reasoning Based on the Swiss Example* (Brill Nijhoff 2020) 303–306.

[91] For instance, for the principle of self-determination the CJEU has referred to Art 1 of the UN Charter, see C-104/16 P *Council v Front Polisario* (n 85) para 88. For the principle of systemic integration, the Court referred to Art 31(3)(c) VCLT, see Case T-279/19 *Front Polisario v Council* EU:T:2021:639, para 191.

[92] See generally, Kassoti (n 8); Odermatt (n 8). For instance, the CJEU has referred to ICJ case-law as evidence of the GPIL of the complete and exclusive sovereignty of a State over the air space above its territory, Case C-366/10 *Air Transport Association of America and Others* EU:C:2011:864, para 104, as well as of the *rebus sic standibus* principle in *Racke* (n 63) para 50.

[93] This criticism has been voiced in the context of the discussion on the role of the CJEU in the identification of customary international law norms, Kassoti (n 8) 46; Odermatt (n 8) 318.

[94] See in general A Gourgourinis, 'General/Particular International Law and Primary/Secondary Rules: Unitary Terminology of a Fragmented System' (2011) 22 *European Journal of International Law* 993.

[95] ILC, 'Report of the Study Group of the ILC, Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law', finalised by Mr M Koskenniemi (13 April 2006) UN Doc. A/CN.4/L.682 and Add 1, para 500.

the phrase 'general international law' has been used in ICJ jurisprudence[96] and in the work of the ILC[97] to denote rules of general application to be distinguished from special rules agreed between specific parties (*lex specialis*) that come from a wide variety of sources (customary rules, general principles of law and widely accepted international agreements). Similarly, the CJEU seems to be using the term 'general international law' to indicate norms of general application without necessarily taking a position as to how they were formed.[98] Thus, for example, the Court has expressly referred to 'the *customary* principle of good faith which forms part of *general international law*'[99] and to '*customary* rules enshrined by *general international law*'[100] – thereby making it clear that the generality of 'general international law' refers to their *erga omnes* binding character and that customary rules are only a sub-category of norms falling within that group. The fact that the phrase 'general international law' includes norms of general application irrespective of their source was made clear by AG Wathelet in the *Western Sahara Campaign UK* case, where the AG argued that: '[S]ome of the rules of international law relied on in the present case are both rules of customary law and rules of treaty law, [...], whereas other rules, such as the right to self-determination, *are part of general international law and, on that basis, do not come exclusively under international treaty, or customary law*'.[101] The existence of a broad category of 'general international law' norms brings an element of inclusivity and flexibility in the case-law as it allows the CJEU to refer to a wide array of norms of general application without having to take a definitive stance on how these are formed or identified. At the same time, the question of the conditions that need to be satisfied for individuals to be able to rely on 'general international

[96] See for instance *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (Advisory Opinion) (ICJ, 22 July 2010) paras 79–84. See also Separate Opinion of Judge *ad hoc* Dugard *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v Nicaragua)* (ICJ, 16 December 2015) paras 12–16.

[97] ILC First Report on General Principles of Law (n 3) paras 70-75; ILC, 'First report on formation and evidence of customary international law by Sir Michael Wood, Special Rapporteur' (17 May 2013) UN Doc A/CN.4/663, para 42.

[98] Albeit not with absolute consistency, sometimes the term 'general international law' is used as a synonym for customary international law. See for example, Joined Cases C-14/21 and C-15/21 *Sea Watch eV v Ministero delle Infrastrutture e dei Trasporti, Capitaneria di Porto di Palermo, Capitaneria di Porto di Porto Empedocle*, EU:C:2022:604, para 92; Case C-63/09 *Axel Walz v Clickair SA*, EU:C:2010:251, para 23.

[99] Case C-308/06 *The Queen, on the application of International Association of Independent Tanker Owners (Intertanko) and Others v Secretary of State for Transport*, EU:C:2008:312, para 52. (Emphasis added).

[100] Case C-537/11 *Mattia Manzi and Compagnia Naviera Orchestra v Capitaneria di Porto di Genova*, EU:C:2014:19, para 39.

[101] Opinion of AG Wathelet in Case C-266/16 *Western Sahara Campaign UK v Commissioners for Her Majesty's Revenue and Customs and Secretary of State for Environment, Food and Rural Affairs*, EU:C:2018:1, para 88 (emphasis added).

law' in the context of judicial review of EU acts remains open since different conditions apply depending on the source of international law (customary or treaty law) binding on the EU.[102]

3.2. The influence of international law on the development of general principles of EU law

The influence of GPIL, or international law more broadly, on the development and interpretation of GPEU is well trodden ground.[103] Thus, for instance, the principle of direct effects is rooted in international law[104] – although, its trajectory within the EU legal system can be said to be unique.[105] Similarly, the influence of the international law principle of good faith on the development of different dimensions of EU loyalty is well-documented.[106] It has also been suggested that even the principle of autonomy of EU law is grounded in international law notions of autonomy of international organizations.[107]

In this context, an issue that has attracted some attention concerns the practice of the CJEU of recognising that a GPIL is equivalent to an existing GPEU but choosing to apply the latter.[108] For instance, in *Opel Austria* the Court found that 'the principle of good faith is a principle of customary international law the existence of which has been recognised by the International Court of Justice' and is as such binding upon

[102] The question was taken up by AG Wathelet in his Opinion, see Ibid paras 88–96. According to the AG: 'while it was with the objective of not automatically precluding the possibility of relying on the rules of customary international law that the Court imposed different conditions applicable to such rules from those applicable to international treaty law, it would be contrary to that same objective if, as the Secretary of State, the Spanish, French and Portuguese Governments and the Council and the Commission propose, the possibility of relying on the rules of general international law were made subject to the conditions governing the possibility of relying on the rules of customary international law, where they satisfy the conditions that determine the possibility of relying on the rules of international treaty law'. Ibid para 89. See also *Front Polisario v Council* (n 91) paras 290–291. On the invocability of customary international law rules to challenge the legality of EU law, see *Commission v Front Polisario* (n 39) paras 169–177. See also E Kassoti and RA Wessel, 'The Normative Effect of Article 3(5) TEU: Observance and Development of International Law by the European Union' in P García Andrade (e d), *Interacciones entre el derecho de la Unión Europea y el derecho internacional público* (Tirant lo Blanch 2023) 19, 36–38.

[103] Castellarin (n 8) 141–143; Odermatt (n 8) 314–316.

[104] *Jurisdiction of the Courts of Danzig* (Advisory Opinion) (PCIJ, 3 March 1928) Series B No 15, 17–18.

[105] A Nollkaemper, 'The Duality of Direct Effect of International Law' (2014) 25 *European Journal of International Law* 105–106; B De Witte, 'Direct Effect, Primacy, and the Nature of the Legal Order' in P Craig and G de Búrca (eds), *The Evolution of EU Law* (3rd ed, Oxford University Press 2021) 226–227.

[106] G De Baere and T Roes, 'EU Loyalty as Good Faith' (2015) 64 *International and Comparative Law Quarterly* 829; Klamert (n 8), 106–107.

[107] M Konstantinidis, 'Demystifying Autonomy: Tracing the International Law Origins of the EU Principle of Autonomy' (2024) 25 *German Law Journal* 94.

[108] Castellarin (n 8) 141–142.

the European Union.[109] Yet, rather than applying this GPIL directly, the Court applied the 'equivalent' GPEU: 'the principle of good faith is the corollary in public international law of the principle of protection of legitimate expectations which, according to the case-law, forms part of the Community legal order'.[110] In subsequent case-law, the Court has insisted on this practice of recognition of equivalences, and it has applied the principle of good faith as a GPEU (legitimate expectations), despite the fact that the parties to the disputes at bar had expressly relied on a GPIL.[111] This practice has been criticised in the literature as it is thought that the Court has recourse to an equivalent GPEU in order to highlight the autonomy of the EU's legal order.[112] However, a more nuanced view of the practice in question emerges through a close reading of the AGs' opinions in the relevant cases. Rather than a means of asserting the autonomy of EU law, it seems that reliance on an equivalent principle of GPEU was a pragmatic way to overcome the difficulties and uncertainties surrounding the question of whether and under which circumstances individuals can directly rely on international law.[113] The Opinions of the AGs show awareness of the differences (in scope)[114] between the two principles (good faith as a GPIL and legitimate expectations as a GPEU) and expressly reject the idea that the GPEU of legitimate expectations takes precedence over its counterpart in international law. Thus, for example, AG Jacobs in *Racke* did not use the term 'corollary' in order to describe the relationship between the two principles but, instead he argued that: '[I]n Opel Austria the international law principle of good faith *was married to* the Community law principle of legitimate expectations'.[115] Furthermore, as AG Mazák stressed in *Greece v Commission:*

> 'The principle of good faith is [...], to some extent, the counterpart in public international law, of the protection of legitimate expectations, existing in the Community legal order [...] I believe the use of the word "counterpart" is more appropriate in this connection because it is more neutral than the word "corollary", which the Court [...] used [...] in *Opel Austria v Council*. Indeed, to my mind, the term "corollary" necessarily implies that

[109] *Opel Austria GmbH v Council of the European Union* (n 52).

[110] Ibid para 293.

[111] Case C-27/96 *Danisco Sugar AB v Allmänna ombudet*, EU:C:1997:563; Case T-231/04 *Greece v Commission*, EU:T:2007:9.

[112] Odermatt (n 8) 314; T Molnár, 'The Court of Justice of the EU and CIL Interpretation: Close Encounters of a Third Kind?' in M Fortuna K Gorobets, P Merkouris, A Føllesdal, G Ulfstein, P Westerman (eds), *Customary International Law and Its Interpretation by International Courts: Theories, Methods and Interactions* (Cambridge University Press 2024) 180. This practice has also been criticised in substantive terms. Thus, Orakhelashvili notes that 'public international law is unfamiliar with the operation of the principle of good faith to produce effects upheld in *Opel Austria*'. Orakhelashvili (n 8) 70.

[113] Opinion of AG Jacobs in Case C-162/96 *Racke GmbH & Co v Hauptzollamt Mainz*, EU:C:1997:582, paras 75–76, 84–90.

[114] Opinion of AG Mazák in Case 203/07 P *Greece v Commission,* EU:C:2008:270, fn. 24.

[115] AG Jacobs in *Racke* (n 113) para 76 (emphasis added).

> the Community law principle of protection of legitimate expectations precedes, in time and importance, the international law principle of good faith'.[116]

Overall, one wonders whether the recognition of equivalent EU law principles and their application in a specific case is necessarily a negative phenomenon, or rather part and parcel of the reality of interpreting and applying international law in domestic contexts. As Nollkaemper argues: 'A tension exists between the universalist aspirations of much of international law, on the one hand, and, on the other, the need to ground interpretation and application of the law in a localized expression. International law may lose some of its uniform meaning in this process, yet may gain domestic relevance'.[117]

3.3. Resistance to general principles of international law?

The previous section described an occasional reluctance of the CJEU to directly apply GPIL, despite the above-mentioned general openness of the CJEU towards international law. The question is to what extent this reluctance is sometimes even translated into an outright resistance by (members of) the Court to apply a certain principle. Generally, the CJEU seems to resist applying GPIL when doing so would threaten the autonomy, uniformity, or effectiveness of EU law. A birds-eyes' view of the classic case law hints at a presumption that fundamental rights and EU constitutional principles often take precedence over GPIL; that the CJEU requires explicit incorporation of international law into EU law for it to have direct effect or supremacy;[118] and that the Court is particularly cautious about GPIL in areas like data protection, competition law, and investor-state disputes, where EU-specific standards are highly developed.[119] And with regard to (principles of) customary international

[116] AG Mazák in *Greece v Commission* (n 114) para 78 and fn. 25.

[117] A Nollkaemper, 'Grounds for the Application of International Rules of Interpretation in National Courts' in H P Aust and G Nolte (eds), *The Interpretation of International Law by Domestic Courts: Uniformity, Diversity, Convergence* (Oxford University Press 2016), 34–36.

[118] For instance, in Case C-21/72 *International Fruit Company NV and others v Produktschap voor Groenten en Fruit (International Fruit Company)*, EU:C:1972:115, the CJEU ruled that GATT (General Agreement on Tariffs and Trade) provisions could not be invoked by individuals to challenge EU measures, as GATT was not part of EU law and did not have direct effect. This was later extended to other international agreements unless they explicitly provided for direct effect. In Case C-149/96 *Portuguese Republic v Council of the European Union* (*Portugal v Council)*, EU:C:1999:574, the CJEU held that the EU could not be bound by international agreements to which it was not a party, even if those agreements reflected GPIL. The Court emphasized the need for formal EU consent to be bound by international norms.

[119] Cf Case C-362/14 *Maximillian Schrems v Data Protection Commissioner* (*Schrems I)*, EU:C:2015:650, in which the CJEU invalidated the EU-US Safe Harbour Decision, which allowed the transfer of personal data to the US. The Court relied on the EU Charter of Fundamental Rights (not just international law) to strike down the decision, emphasising that EU standards for data protection could not be compromised by international agreements or practices. In Case C-284/16 *Slowakische Republik v Achmea BV* (*Achmea)*, EU:C:2018:158, in which the CJEU ruled that investor-state dispute settlement

law, it has been established that the Court refuses to recognise these principles as automatically overriding EU secondary legislation unless the EU has explicitly incorporated them.[120]

A case in point is *Western Sahara Campaign UK*,[121] in which AG Wathelet took issue with the application of the so-called 'Monetary Gold Principle'. This principle is derived from the *Monetary Gold* case.[122] That case was about whether the ICJ could adjudicate conflicting claims over Nazi gold seized from Rome, but the Court held it had no jurisdiction because doing so would require deciding on the legal responsibility of a third-party state (Albania), which was not present in the proceedings. The principle – also referred to as *the principle of consent to jurisdiction* – thus entails that that the Court cannot exercise its jurisdiction to settle a dispute between two states where, in order to do so, it must examine the conduct of a third state which is not a party to the proceedings. The Monetary Gold principle is mentioned as a GPIL in the 4th Report by ILC Rapporteur on GPs.[123] Nevertheless, AG Wathelet held that:

> 'That principle, which is to be found in the Statute of the International Court of Justice, does not exist in the Statute of the Court of Justice of the European Union and, in any event, could not exist in EU law since it would automatically preclude the possibility of reviewing the compatibility with the EU and FEU Treaties of the international agreements concluded by the Union if the third State that signed the agreement with the Union was not a participant in the proceedings before it'.[124]

This led the AG to conclude that the principle 'is not, as the Council and the Commission maintain, relevant in this case'.[125] It is interesting to see that also here, the AG looked for a (similar) principle in the Statute of the CJEU, in the absence of which he concluded that 'in any event' the principle could not apply as it would hamper the functioning of Union law.

(ISDS) clauses in intra-EU bilateral investment treaties (BITs) were incompatible with EU law. The Court prioritised the autonomy of EU law and the exclusive jurisdiction of the CJEU over the application of international investment law principles within the EU. In Case C-206/10 *European Commission v Federal Republic of Germany (Commission v Germany)*, EU:C:2011:283, the CJEU ruled that Germany could not invoke state immunity to avoid enforcing EU competition law against a foreign state-owned entity. The Court held that EU law takes precedence over customary international law on state immunity in areas governed by EU rules.

[120] See the classic case, *Racke* (n 63), in which the CJEU held that customary international law could not be invoked to challenge the validity of an EU regulation unless the EU had intended to incorporate that custom into EU law. The Court emphasized that the EU legal order is distinct and that international customs do not automatically bind the EU.

[121] AG Wathelet in *Western Sahara Campaign UK* (n 101).

[122] *Effects of Awards of Compensation Made by the United Nations Administrative Tribunal (Advisory Opinion)* (ICJ, 13 July 1954) para 19.

[123] ILC Fourth Report on General Principles of Law (n 3) para 141.

[124] Ibid para 57.

[125] Ibid.

Another example is the non-acceptance of a principle known as *exceptio non adimpleti contractus.* Flowing from the law of contracts, this principle entails that the plaintiff is not entitled to sue unless it has performed its own part of a contract.[126] In internal relations, this principle would conflict with the special regime of responsibility under EU law. Application of this principle under EU law has thus been problematic as inter-state retaliation and countermeasures are prohibited. In Joined cases 90/63 and 91/63 *Commission v Belgium and Commission v Luxembourg,* the Court considered that 'the basic concept of the Treaty requires that the member states shall not take the law into their own hands'.[127] The reasons for the Union's rejection of the international law principles of inter-state reciprocity and retaliation have been explained by CJEU Judge Lecourt. Lecourt has argued that the Court wished to emphasise here that no unilateral legal acts adopted by Member States could prevail over the Treaties 'because the Member States had renounced the ability to take self-help action to enforce their legal rights'.[128] This position is concomitant with the idea that EU law has its own complete set of secondary rules covering not only the legal consequences of any breach of EU law but also means of dispute settlement and enforcement. While this concerned an early case, the rejection of this particular principle has been confirmed in later case-law.[129] It needs to be noted however that the preclusion of recourse to countermeasures is not at odds with (emerging) rules of international institutional law, including EU law. Castellarin argues that since: '[t]he structure and identity of the EU legal order as a whole are concerned by the issue of self-help [...] [t]his justifies *setting aside* principles of international law to find a more appropriate solution for the EU legal order'.[130] However, viewing the rejection of countermeasures within the EU legal order merely as a 'a remarkable expression

[126] The same principle finds expression in VCLT (n 45) Article 60. Yet, the *exceptio* is not identified with the provision of Article 60 VCLT and hence was used separately as a GP.

[127] Joined Cases 90/63 and 91/63 *Commission v Belgium and Commission v Luxembourg,* EU:C:1964:80.

[128] R Lecourt, 'La Dynamique Judiciaire dans l'Édification de l'Europe' (1965) 64 *France-Forum* 22, as translated by W Phelan, *Great Judgments of the European Court of Justice: Rethinking the Landmark Decisions of the Foundational Period* (Cambridge University Press 2019), 114–115. AG Trabucchi has also explained that 'The traditional methods of self-protetcion including the general principle of 'inadiplementi non est adimplendum', which the States are recognized as having under general international law, have been replaced in the Community by measures and procedures which are better able to secure legal certainty and that the law is observed by all. If a State believes that its rights have been infringed ..., the Treaty provides it with adequate means of redress through the Court, and these constitute the only means of obtaining satisfaction'. Opinion of AG Trabucchi in Case C-99/74 *Grands moulins de Antilles v Commission*, EU:C:1975:145.

[129] See eg Joined Cases 52 and 55-65 *Germany v Commission*, EU:C:1966:32; Case C-5/94 *The Queen v Ministry of Agriculture Fisheries and Food*, *ex parte: Hedley Lomas (Ireland) Ltd*, EU:C:1996:205.

[130] Castellarin (n 8) 145 (emphasis added).

of the autonomy of the EU legal order' [131] seems to downplay the freedom that international law affords to legal persons to create comprehensive relationships and contract out of a significant part of international law (*jus cogens* aside) by means of application of a *fundamental principle* of international law, namely the *lex specialis* rule. In other words, it is questionable whether the rejection of countermeasures within the EU legal order should be read as indicia of its 'otherness'. Rather, it emphasises the diffuse, horizontal nature of the international legal order that allows its subjects to contract out of rules of general application and create sub-systems of law. Indeed, Article 22 ARIO provides that countermeasures may not be taken by members 'in response to a breach of an international obligation under the rules of the [international] organization unless such countermeasures are provided for by those rules'.[132] The ILC justified the prohibition on the 'fall-back' option of countermeasures on the institutional plane with reference to the 'obligation of close cooperation that generally exist between an international organization and its members' (ARIO ILC Commentary to Article 22(6), p 72). Although it is questionable that an outright prohibition of countermeasures exists at the institutional level as a matter of positive law, it seems that this position is justified in the light of the distinct and relatively autonomous nature of the legal systems of international organizations' vis-a-vis general international law. As Bordin aptly remarks:

> 'Rules devised for a decentralised community comprising legally autonomous entities are not always suited for application in institutional settings characterised by stronger ties of solidarity [...] This provides a reason to limit recourse to unilateral action to grounds that are provided by, or otherwise compatible with, the constituent instrument and other internal rules, rather than uncritically filling the gap with the means of 'private justice' envisaged by the international law of States'.[133]

These situations concern potential conflicts between the nature of the Union's legal order, and particularly the special relationship between the EU Member States. In relations with third states, the 'self-help' principle seems easier to apply. Thus, in a WTO case, for instance, the European Community claimed that 'even in the absence of any express provision to that effect, it is implicit in any agreement involving mutual obligations that if one of the parties fails to fulfil its obligations, the other party is released from complying with its own obligations'.[134]

[131] Castellarin (n 8) 143, 148.

[132] See also ILC, 'Articles on the Responsibility of International Organizations' (63rd Session, 2011) UN Doc A/66/10, Art 52

[133] F L Bordin, *The Analogy between States and International Organizations* (Cambridge University Press 2018) 210.

[134] WTO, 'Canada - Certain Measures Affecting the Automotive Industry – Report of the Panel' (11 February 2000) WT/DS139/R and WT/DS142/R.

A third example relates to the *principle to the effect that customary law can emerge within international organisations*.[135] It has been suggested in the literature that the dictum of the CJEU to the effect that 'mere practice cannot override the provisions of the Treaty'[136] entails that the Court has rejected the principle that custom can emerge within international organizations (in so far that this principle exists in the international legal system).[137] It is submitted however that the correct view is that the Court has not pronounced on the issue. In 2007, AG Maduro floated the idea of relying on customary international law's two element test in order to distinguish mere practices from intra-EU customary rules.[138] The AG referred to judicial practice confirming instances of inter-institutional (EU) customary law, including the confirmation by the CJEU of the legality of a resolution of the Parliament to hold meetings of its committees and political groups in Brussels and the legality of the management committee procedure.[139] In Maduro's view, such unwritten intra-EU rules could function as gap-fillers or aids to interpretation, and they could never result in the modification of the Treaties since these can be revised only in accordance with the formal procedure laid down for that very purpose.[140] This position has not been expressly rejected by the Court.

Fourthly, given the Union's abundant case law on citizenship,[141] the question is whether the Court has rejected *principles of international law pertaining to the*

[135] This principle is recognised in scholarly writings and the work of the ILC, 'Draft Conclusions on the Identification of Customary International Law' (70th session, 2018) UN Doc A/73/10; K Daugirdas, 'International Organizations and the Creation of Customary International Law' (2020) 31 *European Journal of International Law* 201.

[136] Case 68/86 *United Kingdom v Council*, EU:C:1988:85, para 24; Case 327/91 *France v Commission* EU:C:1994:305, para 36; Case 84/94 *United Kingdom v Council*, EU:C:1996:431, para 18. See also, more recently, Case C-551/21 *Commission v Council (Signature d'accords internationaux)*, EU:C:2024:281, para 82.

[137] Castellarin (n 8) 143–144. The dictum also raises the (distinct) issue of the role of subsequent practice in the interpretation of the EU Treaties. The CJEU does not refer to the Vienna Convention on the Law of Treaties for the purpose of interpreting the EU Treaties, and this is in keeping with the idea that EU law is an 'autonomous legal order'. In this vein, the Court has refrained from taking into account subsequent practice either by the institutions or the MS in interpreting the EU. Case 174/84 *Bulk Oil (Zug) AG v Sun International Ltd and Sun Oil Trading Co*, EU:C:1986:60, para 65; *France v Commission* Ibid para 36; Case C-426/93 *Germany v Council*, EU:C:1995:367, para 21. See ILC, 'First Report on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties by G Nolte, Special Rapporteur' (19 March 2013) UN Doc A/CN.4/660 paras 26, 41. See also 'Contribution of the European Union on the topic of subsequent agreements and subsequent practice in treaty interpretation' (2015) 3, at legal.un.org

[138] Opinion of AG Maduro in Case C-133/06 *Parliament v Council*, EU:C:2007:551, para 27.

[139] Ibid para 28. On the topic of EU customary international law, see generally S Besson, 'General Principles and Customary Law in the EU Legal Order' in Vogenauer and Weatherill (eds) (n 20) 105.

[140] Ibid para 29.

[141] Among the many studies on European citizenship, see for a comprehensive overview N Shuibhne, *EU Citizenship Law* (Oxford University Press 2023).

recognition and acquisition of nationality. It has been argued that the CJEU has rejected GPIL in this area,[142] and more particularly the genuine link test put forward in *Nottebohm*.[143] In *Nottebohm*, the ICJ seems to have allowed states to refuse to recognise nationality conferred by another State in the absence of a 'genuine link' with the country the nationality is claimed of. Prima facie, the CJEU indeed seems to have rejected the genuine link test in the context of EU law. In *Micheletti*,[144] and in subsequent case-law,[145] the CJEU argued that Member States are not allowed to 'restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality'. In *Micheletti*, AG Tesauro expressly rejected the relevance of the ICJ's dictum in *Nottebohm* considering that the origin of the concept of 'genuine link' discussed therein belonged to a 'romantic period' of international relations and diplomatic protection.[146]

Yet, the situation seems to be more nuanced. The question is whether the EU law approach indeed differs from that under international law. Answering this involves exploring whether the relevant principles propounded in *Nottebohm* are well-entrenched in positive international law. This does not seem to be the case. As Dörr observes: '[M]ost of the [ICJ's]Court's reasoning at that time met severe criticism and is still rather controversial today'.[147] The ILC has further stressed that the existence of the genuine link test does not seem to be grounded in international practice in its 2006 Draft Articles on Diplomatic Protection.[148] The Commission took the view that the *Nottebohm* dictum should be confined to the facts of that case and that the ICJ in that case 'did not intend to expound a general rule applicable to all States..'.[149] International judicial practice and doctrine further cast doubt on the idea that the genuine link test has risen to the level of a customary rule of international law or a general principle of international law.[150] This suggests that casting doubt

[142] Castellarin (n 8) 145.

[143] See also L D Spieker and F Weber, 'Bonds without Belonging? The genuine link in International, Union and Nationality Law' (2024) 43 *Yearbook of European Law* 56, 60–62. Spieker and Weber understand *Nottebohm*'s genuine link as a general principle of international law.

[144] Case C-369/90 *Mario Vicente Micheletti and others v Delegación del. Gobierno en Cantabria*, :EU:C:1992:295, para 10.

[145] See for example Case C-148/02 *Garcia Avello v Belgium*, EU:C:2003:539, para 28; *Toufik Lounes v Secretary of State for the Home Department* (n 66) para 55.

[146] Opinion of AG Tesauro in Case C-369/90 *Mario Vicente Micheletti and others v Delegación del. Gobierno en Cantabria*, EU:C:1992:47, para 5.

[147] O Dörr, 'Nottebohm Case' in A Peters (ed) The *Max Planck Encyclopedia of Public International Law* (Oxford University Press 2007) at opil.ouplaw.com.

[148] ILC, 'Draft Articles on Diplomatic Protection with commentaries', text adopted by the International Law Commission at its fifty-eighth session, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (2006) UN Doc A/61/10 .

[149] Ibid Commentary to Art 4, 30.

[150] R Sloane, 'Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality' (2009) 50 *Harvard Internationa l Law Journal* 1; P Spiro, '*Nottebohm* and "Genuine Link": Anatomy of a Jurisprudential Illusion' (2019) *IMC Working Paper*, at investmentmigration.org;

about the 'genuine link' criterion as a GPIL is much more general and that the CJEU in its application did not deviate from mainstream international legal thinking.

The recent *Commission v Malta* case *(Citizenship by Investment)*[151] rekindled the debate about the relevance of the principles propounded in *Nottebohm* for the European legal order. According to the Commission, the *Nottebohm* judgment supports the proposition that international law requires a genuine link as a condition for the acquisition of nationality. AG Collins explained in his Opinion the irrelevance of the *Nottebohm* principle for the case at hand. AG Collins argued that the case at hand concerns the issue of *acquisition* of nationality, whereas the *Nottebohm* dictum is about *recognition* of nationality by third States.[152] In relation to the issue of acquisition of nationality, the AG stressed that: 'there is no significant divergence between EU law and international law on the question as to whether a genuine link must exist between an individual and the State of which he or she is a national, since neither imposes such a requirement'.[153] As far as the question of recognition of nationality is concerned, the AG acknowledged that the *Micheletti* line of case-law preventing MS from not recognizing another Member State's grant of nationality seems to be, at first blush, at odds with the *Nottebohm* ruling.[154] At the same time, the AG seems to side with the view that, ultimately, in *Nottebohm* the ICJ did not propound a general rule on recognition of nationality; rather it is a much narrower decision where the international court, due to the exigencies of the case, applied the general principle of prohibition of abuse of rights.[155] Understandably, the CJEU in its judgment did not address the matter – thereby implicitly confirming the irrelevance of the ICJ's dictum in the context of acquisition of nationality.

4. Conclusion: functions of general principles of international law in the EU legal order

The aim of the present contribution was to provide insights into the role of GPIL in the EU's legal order and into the different ways in which the CJEU uses these principles. The above analysis reveals that GPIL play a central and multifaceted role in the European Union's legal order. First of all, they may form a source and basis of EU law itself. General principles of law are recognised as a primary source of EU

M Van Den Brinck, 'Revising Citizenship within the European Union: Is a Genuine Link Requirement the Way Forward?' (2022) 23 *German Law Journal* 79, 80–82.

[151] *Commission v Malta (Citizenship by Investment)* (n 15). See, in this journal, O'Neill (n 17).

[152] Opinion of AG Collins in case C-181/23 *Commission v Malta (Citizenship by Investment)*, EU:C:2024:849, paras 56–57. See S Coutts, 'On Mutual Recognition and the Possibilities of a "Single European Polity": The Opinion of AG Collins in Case C-181/23 *Commission v Malta*' (2024) 9 *European Papers* 818–829.

[153] Ibid para 57.

[154] Ibid para 57.

[155] Ibid fn 51.

law, standing alongside the Treaties at the top of the EU's legal hierarchy, as specified by Article 6(3) of the Treaty on European Union (TEU). These principles are derived both from public international law and from the common constitutional traditions of the Member States. Secondly, GPIL may influence the evolution and interpretation of EU law. The CJEU has developed and defined general principles of EU law by drawing from or in relation to international law. Key principles include *fundamental rights*, *proportionality*, *legal certainty*, *equality before the law*, *primacy of EU law*, and *subsidiarity*. Thirdly, GPIL assist the CJEU in reviewing the legality of both EU secondary legislation and Member States' actions. For example, these principles are used to strike down EU acts or Member State actions that conflict with fundamental values such as non-discrimination, legal certainty, or fundamental rights guaranteed at the international level. Fourthly, where there are gaps in the Treaties or EU legislation, general principles derived from international law help ensure continuity, coherence, and the avoidance of injustice within the EU's legal order. They guide interpretation and application of both existing and new legal norms. Fifthly, fundamental rights recognised by international law, particularly those protected by the European Convention on Human Rights (ECHR), are explicitly described as constituting general principles of Union law (Article 6(3) TEU). This ensures that EU law both draws from and reinforces basic international human rights standards. Sixthly, the principles also serve as a bridge between EU law and national laws. Through mechanisms like the preliminary reference procedure, national courts apply these general principles as developed by the CJEU, promoting convergence and harmonisation of laws across the Member States.

The CJEU consistently applies principles of international law to review the legality and interpret secondary law acts, in particular within the EU's external relations. The Court maintains that the EU must respect international law when exercising its powers, thereby interpreting EU law in accordance with relevant international law principles. Key principles utilised by the Court include *pacta sunt servanda* (the obligation to interpret and apply treaties in good faith), *rebus sic stantibus* (the possibility of treaty termination or suspension due to changed circumstances), *the relative effect of treaties* (treaties only create obligations and rights for the parties involved), *the principle of systemic integration* (considering relevant international law rules to interpret treaties), and *the principle of self-determination* (recognised as essential in international law). These principles serve to assess the legality of international agreements concluded by the EU and to interpret EU secondary law acts related to external relations. Additionally, the Court employs these principles to ensure that EU secondary law is interpreted consistently with international law, promoting uniform application across EU member states and compliance by EU institutions and countries.

General principles of international law, including those of customary international law, thus influence the decisions and interpretations of EU courts. This follows

from the CJEU's aim to draws on international law to interpret EU treaties and secondary legislation, seeking to maintain 'interpretative harmony' between EU law and international law where possible. This can manifest in both explicit and implicit references to principles such as proportionality, legal certainty, and protection of fundamental rights, many of which have roots in international law. The CJEU may incorporate GPIL into its reasoning, but it sometimes interprets or applies these norms to fit within the context of the EU's autonomous legal order, or chooses to apply similar EU principles. The latter option allows the EU to apply a principle in a substantive sense, while safeguarding the EU's autonomy. Indeed, when a clear conflict arises between EU law and GPIL, the Court may prioritise the autonomy and primacy of EU law, and (re)formulate GPIL, or be selective in their application. The CJEU thus recognises a 'duty of harmonious interpretation', affording it some flexibility to align EU and international law where possible, unless such alignment would undermine the fundamental values or legal structure of the EU.

Where does this analysis leave the discussion on coherence? As shown above, the practice of the CJEU attests to the terminological ambiguity and the theoretical and practical difficulties surrounding the concept of GPIL. In this sense, coherence seems too big of a task to be relegated to GPIL alone. At the same time, the study of the Court's use of and reliance on GPIL is helpful at many different levels. First, the relevant practice reveals the CJEU's understanding of GPIL as fundamental principles of general international law that are binding *erga omnes* and that come from a wide variety of sources. Thus, insights from the CJEU's practice advance the doctrinal debate on GPIL. Furthermore, the discussion shows that the Court engages with GPIL in a similar way to other (international or domestic) courts. Instances of lack of clarity in the jurisprudence pertaining to different dimensions of the concept of GPIL are not a feature unique to the CJEU. Finally, it was shown that GPIL have played a significant role in the development of GPEU and that, upon reflection, instances of resistance to GPIL can be explained on grounds other than mere assertions of autonomy of EU law. These observations provide much-needed nuance in the context of assessing the attitude of the Court towards GPIL and international law more broadly. Importantly, the different and subtle ways in which GPIL function within EU law demonstrate that the international and the EU legal orders may be closer than what is commonly assumed.