

UNIVERSITY OF TWENTE.

Bachelor Thesis

The further Development of the European Union as a Global Actor

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“Labeling and normative Actorness in EU Middle East Policy”

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Abstract

Normative Power is often proposed as a way for the EU to secure it a significant role in the Israeli-Palestinian conflict. The labeling of Israeli settlement products was widely received as a possibility for the EU to differentiate itself from settlements and boost its normative profile. The political dimension was however largely erased from labeling and the issue completely diffused to European consumers on the grounds of internal legal necessities rather than a clear rejection of settlements regarding their illegality under international law. The interpretative notice on labeling was not the outcome of a new normative self-construction by the Union, but rather a result of a number of self-interested governments feeling the need to bolster their normative standing and relieve themselves from internal pressures. Because of division between different camps with diverging interests in favoring or opposing labeling, the provision is politically inconsistent and carries the potential for inefficient application. Considering the importance of immediate action against settlements to secure the European goal of a two-state-solution, the potentials for opposing member states to defect from it have not been sufficiently ruled out. A significant upgrade for the EU's standing as a normative power concerning the Israeli-Palestinian conflict is thus unlikely.

Key Words

European Union, Normative Power, Labeling, Settlements, Interpretative Notice.

Abbreviations

AA	Association Agreement
ACAA	Agreement between Israel and the EU on the conformity assessment and acceptance of Industrial products
BDS	Boycott, Divestment and Sanctions Movement
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defense Policy
DG	Directorate General
EC	European Community
ECA	European Court of Auditors
ECJ	European Court of Justice
EEAS	European External Action Service
EU	European Union
FAC	Foreign Affairs Council
EFTA	European Free Trade Association
HR	High Representative
IN	Interpretative Notice on the origin of goods from the territories occupied by Israel since June 1967
MEPP	Middle East Peace Process
NGO	Non-governmental Organization
OECD	Organization for Economic Cooperation and Development
OPT	Occupied Palestinian Territories
PA	Palestinian Authority
PEGASE	Direct Financial Support to the Palestinian Government
PLO	Palestine Liberation Organization
ROO	Rules of Origin clause in the EU-Israeli Association Agreement.
UN	United Nations
UNRWA	United Nations Relief and Works Agency
TSS	Two State Solution

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1. Introduction

The European Union as an evolving global actor looks back at almost 60 years of involvement in international politics. Since 1993, the Common Foreign and Defense Policy (CFSP) has been one of the three pillars of the European Union and was later given prominent position in the treaties. After more than two decades of CFSP, the question needs to be raised how its international involvement has contributed to solving global problems and what is needed for the EU to play a bigger role in the international realm. The EU is oftentimes associated with its normative action in international politics, such as its commitment to the diffusion of democracy and the institutionalization of conflict. A recent case in European foreign policy has been chosen to assess whether a normative power EU is capable to contribute to the proliferation of the norms flowing from the EU very own founding treaties.

In November 2015, the European Commission caused great uproar with a move in currently one of the most controversial fields in European Israeli Relations: The treatment of Israeli settlement products on the European internal market. Stress already apparent for years broke out into diplomatic turbulence. The European ambassador to Israel was summoned, diplomatic relations partly suspended¹ and the cold in European Israeli diplomatic relations has continued until the writing of this paper.

The recent development was brought about by the *Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967*, which entails that in the future, EU member states are obliged to guarantee that products from Israeli settlements are not classified as eligible for preferential treatment under the Association Agreement signed in 1995.² This is to be done by ensuring the correct indication of origin or place of provenance on the products (*labeling*). The *Interpretative Notice* was issued by the Commission following the request of sixteen member states foreign ministers.³ Rather than actually producing law it informs about the Commission's understanding of already existing European trade regulations flowing for example from the association agreement with Israel. The rule is supposedly one

¹ P. Beaumont, 'EU issues guidelines on labelling products from Israeli settlements', *The Guardian* (London, 11 November 2015); M. de la Baume, Israel slams "shameful" EU' *Politico* (Brussels: 11 November 2015) Available at <http://www.politico.eu/article/eu-backs-labeling-rules-for-goods-from-israeli-settlements-european-commission/>.

² European Commission, *Interpretative Notice on the origin of good from the territories occupied by Israel since June 1967* § C(2015)7834, Directorate General TRADE ed, (Brussels: 11 November 2015).

³ EU Foreign Ministers' Letter to the High Representative (H.E.Mrs. Federica Mogherini ed., Kurz, Reynders, Lidegaard, Garcia-Margallo, Tuomioja, Fabius, Pusic, Flanagan, Gentiloni, Asselborn, Vella, Koenders, de Machete, Wallström, Erjavec, Hammond 2015) Retrieved from <http://www.haaretz.com/israel-news/1.652113>.

step in a wider development which aims to fight the blurring of the Green line⁴ as a future border by Israeli economic activity in the occupied territories. Before, the EU had for a long time not managed to turn its economic influence in the region into effective action as a normative power and was frequently accused of actually aiding the occupation in multiple ways.⁵ In this context, the introduction of *labeling* has attracted wide public attention and severely worsened EU-Israeli relations.⁶

Anti-occupation NGOs and the Palestinian Authority have lauded the move a step forward in fighting the illegal occupation of the West Bank, East Jerusalem and the Golan Heights.⁷ Yet they have remained skeptical about its scope, application in practice and practical changes to derive from it.

Settlements are highly problematic under International Law in various aspects. Especially relevant for this paper are the Hague regulations which prohibit an occupying force to appropriate the resources of an occupied territory for one's own benefit.⁸

The idea for differentiation between Green-Line-Israeli and settlement products on the European market has been discussed for more than a decade.⁹ Yet, it is not clear whether and how the EU, after years without significant progress concerning settlement expansion, finally found a solution to move forward on excluding such goods from preferential treatment trade benefits.

⁴“*Green Line*” refers to the demarcation lines from the 1949 Armistice Agreements between Israel and its Arab neighbors.

⁵ N. Gordon and S. Pardo, a) ‘Normative Power Europe and the Power of the Local’, 53 (2) *Jcms-Journal of Common Market Studies* 2015, 416-427; N. Gordon and S. Pardo, b) ‘Bordering Disputed Territories: The European Union’s Technical Customs Rules and Israel’s Occupation’, published in R. A. Sarto ed., *Fragmented Borders, Interdependence and External Relations: The Israel-Palestine-European Union Triangle* (London:Palgrave MacMillan UK 2015) 86-106. ; R. Youngs, Palestine: ‘State Building in Hard Times’, in *Europe and the Middle East- In the Shadow of September 11* (London: Lyenne Rienner 2006) 145-169.

⁶ C. Kroet, Harris, ‘Israel Cabinet to vote tit-for-tat EU labeling’, (Brussels, 2016), available at <http://www.politico.eu/article/israel-to-vote-on-tit-for-tat-eu-labeling-law/>; Harkov and Lahav, ‘Israel: EU decision to label settlement products may harm ties with Brussels’ *Jerusalem Post* (Jerusalem: 4 November 2015).

⁷ See inter alia, O. Barghouti, ‘The EU helps Israel oppress Palestinians’, *Politico*, (Brussels 11 December 2015); Al Haq, ‘PHROC Welcomes EU Labelling of Settlement Products as a First Step Towards a Ban’ (Ramallah, 12 November 2015) available at <http://www.alhaq.org/advocacy/targets/european-union/991-phroc-welcomes-eu-labeling-of-settlement-products-as-a-first-step-towards-a-ban>.

⁸ See, inter alia Art.48ff. Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. (The Hague, 1907); for explanation see: Human Rights Watch ‘Occupation, Inc.-How Settlement Businesses Contribute to Israel’s Violations of Palestinian Rights’ (2016), available at <https://www.hrw.org/report/2016/01/19/occupation-inc/how-settlement-businesses-contribute-israels-violations-palestinian>.

⁹ See M. Hirsch, ‘Rules of Origin as Trade or Foreign Policy Instruments? The European Union Policy on Products Manufactured in the Settlements in the West Bank and the Gaza Strip’, 26 (3) *Fordham International Law Journal* 2002, 572-593.

Perhaps with labeling, the EU has now found a way to act with more political force as a normative power.

Scientifically this issue is still fresh and has not undergone thorough examination, which would support or reject this conclusion. The thesis thus picks up the development and aims at a better understanding about whether and which insights can be derived from *labeling* concerning changes in EU normative power politics. As a result, the research question is set out as: *‘How does the Interpretative Notice on labeling of Israeli settlement products affect the role of the EU as a normative power in Middle East politics?’*

2. Literature

Many aspects of EU action in the Middle East conflict have been subject to in-depth scientific work. It is remarkable that a lot of articles from the beginning of the 21st century address the same issues in EU politics that we are facing today.¹⁰ There is general scientific consensus that the EU has failed to translate its potential in terms of financial importance to the Palestinian Authority and its economic relations with Israel into an instrument of conflict-solving.¹¹ Some scholars have pointed at the fact that on the ground the EU was never perceived to be a central actor in the conflict despite its deep financial and economic involvement.¹² Now once again, with *labeling*, the European Union has acted towards restricting the influx of settlement products into its market. The outcry by Israeli officials and academia¹³ and the wide reception in the popular press in November however suggest that with *labeling* a qualitative shift may have occurred, opening up a need for re-assessment of the EU's role in the Middle East.

Knowledge about the current developments in differentiation is limited to a number of articles published between 2013 and 2015, dealing with the shortcomings of prior EU policy and the possible impact of *labeling*.¹⁴ As of June 2016, there have been no papers published conducting an ex post evaluation of what labeling has meant for the EU as an actor in the conflict. Nevertheless, what *has* been published before, provides the key issues for examination and valuable insights into how to assess them.¹⁵

¹⁰ G. Harpaz, 'The dispute over the treatment of products exported to the European Union from the Golan Heights, East Jerusalem, the West Bank and the Gaza Strip-the limits of power and the limits of the law', 38 (6) *Journal of World Trade* 2004 1049-1058; C. Hauswaldt, 'Problems under the EC-Israel Association Agreement: The Export of Goods Produced in the West Bank and the Gaza Strip under the EC-Israel Association Agreement', 14 (3) *European Journal of International Law* 2003, 591-611; Hirsch, *supra* note 9; N. Tocci, 'The Widening Gap between Rhetoric and Reality in EU Policy towards the Israeli-Palestinian Conflict' 217 *CEPS Working Documents* 2005, available at http://aei.pitt.edu/6649/1/1190_217.pdf.

¹¹ David Cronin, *Europe's Alliance with Israel* (Pluto Press. 2011); S. Pardo, 'Between attraction and resistance- Israeli views of the European Union', in S. Santoro, F. Lorenzo, S. Lucarelli, (eds.) *External Perceptions of the European Union as a Global Actor* (Oxon:Routledge 2010) 70-86; R. Youngs *supra* note 5.

¹² R. Nasrallah, S. Santoro, 'Conflict and hope- The EU in the eyes of Palestine', in S. Santoro, F. Lorenzo, S. Lucarelli, (eds.) *External Perceptions of the European Union as a Global Actor* (Oxon:Routledge 2010) 87-104; S. Pardo *supra* note 11.

¹³ See, inter alia, R. Sabel, 'The EU Policy on Goods from "the Territories"', *Israel Journal of Foreign Affairs* 2016, 1-4.

¹⁴ See, inter alia, Gordon and Pardo *supra* note 5 a) and b); H. Lovatt and M. Toaldo, 'EU differentiation and Israeli settlements', 140 *European Council on Foreign Relations Policy Brief* 2015; World Wide Movement for Human Rights (FIDH), 'Trading Away Peace: How Europe helps sustain illegal Israeli settlements', (Paris: 30 October 2012) Paris, at 31.

¹⁵ For this paper, the main issues were extracted from Gordon & Pardo *supra* note 5 a) and b); Lovatt and Toaldo *supra* note 14; B. O. Martins, 'A Sense of Urgency: The EU, EU Member States and the Recognition of the Palestinian State', 20 (2) *Mediterranean Politics* 2015, 281-287; C. du Plessix, 'EU3 Resistance to Norms in

When identifying key issues regarding *labeling*, three streams of prior research in more general terms should be noted. Most articles have either focused on

- a) *EU's normative power aspirations* and the roots of involvement in the conflict,
- b) the failure of the EU to build a *consistent external Middle East policy* in terms of economic cooperation with Israel and development aid to the Palestinian Authority and finally
- c) European integration and the *internal and external processes* in trade policy.

Focus point a) addresses the motivation, results and inner contradictions of the EU trying to promote itself as a normative actor. The literature explores the dynamics of normative power and its inward-bound role in shaping the EU as well as its interest-lead and conflict-irrational application in the context.¹⁶

Building on that, the second stream of literature b) has concentrated on evaluating the EU's role on the grounds concerning economic cooperation with Israel and the Palestinian Authority.¹⁷ The literature here points to disastrous effects of EU involvement, resulting in constant reinforcement of the problematic status quo¹⁸ and the build-up of an authoritarian and highly corrupt police state in the West Bank.¹⁹ These are often times portrayed as the result of stakeholder interest at conflict with the normative profile the EU wants to develop.

External Action: The case of the (Future) Borders of Israel and Palestine' 20 (special Issue) *European Foreign Affairs Review* 2015, 103-122.

¹⁶ I. Manners, 'Assessing the decennial, reassessing the global: Understanding European Union normative power in global politics', 48 (2) *Cooperation and Conflict* 2013, 304-329; M. Pace, 'The construction of EU normative power', 45 (6) *Jcms-Journal of Common Market Studies* 2007, 1041-1064; M. Pace, 'Paradoxes and contradictions in EU democracy promotion in the Mediterranean: the limits of EU normative power', 16 (1) *Democratization* 2009, 39-58.

¹⁷ R. A. Del Sarto, 'Defining Borders and People in the Borderlands: EU Policies, Israeli Prerogatives and the Palestinians', 52 (2) *JCMS: Journal of Common Market Studies* 2014, 200-216; Gordon & Pardo, *supra* note 5 b); Hovdenak, ' Hamas in transition: the failure of sanctions', 16 (1) *Democratization* 2009, 59-80; A. Livingston, 'EU failures in Economic Relations: The case of Israel and Palestine', 19 (4) *European Foreign Affairs Review* 2014, 503-518; K. Marten, 'Reformed or Deformed? Patronage Politics, International Influence, and the Palestinian Authority Security Forces', 21 (2) *International Peacekeeping* 2014, 181-197; Martins, *supra* note 15; Y. Sayigh, 'Inducing a failed state in Palestine', 49 (3) *Survival* 2007, 7-30.

¹⁸ A number of European Human Rights organizations active in the West Bank describe the status quo as follows: 'In contrast to the commonly held perception that the situation is one of stalemate and status quo, they have seen that the reality on the ground is far from static. Settlements are expanding, reducing Palestinian access to resources such as water and farmland, while the related infrastructure of checkpoints, settler roads and the separation barrier is blocking their freedom of movement and hindering their access to basic services. Palestinian homes and infrastructure are being demolished to make way for settlements, displacing hundreds of people every year' FIDH, *supra* note 14 at 9.

¹⁹ See inter alia, Marten, *supra* note 17.

The last stream c) deals with the problem of establishing coalitions working towards a consistent EU trade regime to make Israeli facts-on-the-ground tactics in settlements economically unprofitable.²⁰ It identifies internal pressures which have played a major role in the aforementioned problems.

The scientific debate lacks an explanation relating the abovementioned aspects to whether through *labeling* the EU has made progress in putting its self-conception and action into accordance. Following from that, there needs to be an assessment of how thinking about EU normative power as an actor in the Middle East is affected by labeling. Namely whether the move towards labeling, which has stirred so much attention, has actually amounted to substantial changes in the way the EU acts as a normative power.

Certain concepts as well as the function of theory in answering the research question call for clarification:

2.1. Labeling

'Labeling', in the context of this paper, refers to a development in attempts towards *'differentiation'* between products from the so-called occupied territories (Golan Heights, Gaza Strip West Bank and East Jerusalem) and Israel proper. It brings about the obligation for EU member states to ensure the correct indication on a number of products, if the product originates from an Israeli settlement.²¹ Differentiation is understood as the exclusion of settlements from the integration of the EU and Israel, with product-labeling only representing one aspect of it. In other fields such as direct funds as in research grants flowing from the EU to settlements, or students from a settlement university taking part in European educational programs, differentiation is in principal already in place.²²

²⁰ See inter alia Gordon and Pardo, *supra* note 5 (b); Lovatt and Toaldo, *supra* note 15; T. Moerenhout, 'Just Trade and Foreign Policy: A Case Study of the Legal Permissibility and Political Feasibility of Ceasing Trade with Israeli Settlements in Occupied Territories', (2012) available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2168748; C. du Plessix, *supra* note 15.

²¹ See European Commission, *supra* note 2.

²² See Gordon and Pardo, *supra* note 5 (a).

2.2. Normative Power in EU foreign politics

To understand how certain actors (e.g. Member States and the Commission) have been able to advance rules on labeling, one needs to have an understanding of how the EU has perceived and constructed its role in the Middle East conflict as a normative power.

The concept of *EU normative power* has evolved in 2002 and was introduced to analyze how actors most prominently the EU which do not draw their international position from military capabilities can yield influence in the international realm.

Michelle Pace proposed that a successful construction of normative power would secure a global role for the EU.²³ She as well as a number of other scholars have however made the argument that EU politics in the Middle East in the past have never been effective, because genuine normative power action has oftentimes collided with ‘hard’ Union interest, or individual member state foreign policy causing inconsistency and imbalance.²⁴

Normative power is a term used to describe three different concepts.²⁵ The *first* identifies the power in judging and justifying truth claims, so to define what passes as ‘normal’ in international politics.²⁶ The *second* is ideational power as a combination of material (economic) and discursive elements.²⁷ Rosamond and Parker have identified the externalization of internal liberal market tools as a form of civilian power, here.²⁸ The *third* is the idea of acting as the “ideal global actor”²⁹.

Generally in normative power, the emphasis lies on the ability to use normative justification rather than offering material incentives or the use of force.³⁰ While Manners pointed at the notion of normative action being action that is not motivated by self-interest, Diez's emphasis

²³ Pace, *supra* note 16.

²⁴ R. Hollis, ‘European Elites and the Middle East-Consensus and Division’, in Andrew Gamble ed. *The European Union and World Politics* (Basingstoke: Palgrave Macmillan 2009) 137-152; Marten, *supra* note 17. C. Musu, *European Union Policy towards the Arab-Israeli Peace Process - The Quicksand of Politics* (Basingstoke; Palgrave Macmillan. 2010); Pace, *supra* note 16. S. Pogodda, ‘Inconsistent interventionism in Palestine: objectives, narratives, and domestic policy-making’, 19 (3) *Democratization* 2012, 535-552; Sayigh, *supra* note 17; F. Terpan, ‘EU-Israel relations: in search of Coherent and Consistent EU Foreign Policy’, *The EU in International Affairs* II, 2 (2010).

²⁵ See the classification by Manners, *supra* note 17.

²⁶ *Ibid.* at, 308. citing O. Parker and B. Rosamond, ‘Normative power Europe’ meets economic liberalism: Complicating cosmopolitanism inside/outside the EU’.

²⁷ *Ibid.* at, 308 citing T. Diez, ‘Normative power as hegemony’, 48 (2) *Cooperation and Conflict* 194-210.

²⁸ I. Manners, *supra* note 16 at 309.

²⁹ *Ibid.* at. citing Thomas Diez, *Normative power as hegemony*.

³⁰ Ian Manners, *supra* note 16 at 309.

on thinking normative power as a kind of neo-Gramscian hegemony, where norms and interests infuse each other, provides a link to its usability in politics.³¹ This includes the construction of an inward-bound idea of the EU as an instrument to empower the own identity, promoting itself as acting in a genuine categorical imperative-citizen-manner. It can give us insights in how EU stakeholders can promote their power, referencing to rule of law, good governance, democracy, human rights, as well as order and justice as a common reference point for EU actors creating obligations.³² This indicates that eventually, the European normative power aspirations can be exploited by EU stakeholders for their purposes and how ideas can shape interests. Finally it can then be elaborated further into how the establishment of a European idea can be used in politics.

The paper will compare the EU's roles in regards to how they related to the EU's *norms*, before and after labeling. The norm is understood as "*a principal or standard of correctness that reflects people's expectations of behaviour, is binding upon the members of a group and serves to regulate action and judgment.*"³³ This definition features the utilitarian, societal and moral dimension of norm. These categories can describe norms in the sense that they can serve functional purposes (utilitarian), constitute social groups (social) and distinguish moral from immoral behavior.³⁴ In international politics however, Manners identified *narrative norms* as central, which he describes as the "*ability to shape or change what passes as normal.*"³⁵ This entails that norms function as a category which legitimize certain narratives and deligitimize others.

For the EU, the own norms have at one time been mediated by member state governments and laid down as guiding principles in the legal documents establishing the European Union. The Lisbon Treaty Article 3 defines them as the standard to be upheld also in its '*relations to the wider world.*'³⁶

³¹ Thomas Diez, *Normative power as hegemony*, *supra* note 25 at 201-202.

³² Pace, *supra* note 16.

³³ Ian Manners, 'Normative Power Europe: A Contradiction in Terms?' (2002) At 32. Available at http://rudar.ruc.dk:8080/bitstream/1800/8930/1/Ian_Manners_Normative_Power_Europe_A_Contradiction_in_Terms_COPRI_38_2000.pdf.

³⁴ *Ibid.* 32.

³⁵ *Ibid.* 32.

³⁶ See Article 3 (5) TEU.

2.2.1. The European norms

Manners has pointed out that the EU in the international context creates its identity by being something “*more than a state*”.³⁷ This means in short that the EU will aim at surpassing the image of a profit-maximizing international actor, which the nation state is usually associated with. Pace portrayed EU actors to perceive themselves as a ‘force for good’ in conflicts.³⁸ The actual core norms the EU³⁹ has set for itself in external action are peace, democracy, liberty, human right and the rule of law.⁴⁰ The notions of peace and rule of law are deserve special attention as they mean very specific things to the EU in the context, namely peace meaning a two-state-solution and rule of law as the rule of international (humanitarian) law.

EU-actors are well aware of the danger of on-the-ground-developments making a *two-state solution* impossible, because of the proliferation of settlements on the land designated for a future Palestinian state. Yet they stress the centrality of this concept in all related publications with at the moment only the Palestinian Affairs Committee in the European Parliament arguing that current EU policies turn “*a blind eye to a nonexistent peace process.*”⁴¹

The most problematic feature of settlements is perceived to be that they are threatening such a solution and their proliferation illegal under international law and international humanitarian law.⁴² The European Council repeatedly recalled the implementation of international

³⁷ Manners, *supra* note 33 at 33.

³⁸ See Pace, *supra* note 13 (a) at 1049.

³⁹ Although these norms that have been proposed to be Europe’s core anchor points are in line with universalist or hegemonic understandings of norms, in the context of the Middle East conflict, a close focus on the EU’s own understanding is important. This is because it has in many cases been the EU which infused own conceived norms into the international system, which only overtime accepted them as universal. As differentiation is a practice in which the EU is a vanguard once again, a fitting international normative framework has not yet evolved. See the reasoning of Swedish scholar Anders Persson about how EU diplomacy has established central anchor points in the international perception of Middle Eastern issues, such as Palestinian right self-determination, Jerusalem as a joint capital, the Roadmap, etc. European Council on Foreign Affairs, ‘EU Differentiation and settlements’ conference, *Autumn session of Swedish Institute on international Affairs* (Stockholm: 10 September 2015) Available at: http://www.ecfr.eu/article/commentary_eu_differentiation_and_israeli_settlements_video_page, at 14 minutes.

⁴⁰ *Ibid* at 32. These flow from Article 3 (5) TEU, More recent Lazarou, E. Gianniou, Tsourapas, G. ‘The Limits of Norm Promotion: The EU in Egypt and Israel/Palestine’ *Insight Turkey* 15 (2) 2013, 171-193. At 184; Pace, *supra* note 13 (a), at 1045.

⁴¹ As pointed out in all recent conclusions by the Council of the European Union, 610/15 ‘Council Conclusions on the Middle East Peace Process’ (Brussels: 20 July 2015) At 6); CR/17-18.3.2015, M.Anderson for ‘European Parliament’s Delegation to the Palestinian Legislative Council ‘Final Programme’-for Working Group to Palestine` (18 March 2015) At 5. Available at: https://polcms.secure.europarl.europa.eu/cmsdata/upload/f0e26f71-1380-4efa-a2c6_7a97671b649c/2015_DPLC%20report_EN.pdf.

⁴² This becomes clear in recent opinions by the European Parliament, *supra* note 49. 2014; or the Council of the European Union, ‘Council Conclusions on the Middle East Peace Process (MEPP)’ General Secretariat of the Council ed.17 November 2014) at 2. Available at https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/145800.pdf.; Council of the European Union, ‘Council Conclusions on the Middle East Peace Process’, (Brussels: 20 July 2015) At (2)

law and internal Union legislation to exclude settlement products from agreements between Israel and the EU since 2012.⁴³

Having introduced the norms it should be noted, that while the European Institutions and other actors are not necessarily in line with each other in every aspect of the conflict, norms are to be seen as a cumulative picture built by all its institutions and officials laid down in the treaties and developed over time. EU Action in the Middle East is constantly disputed, in terms of their ideas on the principles of EU action, the EU stakeholders do not differ as much.⁴⁴

2.2.2. The self-image as an actor

Labeling has been portrayed by Israeli politicians and parts of the public press to be affiliated with the Boycott, Divestment and Sanctions movement (BDS), which promotes a stop of economic, cultural and other relations with Israel aiming to place it under similar political pressure as apartheid South Africa. In the Middle East the EU has always rejected sanctioning Israel and any notion of boycott.⁴⁵ Its official focus has instead always been on shaping politics through shaping positive integration.

Isleyen portrayed the EU as very active as a civilian power in the Middle East and as such providing billions of euros in support for the build-up of the Palestinian Authority, with varying commitment to its own values.⁴⁶ The civilian power notion becomes very explicit in the Council's conclusions concerning the war over Gaza in spring and summer 2014. The heads of states saw their own influencing power flowing from Europe's economic weight, stating in regard to the war in Gaza in Summer 2014, that *“the EU will do all it can to support the achievement of a lasting and just solution to the conflict. In this regard, the EU reiterates its offer to both parties of a package of European political, economic and security support and of a Special*

available at http://eeas.europa.eu/delegations/israel/documents/news/20150720-council-conclusions-on-the-middle-east-peace-process_en.pdf.

⁴³ Inter alia, this was done in the Council Conclusions of 12 May 2012 at (6); 10 December 2012 at (4); 20 July 2015 at (6); all available at http://eeas.europa.eu/mepp/docs/index_en.html. The European parliament reiterated 'full respect to International law' in the conflict in the 10 September 2015 resolution on the conflict. Also the European Commission referred to International law three times in the Interpretative Notice itself, European Commission, supra note 2. See articles 1),2),7).

⁴⁴ This can be nicely seen in how the Council has since 2012 repeatedly called settlements unacceptable and for them to be excluded from all bilateral agreements, but was never able to find a consensus on how this should be done.

⁴⁵ Most recently so through special envoy Faarborg-Andersen's speech at *Ynet and Yedioth Ahronoth's anti-BDS conference*, available at <http://www.ynetnews.com/articles/0,7340,L-4784149,00.html>.

⁴⁶ B. Isleyen, 'The European Union in the Middle East Peace Process-A Civilian Power?' Hinnenkamp Hentges, Honer, Platzer eds. (Stuttgart: Ibidem 2008) at 66.

*Privileged Partnership with the EU in the event of a final peace agreement.*⁴⁷ As an actor, the EU uses declarations and its purse to take influence, while sanctions towards Israel or the Palestinian Authority (PA) have been few in numbers and in regard to Israel very inconsistently applied.⁴⁸ Santoro and Nasrallah have identified two distinctive roles of the EU in the conflict, one as a donor and one as a mediator. According to them, the EU has been the primary actor in the *donor sphere*, but not been able to challenge the American *monopoly* over mediation.⁴⁹

Yet, Manners attributed an important role to the EU and its member states in setting up a system of international norms of all kinds through primary international law, conventions, the ICC etc.⁵⁰ In the current documents positioning the EU as an actor in the Middle East conflict, this approach of shaping and institutionalizing international law is still central.

2.2.1. Norm diffusion

Once norms are established, as in the EU case, when laid down in the treaties or official declarations, they can according to Manners diffuse through six different channels, in the process of shaping what passes as normal.⁵¹ Diffusion happens when third actors start to accept the norms as a reference point for legitimate action. This is when normative power arises. To assess how normative power is connected to labeling the six channels will exemplarily be explained. Through all of these, the EU's position as a normative power could be fostered.

1) Contagion- where diffusion is unintended

All EU action has the potential for unintended diffusion of European norms to other actors. Contagion diffusion sets up the wider global significance of EU normative power. As many other international actors have adopted the practice of sharing the position of the EU on Middle East conflict issues, it is possible that the EU has created an international dynamic when introducing labeling. Defining differentiation between Israel and its settlements a European norm could thus impact the international norm system in itself.

2) Informational- through strategic and declaratory communications by the EU

The informational channel transports the European norms through strategic communications. This entails voicing active declaratory political messages the EU itself would

⁴⁷ Council of the European Union, 'Council Conclusion on the Middle East Peace Process', 12091/14, (Brussels: 22 July 2014) At (10).

⁴⁸ See Chapter 6.3. "Linkage".

⁴⁹ Santoro, Nasrallah, *supra* note 12, at 90.

⁵⁰ Manners, *supra* note 33 at 36.

⁵¹ *Ibid* at 35.

like to see associated with itself. In labeling this would entail explaining the own decision in a way stressing its superior normative legitimacy.

3) Procedural- institutionalisation of relationship by EU

The procedural channel describes a diffusion of norms through interaction in an institutionalized environment. For differentiation it would be interesting here, that apparently even after decades of cooperations between the EU and Israel, there is a big argument between the two on how the treaties regulating the relationship are to be understood.

4) Transference- exchange of benefits by EU and third parties

Transference would entail the export of European norms by conditional “carrots and sticks” in rewards or sanctions. In labeling, a EU wanting to preserve its normative power ambitions would try to export the European differentiation practice to Israel. Conditionality would read here as integration for differentiation. European norms would be exported as a trade-off for benefits. This is arguably where the connection to labeling is the most immediate as one would suppose that labeling is used by the EU to make settlements less profitable and that a stop of the proliferation of settlements by Israel would allow for even deeper integration.

5) Overt- physical presence of EU in third states and organisations

The overt channel functions through the physical presence of the EU in third countries. Much of the inconsistency of EU action results from the specific overtness of the EU in the conflict as a donor to the Palestinians and the inability to derive any substantial power from its permanent physical presence in the conflict. Overtness also carries with it the notion of high visibility as a prerequisite for normative power which was pointed out before.

6) Cultural filters- cultural diffusion and political learning⁵²

The cultural filter very much distinguishes how much an international norm can develop into the normative identity of a third entity. So in labeling for example, whether a European norm would be able to draw legitimacy within an Israeli audience with Europe becoming a reference point for legitimate action.

⁵² Manners, *supra* note 33 at 35.

Out of these six, the first four correspond to labeling, because they are open to direct influence by the EU. The other two are either a given in a long time process, such as overt diffusion or a condition under which normative power can develop such as the cultural filter.

In conclusion, the EU follows a strategy to act as a normative power as it does not have the military capability of a traditional one. Normative power means the ability to shape what is considered 'normal', grows through diffusion and is fostered when legitimacy of actions is perceived to be the guiding principle of action rather than self-interest.

2.3. Integration Theory

A conflict between normative power aspirations and “hard” interest is suggested to have led to a failure of prior EU action. The literature pointed at before in this chapter suggests that EU normative power action has been heavily influenced by EU internal struggles. To assess whether in the case of the *Interpretative Notice* the EU has exchanged interest based politics for action aiming at international law enforcement and “*ideal global acting*”, it is necessary to understand under which circumstances the *Interpretative Notice* came about. This is why the turn towards European Integration theory is taken. It will provide for a better understanding of how the change in application of existing European legal norms came about and where the analysis of how the *Interpretative Notice* came into being needs to start. An analysis of this is key to understand what changes in character and power of EU normative power have been put forward and pushed through by the introduction of labeling. Two competing strands of theory will be used to gain insights into the internal processes leading up to the decision in favor of labeling: Nicholas Jabko’s concept of “*Playing the market*” as well as Bickerton, Hodson and Puetter’s *New Intergovernmentalism*.

2.3.1. *Playing the market*

Translating theoretical assumptions into institutional politics, Nicholas Jabko’s approach on ‘*Playing the market*’ suggests that the Commission has oftentimes managed to raise support for moving forward regulation or liberalization, when there was no agreement between stakeholders on political grounds.⁵³ Jabko argues that the idea of the EU is so dependent on the idea of ‘*the market*’ that it has been applied as a “central mode of justification for reform” at times when broad support coalitions and compromise were unlikely and in turn set in motion new dynamics.⁵⁴

The idea of the market as a ‘*strategic repertoire of ideas*’ suggests that certain actors have perceived a power in the idea of the market and its legal basis. Especially the Commission has according to Jabko the potential to act as a normative entrepreneur by convincing other EU stakeholders of a common ground and common interests in the market which they did not necessarily were aware of before. In combination with normative power theory, one can identify links in a sense that the promotion of liberal democracy entails the rule of law, which in turn

⁵³ N. Jabko, (a) *Playing the market* (Ithaca: Cornell University Press. 2006); N. Jabko, (b) ‘In the name of the Market: how the European Commission paved the way for monetary union’, 6 (3) *Journal for European Public Policy* 1999, 475-495.

⁵⁴ Jabko, *supra* note 53 (a).

mirrors back on the market as a key feature of liberal governance in the EU. The theory suggests a great potential for member states in favor of labeling settlement products and the commission to be able to couch their political ends between the application of EU market law (as the base of market principles) and applied liberal principles such as informed consumer choice. Jabko thus puts strong emphasis on the role the Commission has played in the context and understands the regulation as a sort of spillover originating from integration in the market.

2.3.2. *New Intergovernmentalism*

‘*New Intergovernmentalism*’ championed by Bickerton, Hodson & Putter in turn, provides some valuable insights in the functioning of EU politics as to why the states which have pushed for labeling have done so in the way they did. It stresses the role of European agencies acting on the Council’s behalf as new bodies of intergovernmental agreement finding and understands “deliberation” as the main principle at work.⁵⁵ This approach can possibly help to understand how member states coalitions were formed and how they have e.g. addressed the High Representative, instead of the Commission to move forward on the issue. New Intergovernmentalism stresses that nowadays in conflict, EU actors seek solutions from within policy processes through deliberation and less through vetoes or exits.⁵⁶ Also it emphasizes the role of pressures within the process of preference formation, which results in a blurring of the formation and bargaining between governments. Central to New Intergovernmentalism is yet still not so much the Commission, but the interests of member states in the Council.

Here we run into the basic conflict in European integration theory. Who decides on European action, the States or the Union? Who is the driving force for supposed transition in EU Middle East politics? *New Intergovernmentalism* is challenged by Jabko’s constructivist, but in core Neo-functionalist argument. Other theoretical models are thinkable e.g. *labeling* as a compromise between polarized interests. However, the two theories proposed seem to fit the process of how the *Interpretative Notice* came about well. They can serve as sophisticated examples of their respective schools in the big conflict within European integration theory and are both capable to include notions concerning EU normative power.

⁵⁵ C. J. Bickerton, et al., ‘The New Intergovernmentalism: European Integration in the Post-Maastricht Era’, 53 (4) *Jcms-Journal of Common Market Studies* 2015, 703-721.

⁵⁶ *Ibid.* at 711.

Falsifiable hypotheses will be derived from the theories to assess how much explanatory power each approach has in context, and by doing so, deriving insights into the character of EU normative power and the motivation behind labeling.

3. Sub-questions

According to the central aspects of the literature, five sub-questions have been derived to answer the overall research question of labeling and the EU as a normative power in the Middle East.

- a) What role has the EU played in the Middle East since the signing of the Oslo accords?
- b) What is the conflict between norms and interests?
- c) Why has the Interpretative Notice been published?
- d) How does labeling relate to the conflict of normative power aspirations and interest?
- e) What are possible challenges to the impact of the labeling?

Subquestion b) (Chapter 6) is included to establish the notion of the '*role*' of the EU has been prior to the *Interpretative Notice*, which the Research Question asks about. This is done to later be able to examine whether it was altered by labeling.

Subquestion c) (Chapter 7) analyses up the problematic relationship of interests and norms, to establish an understanding of which problems were for the EU to be overcome in labeling.

Subquestion d) (Chapter 8) tests the different theoretical models which give possible explanations for overcoming opposition within the EU. This includes the analysis of what narratives conflicting normative profile players and coalitions have used to influence the issue of labeling. It tries to answer whether a genuine shift in European norms or the interest of governments brought about labeling.

Subquestion e) (Chapter 9) analyzes which insights we can draw from labeling for the EU as a normative power. It aims at answering why governments and the Commission acted the way they did.

Subquestions f) (Chapter 10) relates the *Interpretative Notice* to the problem of ineffectivity of prior EU action established by the literature and will provide a framework to conclude whether *labeling* has actually sidestepped substantial changes, for example, because different stakeholder positions assessed earlier, could not be reconciled

4. Data

The central data to be used in the study are the

- *Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967*,⁵⁷ published by the Commission on November 11 2015 and the
- *Fact Sheet* which the EEAS issued to complement its release.⁵⁸

Additional information will be drawn from earlier council conclusions, EEAS statements, as well as statements issued by member states or their officials in the aftermath of the publishing of the *Interpretative Notice*. These texts are used to position the *Interpretative Notice* in the wider context of current Israeli-European relationships:

- Regularly issued Council conclusions on the Middle East Peace Process (MEPP)
- Initiative letters by European Foreign Ministers pushing for clarification⁵⁹
- Position papers and statements by member state officials e.g. (Szijjarto, 2016).⁶⁰
- Key legal documents in EU-Israeli economic relations such as the Association Agreement or the BRITA judgement.⁶¹

The data will be used to establish how a) the EU views itself and b) how stakeholders have positioned themselves on the issue of labeling. Additionally, connected to the concepts from the theory section, the de-politicization of the Interpretative Notice it will be analyzed, in contrast to prior versions and comparable documents, to tackle opposition from the member states.

⁵⁷ European Commission, Interpretative Notice, *supra* note 2.

⁵⁸ European External Action Service, *Fact Sheet* (Brussels: 11 November 2015) Available at http://eeas.europa.eu/delegations/israel/documents/relatedlinks/20151111_fact_sheet_indication_of_origin_final_en.pdf. Fact Sheet.

⁵⁹ EU Foreign Ministers, *supra* note 3; '13 EU ministers favor labeling settlement-made goods', *The Jerusalem Post*, 21 April. 2013, available at <http://www.timesofisrael.com/13-eu-ministers-favor-labeling-settlement-made-goods/>.

⁶⁰ This includes written official statements such as Szijjarto's (Foreign Minister of Hungary), as well as public media information on oral statements. Szijjarto's statement was published in 9 (3) *Israel Journal of foreign affairs* 2016, 377-385.

⁶¹ ECJ, *Brita GmbH v. Hauptzollamt Hamburg-Hafen*, C-386/08 [2010]. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=72406&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=423063>.

5. Methodology

The study will engage in literature review and contrasting two theories of European Integration to trace the development of the *Interpretative Notice* in a qualitative cross-sectional single-case-study. The case of the EU and Israel and Palestine as the unit of analysis is chosen because it exemplifies a long-time conflict without significant substantial change but deep EU involvement in the last twenty years. The fierceness of the conflict and its prominence in the public debate place all member states under some scrutiny to engage in it, but to weigh their actions very consciously. Also the EU has deeper relationships with Israel than with any other country in its neighborhood (excluding Switzerland, Norway etc.) and has repeatedly stated the creation of lasting peace in this conflict as one of its core long-time goals.⁶² As a result of these points, the literature on the relations is extensive and offers many insights into what has happened before. The lack of substantial progress in the political situation makes even literature written twenty years ago very accessible to current problems. The geographical proximity adds to the selection in the sense that unlike some other global conflicts, the one in the Middle East has direct repercussions on and within the political arena in Europe.

The primary object of research, the *Interpretative Notice* on imports of settlement products is an obvious choice. It is arguably the most contested document in EU-Israeli Relations in more than a decade. It has drawn broad public attention and blended into a new period of cold relations between Brussels and Jerusalem.⁶³ The *Interpretative Notice* serves the cause of analyzing EU internal politics especially well, because a number of players and institutions have been involved in its shaping. Additionally, it was already discussed heavily for years before in the scientific literature. Also it is an exceptionally good example for establishing where the member states stand on the topic with sixteen states urging the Commission to move forward and Germany, Greece and Hungary in turn stating outright that they would not enforce the new measures.⁶⁴ It is thus currently the ideal object to look at, when analyzing changes in EU normative power in the Middle East.

⁶² See, inter alia Council of the European Union, ‘Presidency Conclusions’ (Brussels: 13 February 2008).

⁶³ See Baume *supra* note 1; Kroet *supra* note 6; Lahav *supra* note 6.

⁶⁴ S. Brandes, ‘Verzicht auf Etikette’, *Jüdische Allgemeine* (Berlin, 21 November 2015), available at <http://www.juedische-allgemeine.de/article/view/id/23949>; L. Kaminski, ‘Die EU-Richtlinien zur Kennzeichnung von israelischen Waren aus den umstrittenen Gebieten: Daten & Fakten’ *Mid East Policy Briefing* (Berlin: 2 December 2015).

The paper will start out in chapters 6 by establishing the Role the EU has played so far, using examples from the scientific literature. On this basis, problems and conflicts are identified in chapter 7. European Integration Theory is then used to understand whether and how the EU has reconciled these conflicts in the case of the *Interpretative Notice*. At this stage, in chapter 8, process tracing in terms of prior similar approaches, wording, or member state positions is applied to choose between and evaluate the two proposed theoretical models. I will analyze the wording of the *Interpretative Notice* in comparison to earlier documents, to assess whether it was influenced by or refers to these and set this in relation to its way through the institutions. Additionally, chapter 10 some legal questions arising from the *Interpretative Notice* itself will need to be adressed for clearer understanding in how far the Interpretative Notice has actually brought with it substantial changes which would suggest a change in the role of the EU as a normative power. The need to do so, stems from the problems the EU has had making its policy effectively and consistently implemented in the past.

The paper will focus on the economy within the West Bank (including East Jerusalem) while the Golan Heights and the Gaza Strip, although they fall under the provisions of the Interpretative Notice are not considered to be of primary importance. This is due to the nonexistence of settlements within the Gaza Strip and the different legal situation concerning non-applicability of the EU-PA association agreement to the originally Syrian Golan Heights.

6. What role has the EU played in Middle East Politics since the signing of the Oslo accords?

Assessing the impact labeling on the role of a normative power EU requires an understanding of where the EU stands in the local context. The scientific literature has pointed out the problematic relationship between European normative power aspirations and the *'hard'* interests of the Union or its member states. To make sense of this notion in the context and establish what constituted the *'failure'* of prior EU policies, the central fields concerning these conflicts will now be pointed out in a historic overview on the relations between the EU and the conflict parties.

It will concentrate on the 'special relationship'⁶⁵ status Israel holds with the Union and the respective role the EU has taken on in the build-up of Palestinian governmental structures. Together, these two aspects show the two sides of how EU engagement contributed to the problematic situation in the West Bank when the prospects of integration *on the one hand* hindered political progress on the other in state-building. Problematic aspects of EU action towards and in Palestine⁶⁶ will be addressed, because although labeling is not directly related to them, they belong into the picture of the EU as a normative power in the Middle East and raise important aspects along the local problem of inconsistency.

6.1. The special relationship

The EU's predecessors have been active in the Middle East since early after the founding of the European endeavor in the 1950s.⁶⁷ Despite constant political differences since the opening of diplomatic relations with Israel in 1959, the ties between Israel and the European Community have continuously and steadily strengthened.⁶⁸ The first Free-Trade Agreement between the two parties was signed in 1975.⁶⁹ In the early years of cooperation, the involvement in the Middle East was limited to establishing economic ties with Israel.⁷⁰

⁶⁵ European Council, 'Meeting on 9 and 10 December 1994 in Essen-Presidency Conclusions' (Brussels: 1994), available at: http://www.europarl.europa.eu/summits/ess1_en.htm#ext.

⁶⁶ Here Occupied Palestinian Territories (OPT)

⁶⁷ C. du Plessix, 'The European Union and Israel- A lasting and ambiguous "special" relationship', 22 *Bulletin du Centre de recherche français à Jérusalem* 2011, 2-16.

⁶⁸ Ibid.

⁶⁹ For detailed info on early EU-Israeli integration, see http://europa.eu/rapid/press-release_MEMO-95-127_en.htm. 13 June 2016.

⁷⁰ Ibid.

After the Yom Kippur-War in 1973, which had been a major contributor to the oil crisis hitting the Western hemisphere, a more political tone was introduced to EC-Middle East relations.⁷¹ The, at this time, nine EC foreign ministers articulated four central positions on the conflict, namely: return to pre-war (1967) positions; end of the territorial occupation; respect for sovereignty of all the states in the region and the primacy of the UN in peace negotiations.⁷² Until the 1980 Venice conference, the EC was frequently criticized that its involvement in the Arab-Israeli conflict was limited to ensuring European oil supply and staying mostly ‘*declaratory*’.⁷³ At the Venice conference, more specific reasoning made way for the Europeans to start promoting the right to a state both to Israelis and Palestinians, causing upset in Israel.

In 1993, the European engagement in the region culminated after the signing of the accords. Already in Oslo, Europe, which is not a party to the treaty, was pushed out from its desired role as a “negotiator” by the US,⁷⁴ which left the EU with opportunities mainly in the economic sphere. In the context of Oslo and the Barcelona Process, the EU took further measures not only to integrate Israel into the European market, but also to enhance Israeli participation in a number of other community programs.

6.2.Barcelona Process

In 1995, the EU kicked off the Barcelona process, which aimed at strengthening political, economic and social relations between the EU and its southern neighbors in the so-called Euro-Mediterranean Partnership.⁷⁵ While the Partnership included many aspects which do not connect to the question of this paper, it should be noted that one of its key goals was the gradual establishment of a free trade-area and led to the establishment of Association Agreements (AAs) between the EU and Israel (1995)⁷⁶ as well as the Palestinian Authority (1997).⁷⁷ The Israeli AA entered into force in 2000 and further deepened the closest economic partnership

⁷¹ B. Isleyen, *supra* note 46, at 54.

⁷² *Ibid.*

⁷³ *Ibid.* at 55.

⁷⁴ See how the US has traditionally pressured the EU to remain uninvolved, as in Musu, *supra* note 24, at 84.

⁷⁵ *Ibid.*

⁷⁶ Taking effect in 2000.

⁷⁷ Technically, the Treaty was signed by the PLO for the benefit of the Palestinian Authority, as can be seen in European Community, ‘Interim Association Agreement on Trade and Cooperation’, *Official Journal of the European Union* (Brussels: 16 July 1997).

that Europe had had with any non-European third country until then. In Protocol 4, free trade for products ‘*produced or modified*’ in Israel was provided.⁷⁸

The AAs furthermore opened up the dimension of Human Rights and Democracy promotion, in the Middle East but as taken up in the next paragraph, were not equipped with ways to hold actors accountable to their pledges through measures such as for example: arms embargos on Israel in response to war crimes, or financial sanctions on the Palestinian Authority (PA) as a response to internal human rights abuses and lack of transparency.⁷⁹ With regards to labeling, the AAs serve as the key documents in setting up the problem and in the path the EU has taken to make its move towards differentiation.

6.3.Linkage

Since the signing of Oslo, the international community had been concerned with how to ensure that Israel as the more powerful party in the conflict could be held accountable for its pledges in the ‘*peace process*’. While officially stressing the importance of International Law, the EU chose the path of economic integration. The idea was to have Israel follow a “carrot-and-stick” path to cooperation and thus ensure a European influence on action in the “*Peace process*”. The problematic side of this approach showed when it became clear that none of the past-Oslo Israeli governments in the 90s was actually willing to politically confront the settler movement, representing a considerable share of the overall Israeli population by the turn of the millennium.⁸⁰

When the problem of settlements became increasingly urgent, because continued construction started to seriously endanger the practical feasibility of a two-state-solution, two times, in 2004 and 2008, a “*linkage*” between the speed of further integration and Israel’s commitment to the two-state solution was included in joint action plans of the EU-Israel Association Council. These in principal provided the EU with the means to hold Israel accountable for settlements, by linking “*the level of ambition of the EU/Israel relationship*” to the “*degree of commitment to common values (...)*”⁸¹ of which human rights and international law were severely violated

⁷⁸ European Communities, ‘Euro-Mediterranean Agreement- establishing an Association between the European Communities and their Member States of the one part, and the State of Israel on the other part’, 4) *Official Journal of the European Communities* 2000, at § 147.

⁷⁹ Isleyen, *supra* note 46, at 73.

⁸⁰ See the estimate of about 390 000 for the year 2000 by Central Bureau of Statistics, ‘Statistical Abstract of Israel, 1992-2006 and List of Localities, the Populations, and Symbols, 1995-2005’, *Statistical Yearbook of Jerusalem*, Jerusalem Institute for Israel Studies (Jerusalem: 2008).

⁸¹ Mutual interest and the capacity of each party are also included; Find the provision at: http://www.enpi-info.eu/library/sites/default/files/attachments/israel_enp_ap_final_en.pdf pg. 1.

through settlements. These measures slowed down integration for some months following Operation Cast Lead in the Gaza Strip in winter 2008/09, but have not been applied over longer time periods. The three significant signed agreements “*on ice*” in 2009 had been ratified by 2012 and new ones, like concerning Israeli participation in certain working groups have been drafted.⁸² Important issues, such as the definition of what actually *constituted* the territory of the State of Israel and thus the practice concerning Israeli settlement products were left undealt with, when the agreements were set up.⁸³ The EU did not take the opportunity to include its understanding of settlements not constituting to the territory of the state of Israel in the most important document for the relationship of the two. In fact it came only into the European attention that economic integration of settlements could be legally problematic when an Israeli trading company was investigated against for trade deflection when importing Brazilian orange juice to the EU marked as “Made in Israel”. The Commission first informed importers of problems regarding the applicability of the free-trade agreements to settlements in 1997, a good half year after the AA with the PLO was signed. Yet, under these circumstances the exclusion of settlement products remained gradual and extremely slow. Notably even in the most recent significant EU-Israeli treatment, the ACAA treaty on industrial products, there was no territorial clause installed to limit its application to Israel proper.⁸⁴ A clause according to which any and all agreements with Israel and the EU in the future, were to include a provision clearly excluding settlements as not constituting the territory of the State of Israel, was first included in a Council Resolution in 2012, seventeen years after the signing of the Association Agreement.⁸⁵ Two years before, the ECJ had ruled in the BRITA judgement, that the EU was bound by international law and as the OPT were not considered part of Israel, the Israeli association agreement could not apply there.⁸⁶ The idea of differentiation in general was not fresh as US and German research programs with Israel had already explicitly excluded settlements in the OPT from their activities as early as 1972.⁸⁷ Already in 2005, the EU decided to implement the

⁸² Agricultural and fishing products (passed in 2010) available at <http://www.enpi-info.eu/library/content/eu-israel-agreement-agriculture>; ACAA on industrial products (in force since January 2013) available at http://ec.europa.eu/health/files/international/2013_qa_israel-eu.pdf; Protocol for participation in community programs (signed 2008) Here information about its issue date could not be retrieved. The protocol however laid the base for the participation of Israel in Horizon 2020.

⁸³ Gordon & Pardo, *supra* note 5 (b), at 78.

⁸⁴ FIDH, *supra* note 14, at 29.

⁸⁵ Council of the European Union, 2012, *supra* note 43 at (4).

⁸⁶ See ECJ, *supra* note 61.

⁸⁷ Gordon&Pardo, *supra* note 5(a) at 420 f.

Rules of origin clause (ROO) from the 2000 EU-Israeli Association Agreement to goods produced in the occupied territories.⁸⁸ This marked a first shift in EU-Israeli trade policy as before all products from settlements had entered the European market as goods qualifying for ‘*preferential treatment*’ eligible for reduced tariffs.⁸⁹ However this was easily evaded by settlement companies using non-settlement post codes and as settlement products did not need to be marked, an effective exclusion was not enacted. Labeling has long been seen as the next logical step in installing a conditionality between further integration and settlement activities.⁹⁰

6.4. The state of integration

Due to the lack of regional partners, EU is often considered the Israeli ‘*hinterland*’ in terms of culture, science and economy.⁹¹ Javier Solana confirmed that in 2009 when stating that “*Israel (...) is a member state of the European Union without being a member of the institutions*”. Today, Israel holds stronger ties to the EU than any other non-European state. It enjoys large trade benefits which affect about 90% of Israeli exports to the EU.⁹² Deepened security cooperation was included in the 2004 action plan along with cooperation on smuggling of arms and weapons of mass destruction.⁹³ Most recent, Israel takes part in the Horizon 2020 program, which funds research with close to € 80 billion in total.⁹⁴

Israel along with some European stakeholders has long criticized an anti-Israeli tone in European politics.⁹⁵ While on the declaratory level, this claim has some substance until today, one should note that concerning this claim, not only did European political action continue to remain predominantly declaratory until the Oslo accords, but also that economically, the EU constantly took measures to further integrate the Israeli economy into the European market structures.⁹⁶

6.5. Palestinian state building

From early on after the Oslo accords, the EC took a lead position in the built up of Palestinian state structures. Right after Oslo, the Community and its member states became the

⁸⁸ Gordon & Pardo, *supra* note 5 (b) at 74.

⁸⁹ *Ibid* at 76.

⁹⁰ Gordon & Pardo, *supra* note 5 (b), at 418.

⁹¹ Plessix, *supra* note 63, at 4.

⁹² *Ibid.* at, 5.

⁹³ EEAS, ‘EU/ISRAEL ACTION PLAN’ (Brussels 2004) At 6, Available at: http://eeas.europa.eu/enp/pdf/pdf/action_plans/israel_enp_ap_final_en.pdf

⁹⁴ For information on Horizon 2020 see <https://ec.europa.eu/programmes/horizon2020/en/what-horizon-2020>.

⁹⁵ Pardo, *supra* note 11; Lazarou et al. *supra* note 40, at 185.

⁹⁶ Musu *supra* note 22; Pogodda *supra* note 24.

biggest donor to the Palestinian Authority providing more than half of its budget in the 90s.⁹⁷ Promoting itself as a normative power, the diffusion of *democratic norms and practice, national security and state-building* were made the pillars of European Palestine politics.⁹⁸ A strand of literature however argues the interference of this goal with European or member state interests and identified trade-offs between external policy goals and the initial plans for Palestine.⁹⁹

In line with the US, the EU in the 1990s provided Yasser Arafat with guidance and resources to convert the former Palestinian resistance forces, mainly those affiliated with Fatah, into proper security organizations.¹⁰⁰ As Oslo turned out to be a terrible deal for the Palestinian population economically,¹⁰¹ and all other significant resistance groups strictly opposed it, Fatah, privileged with administering all of the PA's international funding and resources remained the only partner for the international community for negotiation. It followed that the area within state-building in which progress was made at the highest speed were the security forces, mainly to be able to suppress those groups within the Palestinian resistance which had not been integrated under PA control. The aim of security already then required concessions on democracy and no international conditions were taken against the build-up of an authoritarian state and corruption of European funds by the Fatah regime und Arafat.¹⁰² It should be noted here, that the economic situation in the occupied territories (primarily West Bank and Gaza)¹⁰³ in the first years after Oslo was marked by continuous deterioration and turmoil, leading the EU to invest evermore money in humanitarian aid, then on actual investments. What was presented to the international community as the necessary means to keep the two-state-solution and thus the prospect of peace alive, was on the other side the kick-off for the corrupt structures that cripple institution-building in Palestine until today.¹⁰⁴

⁹⁷ Isleyen, *supra* note 46, at 66.

⁹⁸ Pogodda, *supra* note 24, at 536.

⁹⁹ See *Inter alia* *ibid.*

¹⁰⁰ *Ibid.* at, 539.

¹⁰¹ Isleyen points at a 30% increase in unemployment and a 35% decrease in average per capita incomes from 1992-1996.

¹⁰² Pogodda, *supra* note 24, at 540.

¹⁰³ The term "occupied territories" usually also includes the Golan Heights, captured by Israel in the Yom Kippur-War of 1973 as well. The *Interpretative Notice* explicitly includes these. As this would complicate all aspects of the thesis and due to the fact, that Syrian politics is focused on other problems at the moments, the thesis will in its economic scope focus on the areas granted to the Palestinians in the Oslo accords.

¹⁰⁴ See for more information on foreign aid and corruption Marten, *supra* note 17.

The complete destruction of even these ambivalent advances in security structures by the Israeli army during Operation Defensive Shield in 2002 did not meet International opposition, so that even the limited advances in state-building in the 1990s were repealed. In this context, the EU acted very much not as a normative, but rather a weak civilian power. This fits a problem concerning the destruction of EU-funded infrastructure, in which even the mere declaratory character of most EU action aimed at Israel is hardly developed. Sayigh linked this problem (which prevailed until today) to a lack of unity among member states.¹⁰⁵ Lazarou have made a similar argument for the non-appliance of the AA provisions concerning settlements.¹⁰⁶

Democracy Promotion had been one of the three aims of the European involvement in the OPT. The engagement in democracy promotion was severely damaged in 2006, when the international community froze funding of the PA, after Hamas's victory in free and fair elections (which themselves had taken place under close European scrutiny and funding). In the aftermath the EU and the US directly encouraged conflict between Hamas and Fatah, by staffing up Mahmoud Abbas's presidential guard against the by-then Hamas controlled PA security organizations, creating two rivalling and heavily armed security services in the OPT.¹⁰⁷ In both cases, which only represent a fraction of problematic EU action at the time, problems have been identified as springing from the conflict of European interests with its ambitions to act as a normative player. Here, these concrete interests were security concerns that evolved after the Israeli narrative of Hamas was accepted by the EU as its own and stripped the EU of its '*aura as a transformative power*' in the Arab societies.¹⁰⁸

6.6. Financing the occupation & status quo

Until today, the EU is the largest donor to the Palestinians. Partly in direct funds through the PEGASE program, partly through the UNRWA-program which takes care of around one million Palestinians living in refugee camps in Gaza and the West Bank (including East Jerusalem). The € 451 million of direct EU aid in 2012¹⁰⁹, are complicated by other European money

¹⁰⁶ Lazarou et al, *supra* note 40, at 185.

¹⁰⁷ Pogodda, *supra* note 24, at 543.

¹⁰⁸ Ibid.; I Schäfer. The European Reform Agenda for Palestine: Democratising a Polity or Marginalising Political Actors? In E. Kienle *Democracy Building and Democracy Erosion* (London: Saqi 2009) 113-129, at 129.

¹⁰⁹ In 2012 the EU allocated € 451 million to the PA, UNRWA and infrastructure. This number is down from € 563 million in 2007. http://www.eca.europa.eu/Lists/ECADocuments/SR13_14/SR13_14_EN.pdf

from member state development and humanitarian aid funds as well as private donations through e.g. charities.

Because of that, the EU has been confronted with severe criticism along the argumentation that under International Law, Israel as the occupying state in the disputed territories has certain responsibilities concerning the population there.¹¹⁰ Israel is economically active in the areas and derives profits from settling on them, but does not take on the responsibilities of a state in the OPT and Golan Heights. Following this argument, the EU is effectively funding the Israeli occupation by supplying the resources to run the Palestinian Authority.¹¹¹

6.7.Subconclusion

When looking at the numbers, it appears remarkable, that the EU has never managed to establish itself as a potent actor in the Israeli-Palestinian conflict. On the ground, the EU is not perceived as being a central player to any of the conflict parties.¹¹² Human rights and the rule of (international) law were identified as keystones of possible EU normative power by the literature. However, by its action during the 90s and 2000s, the EU turned out to be a major contributor to the complete lack of both in the Palestinian territories. For one part as it did not exclude settlements from the integration process with Israel, for the other, because of a number of controversial financial activities in the OPT. Great amounts of inconsistency in EU behavior and the placement of security and economic interest in integration before normative action have been identified as main factors in the persistence of the problematic status quo, which the EU has not yet acted to end.

The often harsh political rhetoric has not hindered constant upgrade of ties in many policy fields despite constant settlement construction. Concerning settlements, the EU's willingness to exclude them from the integration process has varied over time. The EU has also been slow in effectively applying the rules of origin clause of the AA and excluding settlement products from European trade benefits. Although the influx of Union money in research grants,

¹¹⁰ Anderson, *supra* note 41, at 5.

¹¹¹ For more details on the line of criticism see, *ibid*; <https://www.medico.de/gaza-krieg-die-eu-finanziert-die-fortsetzung-des-status-quo-aus-wiederaufbau-und-zerstoerung-14791/> 13 June 2016; B. Ravid, 'EU Warns Israel: Policy of Demolishing Palestinian Homes in Area C Will Harm Relations' *Ha'aretz*, 31 May 2016.

¹¹² See footnote 12.

education et cetera directly into settlements has to a large degree been stopped in 2013, preferential import of settlement products has not.¹¹³

At the same time, the EU has tried for about 20 years to build up state structures in Palestine and provides considerable parts of the PA budget. Here inconsistency and European policy goals have oftentimes clashed with the objectives of providing the Palestinian population with a safe life in a democratic state. Furthermore the EU is criticized for its approach of unconditionally funding the Palestinian Authority, for the reason of corruption and dependency. Another stream of literature and official statements points out that this makes the West Bank a profitable area for Israeli economic expansion while most of the costs to be borne by an occupier state under International Law are paid for by the International Community.

The role of the EU can thus be described as at least problematic in regards to the application of international law and the implicit support for settlement and perhaps detrimental if the bigger picture of the overall situation in the OPT is taken into account. Concerning its own action, the criteria of normative power action established in the theory, are apparently not met, resulting in a weak normative power position.

¹¹³ Most recently in the new funding regulations adopted in 2013, see Gordon & Pardo, *supra* note 5 (a).

7. What is the conflict between normative power aspirations and interests in EU foreign policy?

Manners specifies normative action as action not simply in one's interest, but binding himself to the force of international norms.¹¹⁴ Normative power flows thus not mainly from military and economic means, but from the force of ideas.¹¹⁵ Concerning settlements chapter 8 showed that through economic integration of Israel the EU is economically engaging in a number of fields is to the least problematic under international law and thus severely damages its credibility as a legitimately superior normative power in the local context. Normative power raises the question of how the EU internally deals with this conflict of playing a role in the occupation and how it comes about that it is acting so far off its self-defined *norms*, when it is these norms that grant it international leverage. How is it that its normative power aspirations are so little reflected in the EU's behavior? Much of the theory suggests that problems in the definition of the norm and the self-interest of stakeholders such as member states lead to action which is inconsistent with *the norm* and leads to a failure to constitute oneself as the "ideal global citizen."

7.1. Who defines the norm?

Ian Manners, who first brought up the term *EU normative power*, describes normative action as action which usually costly and does not pay off.¹¹⁶ He contrasts *normative* with *self-interested* action. Because norms are constructs and always open for definition, there is however the problem of diverging interests and narratives mixing into norms. It is thus contested whether norms themselves can ever be free of interest in the first place. Thinking of norms rather as a feature of neo-Gramscian hegemony allows us to understand norms as a way of seizing influence also in an implicit way.¹¹⁷ It suggests that the norms in themselves are influenced by implicit EU interests and can be understood as part of an agenda, be it only the promotion of liberal democracy and free-market capitalism.

The norm is always a contested concept. In the case of labeling especially since some European countries are linked to Israel historically in a way that makes a *norm* based only on current developments in International Law problematic. This problem has arisen a lot of times

¹¹⁴ Diez, *supra* note 25, at 197.

¹¹⁵ Ibid.

¹¹⁶ See I. Manners, *supra* note 33, at 36.

¹¹⁷ Ibid.

when one of the agreed-on norms was to be filled with political action.¹¹⁸ As politics is an ever-developing process and because the norm is not fixed, the problem of inconsistent behavior arises, which as shown in Chapter 6 has several times kept the EU from acting successfully.

But even when common *norms* are agreed on, as is actually the case concerning settlements,¹¹⁹ which Israel is regularly criticized for by virtually every European actor involved, the collision of this agreed norm with '*hard*' interest can lead to inconsistency and in-effectivity of the normative approach altogether. The EU faces the dilemma that internal stakeholders expect it to act in line with its norms, but that its own and their "*hard*" interests continue to play a role, a role which a traditional power EU would seek to accomplish by traditional power means such as coercion. Especially in the case of the Middle East, the EU is hardly active as merely a donating power by choice. Repeatedly, especially visible in the Oslo negotiations, the EU has been pushed out of the role a traditional power would seek, the one of the negotiator who due to power capabilities can e.g. serve as a guardian of accords and due to economic power can reimburse conflict parties for concessions.

7.2. Interest in norms

The proximity of the conflict, the importance of Israel as a strategic and economic partner and the political relevance of the conflict lead the EU to perceive that an involvement in the Middle East is in its interest.¹²⁰ Although in recent years, military cooperation under the Common Security and Defense Policy (CSDP) has become more common for the member states, the EU clearly prefers to act in a civilian way, namely through economic relations, development cooperation and the institutionalization of international politics. Neo-Gramscian scholars have pointed out that normative power evolves as a kind of sovereignty not by domination or the use of force, but by political and ideological leadership.¹²¹ This view argues that the EU has interest and found ways to ensure its say through normative action. It thus uses the normative dimension of its action and yields influence by shaping the norms of the environment in its favor. This secures the EU international relevance, although being outweighed in every other aspect by the US. Eventually this is the way normative action although perhaps irrational in the short-run, does pay off. This appears to be where the interest in normative power first evolves from. In the Middle East, the EU has very much tried to establish itself as a political and ideological

¹¹⁸ In labeling it became especially clear when Hungary's foreign minister Peter Szijjarto called the Interpretative Notice to "*have nothing to do with the desired outcome of European leaders*" in P. Szijjarto, 'The crisis in Europe: The Hungarian Perspective', 9 *Israel Journal of foreign Affairs* 2016, at 385.

¹¹⁹ See chapter 2.

¹²⁰ See the reasoning of C. Musu, *supra* note 24, at 88.

¹²¹ Diez, *supra* note 25, at 200.

leader, based on normative action, but apparently as chapter 6 its rhetoric was oftentimes counteracted by its action on the ground.

7.3. Norms and Power

When actors act in a normative way, an intrinsic conflict between the *normative* and the *power* dimension arises, because some options necessary for interest promotion are not provided for within the normative power profile. Normative power usually aims at supporting rather than coercing action in form of e.g. sanctions.¹²² More important though, is that although the EU is locked out from playing a role in a traditional sense and concentrates to act supportively and in line with International Law, some interests and some capabilities remain which deepen the normative gap.

7.4. Conflict of norms and interest

Hollis identified a “*dichotomy between the advocacy of assumed European values on the one hand and the dictates of European security interests and safeguarding of the other*”¹²³ as the central problem of EU normative power. From what has been found out in chapter 7, I take this to be true also for economic interests, or political ones in general. Three concrete types of similar conflicts within the complex of norms and interests, in which the normative dimension was subdued can be pointed out, which all have become relevant for *labeling*.

7.4.1. *The conflict of European interests versus norms*

There have been occasions in which the EU has abandoned its own image of normative action. In these cases, ‘*hard*’ European interests have outweighed the need for continued normative power action.¹²⁴

Picking up on labeling, it is notable that an effective linkage of economic integration with Israel and its role in the conflict was never established.¹²⁵ While at several times, integration was called to stop since the Oslo accords, it has continued virtually the entire time.¹²⁶ The interest of the EU in the economic integration of Israel overweighed the problematic issue of the EU itself getting ever-deeper entangled in the occupation providing it e.g. with capital for

¹²² Pace, *supra* note 16, at 1052; Lazarou et al. *supra* note 40 at 187.

¹²³ Hollis, *supra* note 22 at 1.

¹²⁴ For hard interests and norms promotion see Lazarou, *supra* note 40 at 178.

¹²⁵ See chapter 6.

¹²⁶ See chapter 6 on the in-effectivity of linkage.

construction or retail options for settlement products.¹²⁷ By doing so the EU has undermined billions of euros spent on Palestinian state building.¹²⁸ In a positive process like the one of integrating Israel, normative action could have gone hand in hand with the great objective for Israel to be a part of the European market.

7.4.2. *The conflict of member state versus European interest*

As a common interest of 28 states is hard to identify,¹²⁹ here the notion of European interest refers to the position of the European Commission as the guardian of the Treaties and the institution most drawn to further Europeanization of foreign politics. In this specific case, either the Commission or member states have abandoned normative positions e.g. the application of international law to advance their own political agenda.

The Commission has done so when it did not take considerable action after the first attempt for introducing labeling in 2013, when it was called to do so by 13 member states for the first time.¹³⁰ For tactical reasons, so as not to upset Israel and challenge the American primacy in negotiations in John Kerry's peace initiative, the worked out proposals were put on the shelf.¹³¹ By doing so, the Commission effectively delayed the enforcement of differentiation between settlement- and Israel proper goods by two years, upsetting a number of member states willing to act.

In 2015, the Commission made very clear in the Interpretative Notice, that it considered the text as an integer European issue, by stressing its role as the guardian of the treaties.¹³² Some member states hindered its promotion when they announced that they would yet not enforce labeling. Here, the countries with the closer relations to Israel such as Germany and the Czech Republic deviated from European normative action.¹³³ Although a European rule,¹³⁴ *labeling* remains completely a member state responsibility. Because *labeling* is practically only relevant for the country through which goods enter the European market, the European practice established will be effectively undermined by a number of states until the Commission if at all gets

¹²⁷ In this context, see the reasoning behind the exit of the Dutch pension PGGM pension fund from doing business with Israel in 2014.

¹²⁸ FIDH, *supra* note 14 at 9.

¹²⁹ For the special problem concerning Israel, see Lazarou et al, *supra* note 40 at 178.

¹³⁰ See V. Chadwick, M. De la Baume, 'How on phrase divided the EU', *Politico* (Brussels, 1 April 2016) available at <http://www.politico.eu/article/best-before-1967-how-the-eu-labeled-israels-occupied-territories-food-labels-european-commission/>.

¹³¹ *Ibid.*

¹³² European Commission, *supra* note 2, at (3).

¹³³ See Chapter 7.4.

¹³⁴ Consider that *'rule'* does not refer to actual law here.

active again to pursue enforcement. This endangers the application of the rule of law in the context of settlements and consistency of European norms and action alike.

7.4.3. *The conflict of member state versus member state interest*

In some cases, deviating member state interests and norms led to situations where conflicts between member states kept the EU from crafting its action along its norms.

While in terms of positive economic integration this conflict has not held such a central position, in *labeling*, the opposition of some member states has clearly harmed the initiative by the others and challenges the future effectiveness of the *Interpretative Notice*. It also harmed the normative power behind labeling as it was presented as an administrative necessity rather than a political decision aimed at promoting the rule of international law.¹³⁵

7.5. Subconclusion

Chapter 3 pointed at inconsistency out as a main challenge to effective European action in the Middle East. The literature has shown that in labeling, oftentimes the exchange of normative action in line with the promotion of European norms, for self-interested politics caused a similar inconsistency. In this chapter, a number of different sources for inconsistent action were identified in which different players valued their short-time interest higher than the norms that collective European action should rest on. For labeling to be effective, these problems are to be overcome. This is important because normative power stems from the power of ideas. If ideas and principles are not perceived to be the guiding points in action, or in case the ideas are failed or exchanged in the first place, the EU as a weak traditional power with few pooled military capabilities and high inner division, risks losing the basis for its international importance.

¹³⁵ See chapter 8.

8. Why has the Interpretative Notice been published?

After having analyzed basic problems in EU normative power and how it conflicts with interests, I will now turn to the Interpretative Notice itself. While the content-related reasons for labeling will be addressed in chapter 9, this section analyses different theories about *how* labeling came about.

As suggested in the theory section, the question of how the Interpretative Notice came about are explained by two rival strands of theory on policy-making in the EU: New Intergovernmentalism, which stresses the role of governments and the theory of ‘Playing the market’ which essentially focuses on how the Commission can raise support for integration by inducing stakeholders along a line of arguments stressing the needs and common benefits of a functioning internal market. This question is important because it lays the basis for the question if and how the EU has overcome the conflict of norms and interests in labeling. An outcome in favor of ‘Playing the market’ would suggest for labeling to be the result of the possibility of a genuine European desire to act in a normative way, while an outcome of New Intergovernmentalism would suggest, that labeling was once again the result of member state interests.

Before the theories are tested in terms of which one fits the case of labeling better, a broad outline of how the coalitions for and against labeling were made up will be provided.

8.1. The coalition pushing forward labeling

The camp which pushed forward the Interpretative Notice was made up mostly by Western and Southern European states. In 2013, a total of 13 foreign ministers had addressed High Representative Ashton to move forward on labeling.¹³⁶ Among the other supporters of labeling were France, UK, Spain, Belgium, Denmark, Portugal, Luxembourg, Austria Ireland, Malta, the Netherlands and Finland. These 13 were joined by Italy, Croatia and Sweden in a second letter in the summer of 2015.¹³⁷ The leader in the process is perceived to have been Didier Reynders, foreign minister of Belgium, which has been one of three countries, the others being the UK and Denmark, in which comparable labeling practices had already been in place prior to the *Interpretative Notice*.¹³⁸

¹³⁶ B. Ravid, ‘Half of EU Countries Support Labeling Settlement Goods From West Bank, East Jerusalem, and the Golan Heights’, *Ha’aretz*, (Tel Aviv: April 20 2013) available at <http://www.haaretz.com/israel-news/half-of-eu-countries-support-labeling-settlement-goods-from-west-bank-east-jerusalem.premium-1.516578>.

¹³⁷ EU Foreign Ministers *supra* note 3.

¹³⁸ Since XX member states had been granted the competence to set their own guidelines concerning labeling settlement products Chadwick & De la Baume, *supra* note 130.

On prior differentiation issues, individual Members of the European Parliament were identified as a main force in pushing the Commission to get active.¹³⁹ When the European Parliament voted on its position on the conflict in September 2015, an overwhelming 525 MEPs supported labeling and differentiation.¹⁴⁰ The committee on Palestine at the European Parliament had before repeatedly called for labeling while President Martin Schulz, opposed the move.¹⁴¹

8.2. The opposition against labeling

The camp of the opponents of labeling included mostly Middle- and Eastern European member states. Germany has been a clear opponent to any European sanctions against Israel¹⁴² and for historical reasons could not be expected to be the vanguard on this issue.¹⁴³ The most outspoken opponents of labeling were Hungary's foreign minister Péter Szijjártó who called labeling "irrational"¹⁴⁴ and Czech prime Culture Minister Daniel Herman who urged countries to "reject the efforts to discriminate against the only democracy in the Middle East."¹⁴⁵ The Czech Republic, although hardly known, is arguably the closest ally to Israel next to the United States. Both Hungary¹⁴⁶ and the Czech Republic, as well as Greece¹⁴⁷ have openly stated that they would not enforce the measures and were joined by the German agricultural ministry who also made explicit that it would not have any impact for German practices.¹⁴⁸

¹³⁹ Gordon and Pardo, *supra* note 5 (a), at 419.

¹⁴⁰ This was also the first time, one of the top European Institutions explicitly chose the word 'differentiation' on settlement politics, *supra* note 184. At (15).

¹⁴¹ R. Wootliff, 'EU Parliament head: Labeling products will harm Palestinian workers', *The Times of Israel*, (Jerusalem, 14 January, 2016) available at http://www.timesofisrael.com/liveblog_entry/eu-parliament-head-labeling-products-will-harm-palestinian-workers/.

¹⁴² P. Müller, 'The Europeanization of Germany's Foreign Policy toward the Israeli-Palestinian Conflict: Between Adaptation to the EU and National Projection', 16 (3) *Mediterranean Politics* 2011.

¹⁴³ See the German government's unwillingness to take responsibility in setting a precedent in the BRITA case Plessix, *supra* note 15, at 112; ECJ *supra* note 61.

¹⁴⁴ Szijjarto, *supra* note 39 at 385.

¹⁴⁵ See <http://www.jpost.com/Israel-News/Politics-And-Diplomacy/Czech-Parliament-rejects-labeling-of-products-from-Israeli-settlements-437688> 13 June 2016.

¹⁴⁶ G. Cashman, 'Hungary says no to settlement labeling', *The Jerusalem Post*, (Jerusalem, 16 November 2015).

¹⁴⁷ R. Ahren, 'Greece to defy EU order on labeling settlement goods', *The Times of Israel*, (20 November, 2015)

¹⁴⁸ See Brandes, *supra* note 64. Germany has been sending messages of mixed intensity in this context with Angela Merkel stating in January that negotiations with Mogherini on easing labeling provisions were proceeding. See <https://www.bundesregierung.de/Content/DE/Mitschrift/Pressekonferenzen/2016/02/2016-02-16-pk-merkel-netanjahu.html>.

8.3. Hypotheses Test

a) New Intergovernmentalism

Of the six central Hypothesis of New Intergovernmentalism¹⁴⁹, four apply to the issue in scope: The primacy of deliberation and consensus at the EU level, the paradox of European institutions to not always seek an ever closer Union, the creation and empowerment of *de novo* bodies by the Council and the blurring of high and low politics. Accordingly four Hypotheses have been derived and will be tested:

1) In labeling the blur between low and high politics is revealed

The key concepts of new intergovernmentalist thinking is the reluctance of EU member states to hand over sovereignty to supranational institutions while further integration as such is favored.¹⁵⁰ While in cases of “low” politics, which do not touch the central principles of sovereignty such as standards in traffic or transportation the rejection is less strict, high politics issues such as security, or in this case foreign policy, will only scarcely be handed over. The Interpretative Notice describes a case where the distinction is blurred. While it is technically only an administrative notice of the conduct of customs declaration, a field which the states have handed to the EU already in the Treaties,¹⁵¹ the political dimension reaches into the core features of sovereignty as it appears to severely alter the relations between Israel and the member states. Institutionalization of relations with Israel is so far developed that a minor, merely technical regulation can be used to make political statement. The Interpretative Notice is controversial not because of its actual content, but because of the political implications that it has been charged with. The member states in opposition thus face a situation in which traditional low politics processes, which are not under their authority anymore, possibly have severe high politics impact.¹⁵²

2) Labeling is a product of deliberation and consensus

The points mentioned earlier in this chapter showed that labeling was hardly drafted in a process represented by consensus. Obviously there was enough consensus among a specific group of actors, perhaps latent, to bring it about, but that would render every decision one of consensus. At the same time, several member states, notably Germany, Hungary, Czech Republic and Greece are not happy with it and stated that they were not going to change their

¹⁴⁹ As set out in Bickerton, *supra* note 55.

¹⁵⁰ Bickerton, *supra* note 55 at 5.

¹⁵¹ Art.28, 31 &33 TFEU.

¹⁵² On the possibility of mission creep in labeling see footnote 118 on Hungarian Foreign Minister Szijjarto calling labeling to have nothing to do with the states desired outcome.

practices.¹⁵³ A key point here is, that since in labeling no legislation was drafted, member states were not equipped with e.g. the threat of vetoing a new law touching CSFP in the Council. A clear de-politization of the Interpretative Notice compared to the 16's initial proposal can be seen as having been conducted to make the draft more fitting a compromise and that deliberation among member states has led to at least some degree of permissive consensus. Notably, we have not seen joint action by the opposition camp before or after the issue of the IN.

Yet, it is remarkable that New Intergovernmentalism points out that in the post-Maastricht era, not consensus orientated action oftentimes had problems with inconsistency,¹⁵⁴ a notion which traditionally describes EU Middle East action quite precisely. As the enforcement of labeling remains member state responsibility,¹⁵⁵ inconsistency and delays due to MS reluctance are clearly problematic.

3) European institutions, notably the Commission have not always promoted a European rule

Although the pro-states put forward a first request for labeling in 2013, the two High Representatives for Foreign Affairs and the Commission have not advanced a European agenda regarding the import of settlement goods.¹⁵⁶ This is notable as the matter lies in an area in which the EU not only has the full legislative competences, but where the controversial matter itself lies in the sole responsibility of the Commission.¹⁵⁷ At the same time, the political use of administrative regulation in foreign politics could have been considered as an upgrade of the role of the supranational institution in foreign politics. Yet, the traditional driver of integration, the Commission, has not been as offensive in labeling as some states desired. Scholars of New Intergovernmentalism explain this kind of reluctance as the aim of the Commission is not to engage in an environment it does not perceive as favorable to itself.¹⁵⁸ This might hint at the disastrous position the EU has maneuvered itself into in the Middle East and the perception of the Commission that the member states are too divided and committed to the issue that building a strong future role for the Commission would be probable. At the same time, while trade is an important part of the settlement economy, it remains absolutely marginal in the whole of Euro-

¹⁵³ See 8.2.

¹⁵⁴ See Bickerton et al. *supra* note 55, at 712.

¹⁵⁵ European Commission, *supra* note 2 at 3).

¹⁵⁶ See de la Baume, *supra* note 130.

¹⁵⁷ Note that the interpretative notice '*reflects the Commission's understanding about existing Union legislation*'. See European Commission, *supra* note 2 at (3).

¹⁵⁸ Bickerton, et al., *supra* note 55 at 712 f.

pean trade. Gordon & Pardo showed in this regard, concerning a prior guideline, that its financial and political benefit was outweighed by the administrative strain for the Commission.¹⁵⁹ Also in labeling, the enforcement of any measure against an opposed importer state as well as a clearly opposed exporter state, in a matter where the status under international is complicated and varying from product to product, would require great Commission commitment.

4) Labeling was handed over to a *de novo* body acting under a Council mandate

The Interpretative Notice falls in a number of policy fields which under the competence of multiple Directorate-Generals such as DG TRADE, ENTR and JUST¹⁶⁰. Publishing the IN was also via DG Trade.¹⁶¹ Corresponding to the Interpretative Notice being aimed at the member states and merely clarifying common practice within the Union, the regular style of conduct would thus have suggested appealing to the Commission directly and let it draft its administrative proposition in coordination of the different DGs concerned. Under this light, it appears strange that the member states initially approached High Representatives Ashton and later Mogherini and not the responsible commissioner. The member states in favor, supposedly due to the blur of low and high politics, appealed to the High Representative instead of the Commission itself. The High Representative can be understood as a *de novo* body in New Intergovernmentalism's sense, because it is not an institution, but rather holds a very issue-specific mandate largely defined by the Council in order to shape a foreign policy but to avoid '*mission creep*' by Union organs in '*high*' foreign politics.¹⁶² Although the real-world impact of the *Interpretative Notice* is marginal and even though presented differently, it is a highly political issue. This makes for a strong point in favor of New Intergovernmentalism. Obviously in this special case, the blurring of "high" and "low" politics has taken place, with an internal regulation on the taxation of a tiny fraction of mainly agricultural products had the potential for enormous political repercussions.

According to New Intergovernmentalism, to be able to make at least minimal advances on settlements, the member states induced the HR to watch over the matter and make sure that changes would not exceed what the states in favor had in mind. The HR, acting under Council mandate, but also as vice-president of the Commission featured as a guarantor of a minimal

¹⁵⁹ Gordon and Pardo, *supra* note 5(a) At, 418.

¹⁶⁰ Trade is exclusive competence of the Union. (Art.206f. TFEU) In regards to the content of Labeling also DG SANCO and DG AGRI hold competences as understood in Catherine Ashton, 'Full text of EU foreign policy chief's letter on settlement labeling' (8 July 2013), Available at <http://www.timesofisrael.com/full-text-of-eu-foreign-policy-chiefs-letter-on-settlement-labeling/>.

¹⁶¹ European Commission, *supra* note 2.

¹⁶² Bickerton, et al.,*supra* note 55.

consensus of scope and wording of the IN on the one hand. On the other hand, charging the HR with the task was used also as a signal that the member states were not willing to grant the political dimension of regulative policy to the Commission alone, but to keep it in reach instead, so that the Commission would be limited in exploring an own foreign policy.

New Intergovernmentalism argues that there are cases in which member states will try to push through this kind of blurred-category policy, knowing that they would not be able to get all of Council behind it in unanimity, but also fearing to hand the sovereignty over the issue over to the Commission entirely. The special position of the High representative, acting on both the mandate of the Council and being provided the position of the vice-president of the Commission, offers an opportunity to bypass this problem. The argument can be nicely connected to the two year pause, in which the High Representatives did not act on labeling, because in New Intergovernmentalist argumentation, the support for a move forward under the specific circumstances was not broad enough to push the measure through.

Another possible reading is that the coalition in favor wished for the EU to make a political statement¹⁶³ and therefore deliberately handed the issue over to the HR& EEAS, who not willing to do so, chose to hand it back to DG TRADE, framing it as a solely technical matter.

In any case, all four of new-intergovernmentalist hypotheses, except labeling as a product of consensus, were supported. Apparently the feature of decisions in Council, being taken by consensus with possible opt-outs proposed by New Intergovernmentalism as the central mechanism of post-Maastricht decision making was not pursued.¹⁶⁴

b) Playing the market

Jabko's original theory is further off in terms of proximity to the specific case. It suggests a process in which the Commission induces actors to support integration by using the functioning and proper development of the most important economic feature of the EU, the single market as its argument. The Commission functions as an ideational entrepreneur here, which facing different member state positions, enhances cohesion by equipping the market with a normative dimension. In the original argument, Jabko juxtaposes forces more critical of market integration with those supporting it. They are reconciled by the prospect that future developments are still sufficiently open in terms of actual outcome.¹⁶⁵ In labeling this translates to a perceived shared

¹⁶³ Which would fit the rather political wording of the foreign ministers letter. *Supra* note 3.

¹⁶⁴ Bickerton et al. *supra* note 55, at 704.

¹⁶⁵ Jabko, *supra* note 53 (a), at 32.

common interest in economic integration with Israel by all actors, which could be secured by excluding products capable of harming this prospect due to e.g. inner pressure, but do not alter the general path in EU-Israeli relations. This leaves open the chance of fulfillment of the goals of all players involved and establishes sufficient cohesion for the policy. In any case, it allows for continuous progress along lines which the EU has advanced before, but in which there was not enough cohesion for further European action anymore.

From this, the primacy of the Commission in driving integration and the use of “the market” as a talisman of political discourse, three hypotheses have been derived.

1) The European Commission took the initiative on Labeling

While the Interpretative Notice was issued by the Commission (DG TRADE) as the executive organ of the EU, it is not the case that the Commission was the driving force behind it.¹⁶⁶ Back in 2013, 13 member states had taken the initiative and called for a clarification on how the EU would apply its legal provisions.¹⁶⁷

The Interpretative Notice does not produce law. It merely informs member states in what way the Commission will from now on interpret the existing treaties.¹⁶⁸ Thus action by the Commission was in principle possible ever since the treaties were drafted. Unlike in other cases, where the Commission is very much dependent to be provided a mandate by Council, in terms of its internal affairs, it did not require any formal Council support in this case.

Although no mandate was needed, both High Representatives Ashton and Mogherini were not necessarily persuasive on labeling. While Ashton remained inactive on the issue in response to John Kerry’s Peace efforts in 2013,¹⁶⁹ Mogherini is said to have belated the issue by some weeks after having been brought up by the 16 due to the violence in Jerusalem and the West Bank in Fall 2015.¹⁷⁰ While the HR is more closely attached to the Council, also the Commission itself did not take the chances to move ahead before.

¹⁶⁶ In line with their reluctance to act towards the guideline prohibiting allocation of funds to Israeli entities in the OPT. Concerning this see Gordon & Pardo, *supra* note 5 (a), at 417.

¹⁶⁷ Ravid, *supra* note 136.

¹⁶⁸ ‘this notice reflects the Commission’s understanding of the relevant union legislation’ European Commission, *supra* note 2, at (3).

¹⁶⁹ Lovatt & Toaldo, *supra* note 14, at 6. Also note that Ashton did not answer the plea of a group of former EU leaders for sanctions concerning settlement construction in December 2010. See Lazarou et al., *supra* note 40 at 186.

¹⁷⁰ Chadwick & De la Baume, *supra* note 118.

On November 3rd 2015, the Commission officially stated that “*work (on the IN) is ongoing and it is not possible at this stage to give an exact time frame as to when it will be presented*”, in-officially EU officials are quoted to know it had been ready about a months earlier and that Commission could not delay the issue any longer since the Foreign Affairs Council (FAC) met on November 16th with the clear objective to not want to deal with the issue again.¹⁷¹

The driving forces behind this move on differentiation are thus to be considered the member states in favor and to a large degree the European Parliament, but not the Commission, which delayed it as long as possible. There should yet be a distinction made between the tactical considerations of the HR and the Commission in issuing the IN and the practical willingness of the Commission to enforce it, as it has for example stressed its role as guardian of the treaties in the Interpretative Notice itself.¹⁷²

2) Market principles, the needs of “the market”, and consumer’s choice dominated to political framing of those in favor of labeling

Jabko’s model focusses very much on the role of the Commission. Apparently the Commission has, however, been a slow actor before not taking measures on its own, even after the request to do so was made explicit by 13 states in 2013. As the Commission has not played the central role Jabko suggests, I adjust the theory in the sense that the notion of the market is kept, but fit to match the specific actor context better. Jabko’s argument partly holds, because the tone in which the Interpretative Notice, the accompanying fact sheet and EU official’s statements were kept, minimized the political features of the measure and instead couched it in legal and economic necessities.

This has been done very explicitly to make sure that no political statement could be derived from labeling. Especially the *Fact Sheet* which the EEAS published parallel to the *Interpretative Notice* stressed the unpolitical nature of *the Interpretative Notice*. In line with this, Faarborg-Andersen, European ambassador to Israel released a video recorded in his office when the news media started to report on the issue on November 11th, stressing that the Interpretative Notice by no means should be interpreted as a political move against Israel.¹⁷³

¹⁷¹ Maia de la Baume, *supra* note 119.

¹⁷² European Commission, *supra* note 2, at 3).

¹⁷³ EU Ambassador to Israel: “*Any attempt to relate this to the Peace process or the Israeli-Palestinian issue is misguided.*” <https://www.youtube.com/watch?v=BH0BfEEMeNA> Last Access: 15 June 2016; similarly Vice President of the Commission Dombrovskis: “*a technical issue, not a political stance.*” in de la Baume *supra* note 119.

Instead of direct political statements, “a demand for clarity from consumers, economic operators, and national authorities about existing Union legislation on origin information of products from Israeli-occupied territories”¹⁷⁴ was introduced. Consumer choice and consistency of product standards (in the form of information on origin) in the internal market will serve as representing “the market” further on.

According to the Interpretative Notice (IN), the consumer is to be enabled to make “an informed transactional decision”.¹⁷⁵ The consumer argument is taken up in another five of the twelve paragraphs of the Interpretative Notice and another seven times in the accompanying Fact Sheet, which is about four pages in volume.¹⁷⁶ The claim that only *existing* Union legislation is clarified, is mentioned in five IN paragraphs and six times in the Fact Sheet.¹⁷⁷ Reference to *International Law* is made in three IN paragraphs¹⁷⁸, while the Fact Sheet does not address International Law at all. Notably the internal dimension of the IN is stressed and no political statement aimed at Israel made. Three notions deserve special attention, as they show that labeling was not framed as a normative endeavor: consumers, existing European law and international law.

Consumers: When labeling was optional for the member states, the notion of consumer choice had already been central to the British argument in introducing it on its own market.¹⁷⁹ It was also stressed at the two major occasions of discussion on the European level, the prior advance by the 13 in 2013, and the advance by the 16 in 2015.¹⁸⁰ However then it was added as an additional argument, with the clear primary objective being the threat settlements to peace. A similar wording had arguably positioned the EU more clearly as a normative power.

Existing Law: Even less of a political statement that could be traced back to the EU, the necessity to apply *existing* EU law, which in this case includes treaties with Israel, was stressed as the second big feature of the unpolitical nature of *labeling* in the IN and the Fact Sheet. The argument aims at the need of consistent application of law in the market. However, the apparent

¹⁷⁴ European Commission, *supra* note 2, at 2).

¹⁷⁵ *Ibid* at (11).

¹⁷⁶ *Ibid.* 5, 6, 7, 10 & 11.

¹⁷⁷ *Ibid.* 2, 3, 4, 5 & 12.

¹⁷⁸ *Ibid.* 1, 2 & 7.

¹⁷⁹ Black I. ‘UK issues new guidance on labelling of food from illegal West Bank settlements’, *The Guardian* (London: 10 December 2009) available at ‘<https://www.theguardian.com/world/2009/dec/10/guidance-labelling-food-israeli-settlements>’.

¹⁸⁰ EU Foreign Ministers, *supra* note 3.; *supra* note 59.

confusion of MS regarding the regulations that the EEAS mentioned in the Fact Sheet played no role in the 16's appeal to Mogherini.¹⁸¹

International Law: It was already shown, that the consumers' informed choice and the correct functioning of the legal dimension of imports dominated over the application of International Law, the feature identified as key when European norms and settlements were concerned. The EU merely used International Law to establish a legal basis for its action, not to equip it with normative, political leverage. Notably the settlements are legally problematic to the EU in the first place, because the Association agreement with the PA overlaps in jurisdiction and was decided to be the one applicable to the occupied territories by the ECJ, not because of the occupation status as such.¹⁸² The gap to the European norms is completely ignored in labeling.

These notions are interesting as they deviate from how the EU constructs itself as a normative power which were identified in the literature section.¹⁸³ In the past, the Council, Parliament and agencies like the European EEAS office in East Jerusalem had been very explicit in their condemnation of the settlement policy. Severe criticism of Israeli settlement policy is common among the EU institutions and member states, but never in combination with substantial political consequences. Here however, the move to make settlements an object of the own policy is not supported by pointing at on the normative dimension of International Law and agreements, but rather at its legal bindingness concerning internal regulations and consumer/market necessities. Apparently member states did not intend or did not see ways to bring about labeling as a political statement. While the wording of the initiating letter by the member states, chose a more political tone,¹⁸⁴ all EU officials, the EU ambassador to Israel, as well as officials of the member state in favor, ex post continuously stressed that no political statement should be derived from labeling.¹⁸⁵ The very political content of the parliament resolution from the beginning of September and especially paragraph 9 which implied differentiation as a larger process at work was completely ignored.¹⁸⁶ This point should be considered since the actual economic importance

¹⁸¹ EU Foreign Ministers, *supra* note 3.

¹⁸² Gordon & Pardo, *supra* note 5 (b).

¹⁸³ See chapter 2.2.1.

¹⁸⁴ Note EU Foreign Ministers, *supra* note 3.

¹⁸⁵ See footnote 173.

¹⁸⁶ European Parliament, 'European Parliament resolution of 10 September 2015 on the EU's role in the Middle East peace process' 2015/2685 (Luxembourg: 10 September 2015) at 9), Available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0318+0+DOC+XML+V0//EN>.

of labeling for the Israeli economy will be marginal anyway with settlement products representing only approx. 1% of Israeli trade with the EU, according to the Fact Sheet.¹⁸⁷ Interestingly the role of the normative player was diffused to the European consumers instead of the EU, while already making clear why settlement products could be considered problematic by consumers reveals a latent European awareness of the problem. This tactic supposedly aims at taking the EU out of the fire line and let market mechanisms deal with the problem. It corresponds however with Jabko's notion of moving forward in a way, that leaves the prospect of success open for all stakeholders involved, further and stricter differentiation on the part of the member states in favor, and the prospect of preserving the continuous integration of Israel on the side of those against labeling.

3) Coalition building was pursued stressing "the market"

While in the official representation the before-mentioned principles were central, the camps of member states pro and contra labeling were not constructed using this reasoning, but rather represent the political standpoint that the respective states have held before, with some traditionally being associated to be more pro-Arab (mostly Mediterranean and Scandinavian MS) or more pro-Israel (mostly Central and Eastern Europe). This is in line e.g. with the position the member states took in the 2012 vote on Palestinian non-member observer-statehood, where out of the opposition camp, only Greece and Cyprus¹⁸⁸ had voted in favor of Palestine.¹⁸⁹ This shows that the lines of support and opposition are clearly political and not between countries that "*have decided to wait for guidance at EU level*"¹⁹⁰ and those who perceived that the regulation was sufficiently clear. In Conclusion, all of the Jabko hypotheses were refuted while the notion of couching a politically controversial issue in economic and legal necessities clearly holds for labeling.

8.4.Subconclusion

Having tested both theories concerning their applicability to labeling, New Intergovernmentalism has predicted the procedural dimension of labeling quite precisely: active member states charging a body close to their supervision with the demand for clarification in an area that is traditionally low politics, but can have severe repercussions in high politics. This was combined with the reluctance of the HR and the Commission to engage deeper into a political field where consistent support of a clear political agenda from the member states is improbable

¹⁸⁷ EEAS, *supra* note 42, at 4.

¹⁸⁸ Both under different governments.

¹⁸⁹ See results: <https://pbs.twimg.com/media/A851fHTCMAIW8Xg.jpg:large> 13 June 2016.

¹⁹⁰ EEAS, *supra* note 42, at 2.

and where prior European action has not left many fruitful strategic tools left for action. Jabko's theory stressed the role of the Commission which was refuted, but introduced the tactic of raising support, or in this case calm opposition by pointing at the common interest in the correct functioning of the market. The *Interpretative Notice* was drafted because some member states governments apparently perceived it to be in their wider interest and pushed for it. The normative or political dimension of labeling was however widely dismissed in the Interpretative Notice and the Fact Sheet. While traditionally declarative European positions were not supported by action in line, in the case of labeling it is the other way round.

The move to approach the "European Agency" in person of the High Commissioner instead of the Commission directly, ensured further action stays under closer supervision of the Council. After the formulation stressed the market card, the opponents of the new rules were with no option to confront the decision, but instead provided with ways to justify the move before their national constituencies, pointing at unpolitical legal necessities for the correct functioning of the market and without great possibilities of political action in a diffuse bureaucratic process.

Interestingly no pooled appeal by states opposing labeling has been raised against the Commission provisions. Also it is notable, that a number of countries have not joined the coalition camp, but also have not made their opposition heard. While it is true that most of the economic weight of the EU is on the side favoring labeling, a clear opposition of twelve countries would have been able to engage into a deeper argument or at least bring labeling back up in the multiple forums of the Council. Apparently the governments feared to make a common argument.

Labeling was not on the Foreign Affairs Council schedule of the November 2015 meeting, happening just days after the issuing of the Interpretative Notice at a time when relations with Israel were in a terrible shape. This can be read in a way that the governments' in opposition interest lay less in actually avoiding for labeling to be introduced, but rather acknowledged a European necessity to install some kind of new rule, while the criticism was already focused on the Commission as the central player in communication of labeling and the European parliament, which had called for it in its September 10 resolution. As of June 2016 only Germany has been identified to actually have addressed the High Representative to alter the adopted Commission provisions.

Another point is that the Council has framed the overall situation very much in favor of governments. The parliament was kept out of the process and its position, which was much

more politically explicit, largely ignored and not referred to. The Commission was induced to act in a way which allowed for all possible criticism to be diffused to the Union and its need to find a common framework on how to deal with settlement products. All deliberative processes and most importantly the definition of what the European set of norms concerning the Middle East is, were left in the hands of governments.

A point in labeling seems to suggest that here the member states governments were less concerned about the normative consistency in terms of what the EU should do than they were about what should not be done. The High Representative was induced a position to make sure that the Union would not shape a provision which exceeded what the member states had in mind.

Also the strategy of the opposition camp matches this notion as no alternatives for labeling, let out a political or normative argument was proposed to positively shape the European norm in the opposition's favor.

This too allows for EU normative actorness to be handled with precaution. Apparently a lack of unity shapes the deliberative processes in a way that is not in favor of a resolute European politics along common norms, but rather one, where the interests of governments in this kind of action is met by an interest of others aiming to limit the substantial output of the normative approach and make sure that it does not go out of their hands.

Yet, apparently a lack of unity within the Union has once again, harmed the development of a policy framed in a rigorous normative way. The outcome seems to be less the result of a newly evolved European norm and communicated in a determined way, but rather another awkward EU Middle East policy in which diverging interests and a lack of unity hindered a solid outcome.

9. How does labeling relate to the conflict between normative power aspirations and interest?

To get a better picture of what labeling means for the EU as a normative power, it needs to be applied to the conflict identified in chapter 7. It is central to understand that the issue in differentiation for the EU is its own involvement in policies that run counter to its norms. The EU would not necessarily become a normative power by coercing Israel to change its policy, something a civilian power might well do when it considers it to be in its interest. Rather it is that the EU has until recently not been able to differentiate *itself* from the settlements. That is a problem hindering the EU to be associated with normative integrity at least in the local context. Apparently some member states saw the need to finally do so. The chapter will also try to understand what reasons caused the fierce rhetoric of the opposition camp not being acted up to in the form of any kind of joint political action against the Interpretative Notice.

When the notion of normative action as action that does not (immediately/directly) pay-off is applied, one might wonder why member states have advanced on labeling. States have different interests, which stem from internal pressures and external policy goals. Ideally we expect that either there was a prior interest in labeling, or that the specific nature of labeling and the way it was drafted, was brought it in line with these interests of the member states governments. To understand how this was done, a distinction between an internal and external dimension of normative power is helpful.¹⁹¹

The internal dimension captures the use of labeling to construct the EU as a normative actor towards its internal stakeholders. Acting in a normative way can serve to enhance the EU's own (or separate stakeholders) identity and solidify the common identity of the member states.¹⁹²

The external dimension refers to the power in normative power, namely whether the action taken in a normative way actually influences the decisions of other players, be it through adherence of other states to EU norms or the shaping of norms themselves.

The internal dimension of normative power can collide with hard interests, when e.g. governments are challenged by normative stakeholder expectations. In regards to labeling this has

¹⁹¹ This distinction is very close to Musu's distinction between endogenous and exogenous pressures on European foreign policy, which she understands as the difference of external pressures and internal interests. Musu, *supra* note 24, at 84.

¹⁹² See Gordon and Pardo, *supra* note 5 (b), at 90.

been the case most prominently in Britain, where the Boycott, Divestment and Sanctions Movement (BDS) has gained momentum over the last years.¹⁹³

Externally again, the economy can be a factor contesting normative power. There is an economic interest to keep economic integration vibrant and even deepen the integration of the Israeli economy, including settlements, into the European market. The risk in doing so irrespective of settlements, lies in the possibility of losing the integrity of a normative actor within the international community.

Of course in the end the two dimensions become blurred again if for example the internal stakeholder preferences and capabilities become powerful enough as to interfere in the economic relations, such as in a real world economic effect of a civil society boycott.

9.1. Legitimation

The way out of the dilemma for the EU was to sidestep the conflict by bringing normative action in line with interests. The EU has done so internally in Labeling by, for example, providing the civil society in Europe with ways to influence settlement politics through consumption. Before labeling, distinction between Israeli and settlement goods was nearly impossible for European consumers not wanting to follow the BDS logic, which supports a complete boycott of all Israeli products and is arguably awkward for many Europeans, always carrying with it a sense of radicalism and memories about dark ages in European history. This in turn provides trade with the Israeli economy in general with legitimacy and might actually enhance it once labeled products become a more common sight within Europe, stripping other Israeli products from the problematic image they have had in the past due to settlements.¹⁹⁴ Labeling suggests that the economies of Israel proper and its settlements are two different things, which they actually are not,¹⁹⁵ while the small number of imports affected¹⁹⁶ suggests a lower importance of settlement economics in the overall Israeli economy than it actually has.¹⁹⁷ As a result, the EU can bolster its self-identification and with a minimum impact on the Israeli practices. Gordon and Pardo have made the same argument for prior differentiation attempts.¹⁹⁸ Some scholars have thus called differentiation in general a step friendly to further economic

¹⁹³ For recent developments see <http://www.independent.co.uk/news/uk/politics/boycott-israel-ban-bds-illegal-british-government-tories-palestine-procurement-a6879421.html>.

¹⁹⁴ Gordon and Pardo *supra* note 5 (b) at 387.

¹⁹⁵ Gordon and Pardo, *supra* note 5 (a) at 422.

¹⁹⁶ The Fact Sheet offers a number of less than 1% of Israel trade with the EU being affected.

¹⁹⁷ FIDH, *supra* note 14 at 20.

¹⁹⁸ Gordon & Pardo, *supra* note 5 (b) at 87.

integration.¹⁹⁹ In the internal dimension, this labeling way is brought in line with the political interest of a number of member state governments.²⁰⁰

Insulating economic integration from settlements

When looking at the external dimension separately, the splits between at times harsh declarative criticism of European settlement policy and the lack of linkage with economic integration set out in chapter 6 needs to be analyzed in regard to labeling. Interestingly here, the first EU approach which can be considered to actually have at least partly success to exclude settlement products from tariff benefits, completely lacks the determined tone usually applied by the Council and other European players when the Middle East conflict is concerned. While this might be in line with the important role of the rule of law in its normative profile, the EU due to inner division did not choose to support its argument with the same kind of political statement. While this is less surprising in the case of the IN itself, which has some legal character, the accompanying Fact Sheet has been used to reject the possibility of reading labeling a political decision even more. Apparently internal necessities have hindered the further development of the EU's normative profile through normative claims on the international stage in this case. The external dimension of normative power was thus erased by de-politicization and internal aiming. Israel is not likely to change its practices. However those member state governments who do not support labeling because they fear criticism from their inside in response to action "against" the state of Israel are hard to face a credible antisemitism-argument or even held responsible. This is a key feature to understand why even the governments opposing labeling have not acted to repeal or soften the regulations flowing from the Interpretative Notice.

9.2.Subconclusion

Labeling, in the way it was drafted, answers to immediate (and latent) inner pressures for disintegration of the settlements in a way that very much insulates it from negative criticism based on its external repercussions. It serves the governments in favor to make a visible step perceived to enhance normative action and at the same time does not endanger economic prosperity or being held accountable for singling out Israel. The conflict between normative action and interest is thus solved for the part of the European governments. This however shows that on the level of governments, no further normative statements are to be derived from labeling.

¹⁹⁹ Ibid; Gordon and Pardo, *supra* note 5 (a); Plessix, *supra* note 15.

²⁰⁰ Musu showed similar processes for EU Middle East policies in general in how 'congruence' was achieved. See Musu, *supra* note 24 at 102.

10. What are possible challenges to the impact of labeling?

While tactical and strategic reasons for the action of certain players have been elaborated in Chapter 8, this chapter aims at understanding where we should place labeling in the bigger context of EU Middle East politics, namely whether it is capable of breaking the patterns of inconsistency and in-effectivity in prior EU involvement, which have for so long harmed the successful development of a normative power EU. As prior practices, especially in the field of differentiation have failed, or only gradually or incompletely applied the practical implications of labeling should too be examined in that light. It is thus asks whether the Interpretative Notice on labeling makes a substantial contribution to differentiation and whether in turn differentiation moves EU policy closer to its norms.

In the literature it was established that the goal that the EU continues to pursue is a peace agreement between the PLO and the State of Israel along the Oslo Peace accords, the Roadmap etc. These treaties aim at the establishment of a Palestinian state living peacefully alongside Israel. The two major territories this state is supposed to be established on are the Gaza Strip and the West Bank (including East Jerusalem). This aim is thought by all major European stakeholders to be severely endangered by the continued settlement and bantustanization of the West Bank.²⁰¹ The literature has pointed out that over the last years a consensus emerged among the Israeli public, on that the proliferation of settlements comes without incurring any cost associated with it, as the EU has been reluctant to establish such a cost.²⁰² The West Bank and East Jerusalem serve as territories of economic expansion while the costs a state would traditionally (and under international law concerning situations of occupation) have to provide for e.g. infrastructure, health and education for the population is taken care of by the international community, most importantly the EU and its member states. Linking the norms and future aims, a normative power EU would not foster settlement proliferation.

To make settlements less profitable and as a logic consequence of economic integration, the EU has aimed, although widely unsuccessful to reassert the Green Line as the designated border of a future Palestinian state. As economic production is more accessible to the EU due to import regulation, than e.g. settlement construction, the EU has since about 20 years tried to find ways

²⁰¹ See exemplary Council Conclusion 17 November 2014, *supra* note 42, at (2.) and Anderson *supra* note 41, for the working group of the European Parliament.

²⁰² Lovatt and Toaldo, *supra* note 14 at 2.

to exclude settlement products from trade benefits. Prior Council conclusions showed that in principle the member states see differentiation as a legitimate act.²⁰³

The application of the consumer argument implicitly points at the same direction. On paper this had already been the legal situation. However before *labeling*, the declaration of the origin of goods had mainly been in the sole responsibility of the producers and the State of Israel. Even after rules were specified for the first time in 2005, producers found ways to evade virtually all cost associated with the exclusion from customs benefits, so the legal situation was without consequences for economic activity in the occupied territories. Consumers were not in the position to make informed choices, because even tolled settlement products were still being labeled “*Made in Israel*”.

10.1. Challenges

Confronted with these problems, *labeling* initially set out to ensure the following criteria for a sufficient rule on settlement products, allowing for differentiation. These are not completely distinct from each other, but rather express different concerns of the coalition in favor:

Explicit goals of labeling:²⁰⁴

- European and International Law are enforced
- Clarification for the member states
- Enabling consumers’ informed choice
- Clarity on the origin of goods is established
- All settlement products on the European markets are labeled

Implicit goal of labeling:

- Political statement against settlements²⁰⁵

Long term goals of differentiation:

- Economic activity in settlements is not fostered by the EU-Israel customs benefits
- Re-assertion of the Green Line
- Two-State-Solution

²⁰³ See footnote 43.

²⁰⁴ EU Foreign Ministers, *supra* note 4.

²⁰⁵ Although the political notion disappeared in the Interpretative Notice, the coalition pushing for labeling had initially included it. EU Foreign Minister *supra* note 4.

10.2. *European and International Law are enforced*

The European Council since 2012 repeatedly called to “fully and effectively implement existing EU legislation and the bilateral agreements to settlement products.”²⁰⁶ The legal basis for differentiation had existed for a long time reaching back to the EU-Israeli Association Agreement.²⁰⁷ Differentiation was however very differently enacted in different policy fields. Labeling aimed at an enforcement of the existing provisions and was framed as being as a legal necessity of integration.²⁰⁸ On paper, labeling enforces the prior provisions concerning what the EU considers to be part of the state of Israel in regards to the products labeled.

10.3. *Clarification for the member states*

The way the Commission has framed labeling, the *Interpretative Notice* has resolved the problems it aimed to address. The member states who have “*decided to wait for guidance at EU level*”²⁰⁹ have been provided with a clear guideline in how to proceed with imports from Israeli settlements.

10.4. *Enabling consumers’ informed choice*

The central argument that the Commission made was the informed choice of the consumer to buy or not buy a product supposedly produced in violation of International Law. To make sure consumers can make this informed decision, mainly two features are important: that a) clarity on settlement products will be established before they are labeled and that b) all products coming from settlements will be labeled.

10.4.1. *Clarity on the origin of goods is established*

In 2005 the EU decided to implement the Rules of origin clause (ROO) from the 2000 EU-Israeli Association Agreement to goods produced in the *occupied territories*.²¹⁰ This marked a first shift in EU-Israeli trade policy as before all products from settlements had entered the European market as goods qualifying for “*preferential treatment*” eligible for reduced tariffs.²¹¹

However, before products enter the market, the origin of a product needs to be established. EU member states administrations have run into problems here several times, because

²⁰⁶ See footnote 43.

²⁰⁷ For legal precedent see ECJ, *Brita GmbH v. Hauptzollamt Hamburg-Hafen*. 2010, ECJ *supra* note 61; *Moerenhout*, *supra* note 5, 19ff.

²⁰⁸ See the Sub-conclusion of chapter 8.

²⁰⁹ EEAS, *supra* note 42 at 2.

²¹⁰ Gordon & Pardo, *supra* note 5 (b) at 74.

²¹¹ *Ibid* at 76.

other than often times suggested, there is no administrative differentiation of the settlement economy from the rest of Israel. The state considers the inhabitants of the settlements its citizens and makes no distinction between settlement and Israel proper products.²¹² Also no significant differences in production lines exist. The settlement and the regular economy are intermixed in a way that determining the origin of a product is often times hard.²¹³ An agricultural product may go back and forth into and outside of a settlement for washing, packaging and shipping before European customs officials examine it for the first time. While the international trade regime has come about ways to determine the origin of a product, these rules usually aim at trade deflection, where importers ship goods through third countries to profit from customs benefits, not to clarify the exact spot of production within one economic area, such as Israel and its settlements.²¹⁴ Other than most cases in the international realm, the EU and Israel do not argue about where products are from, but rather about the status of these territories.²¹⁵ Furthermore clear-cut agreed upon borders as usually the case in the International realm do not exist here.²¹⁶ It is one of the shortcomings of European Middle East politics that the 1995 Association Agreement did not offer a specific description what constitutes “*the territory of the state of Israel*”.²¹⁷ The limited applicability of the rules of origin (ROO) clause made it possible to exclude settlement goods based on settlement/Israel proper postal codes. ROO were thus often-times easily evaded by using an outside settlement office when declaring goods, because EFTA regulations do not exclude products which contain materials obtained from the OPT from preferential treatment.²¹⁸

Even when the regulations have been applied correctly, in the European market, consumers were limited in their decision as the fully tolled product was still labeled “*Made in Israel*”.²¹⁹ The Interpretative Notice addressed the problem of origin and closing the hole by ruling out misleading information.²²⁰

²¹² Ibid.

²¹³ For further illustration see FIDH, *supra* note 14 at 20; also Lovatt and Toaldo *supra* note 14 pages 3-5.

²¹⁴ Gordon & Pardo, *supra* note 5 (b) at 77.

²¹⁵ For the respective view on the status of the West Bank, see Lazarou et al., *supra* note 40 at 185.

²¹⁶ Ibid. at.

²¹⁷ European Communities, ‘Euro-Mediterranean Agreement- establishing an Association between the European Communities and their Member States of the one part, and the State of Israel on the other part’ L 147/3 2000 *Official Journal of the European Communities*.

²¹⁸ Lovatt & Toaldo, *supra* note 14 at 5.

²¹⁹ For background on the American practice see <http://www.jpost.com/Israel-News/US-EU-product-labeling-is-not-a-boycott-of-Israel-432928>.

²²⁰ European Commission, *supra* note 2 at 6)&7).

In the Fact Sheet, the enduring problem of defining the origin of the product comes to show as the Commission suggests that, although by today about 7% of the population of Israel is based in a settlement in the 1967 territories²²¹, less than 1% of total trade is estimated to be affected.²²² Using World Bank and OECD Data, settlement-EU trade can be approximated to account for at least 2% of Israel-EU trade and that the share of settlements in the overall Israeli economy is actually closer to 4%.²²³ Thus rules of origin ROO can be expected to not capture a considerable economic activity in the OPT, keeping much of it profitable as before.

10.4.2. All settlement products are labeled
(in a way that is accessible for
consumers)

The Fact Sheet states e.g. pre-packaged foodstuffs and the majority of industrial products are exempt from labeling in the sense that labeling will remain voluntary for them as long as the customer is not misled.²²⁴ Thus some settlement products will still reach the European market under “preferential treatment” status. We lack statistics of how the settlement economy is made up and even how much it contributed to the Israeli economy. Also the volume of settlement imports in the EU is only estimated by the Commission. The Commission did not explicitly state that products where labeling is voluntary have been included in its estimate and that the actual number of settlement exports might actually be higher.²²⁵ An estimate for how much industrial products account for, is therefore also not possible.

In contrast, for those products which *are* being labeled correctly, the Interpretative Notice gives very clear instructions on how the origin of a product is to be formulated, which also rule out Palestinian products being accidentally mistaken for settlement products by consumers.²²⁶ This is problematic in the American labeling practice, which has on paper in existence since the 1990s but does not distinguish between regular Palestinian and settlement products originating from the Palestinian Territories.²²⁷

²²¹ Estimated number from several sources: Israel proper: 8 5000 000 http://www.auswaertiges-amt.de/DE/Aussenpolitik/Laender/Laenderinfos/01-Nodes_Uebersichtsseiten/Israel_node.html Golan Heights 20 000: <http://www.middleeasteye.net/news/golan-heights-residents-fear-creeping-israeli-presence-587458799> accessed 21.05.2016; West Bank (excluding East Jerusalem): 400 000; East Jerusalem: 300 000/ 350 000; <http://www.jpost.com/National-News/Housing-minister-sees-50-percent-more-settlers-in-West-Bank-by-2019-352501>.

²²² EEAS, *supra* note 42 at 4.

²²³ FIDH, *supra* note 14 at 20.

²²⁴ EEAS, *supra* note 42 at 2.

²²⁵ *Id.* at.

²²⁶ See paragraphs 7-10) if the Interpretative Notice, European Commission *supra* note 2.

²²⁷ <http://www.timesofisrael.com/us-restates-labeling-rules-on-israeli-products-from-west-bank/>; The Golan Heights are not part of the American restrictions.

10.5. Correct information is provided

The process of applying labeling includes at least four different players: The exporting settlement company, the importing company, the State of Israel and the member state through which a product enters and the European Commission.

The problems of using incorrect postal codes on products by Israeli producers etc. remain. As long as the state of Israel does not intervene or member states do not carefully investigate the true origin of a product. Whether this has actually changed with labeling is merely a question of legal practice not to be answered here.

10.6. Labeling is enforced in the EU

In terms of the enforcement of labeling in the EU, one should note that it will be entirely in the hands of the member states to take the necessary steps to ensure that none of the products mentioned in the IN which originated from the West Bank is sold labelled incorrectly and does not profit from preferential treatment. However, the definition of what is misleading and also fixing “*effective, proportionate and dissuasive punishments*” is also a member state competence.²²⁸ It can thus be expected that member states not wanting to enforce labeling can find ways to at least delete it for some time, or make the process of enforcement very tedious. A UK television report showed in 2007 that settlement products were oftentimes not systematically subject to customs duties.²²⁹ While Cecilia Malmström, a liberal from Sweden is supposedly not the first Commissioner to be expected to go easy on violations, holding all states, especially those openly opposed to labeling accountable to the practice and possibly applying infringement proceedings will take time. In the context of settlements, according to the EU’s own institutions, a peace agreement along its traditionally argued lines is on the brink of becoming impossible due to settlements. It is remarkable that it has taken the European Union 20 years from the signing of the Association Agreement to the first visible exclusion of a number of settlement products from the European market.

10.7. Political statement against settlement

Lovatt & Toaldo have argued that there has grown an Israeli consensus that settlements can be expanded without incurring tangible costs. Accordingly ‘*making the cost of choosing between the proliferation of settlements over the ability to conduct normal relations with Europe should be made clear to Israelis.*’²³⁰ Although this is not the explicit goal of European

²²⁸ European Commission, *supra* note 2, 3).

²²⁹ Plessix, *supra* note 15 at 110.

²³⁰ Lovatt & Toaldo, *supra* note 15 at 9.

policy at the moment, I will use the approach, because it combines notions of civilian and normative power and leaves open the door for an analysis of the bigger picture of what labeling will do.

The latent goal behind differentiation was to put Israel into the position of having to make a choice either for the proliferation of settlements, or normal relations with Europe.²³¹ A point has been raised answering chapter 6 that an awkward linkage has been put into place in recent years in which the conditionality was the gradual application of European legal norms, not the gradual exclusion from the integration process. As this development stands, a look to how labeling related to it should not be missed. Chapter 8 has shown that the political dimension of labeling has been eradicated in the way the IN was presented. The problematic aspect when looking at labeling, is that the EU has not enforced even this light linkage of settlements and integration but rather presented labeling as an issue which stands outside of the conflict and is explicitly not part of a larger process.²³²

10.8. *Economic activity in settlements is not fostered by European custom benefits*

While for the products where labeling is mandatory and enforced, European trade benefits are not eligible anymore. European trade in general will still be possible, as the products will still reach the market.

10.9. *Reassertion of the Green Line*

The problematic issue to use labeling to reassert the green line is that a regular economic tool is used to reassert something that economically is not there, namely separate economies in settlements and Israel proper.²³³ The state of Israel reimburses for losses due to trade restrictions conducted in the past, for settlement products being denied ‘*preferential treatment*’ on the European market under the title “*national compensation mechanism*”.²³⁴ More effective trade deflection has shrunk the volume of the mechanism from \$ 8 million in 2006 to \$ 1,9 million in 2014.²³⁵ The numbers show how little of the settlement economy is effected by the European

²³¹ Ibid.

²³² Anders Faarborg-Andersen (EU envoy to Israel): “*This is a small technical addition to something that has existed for a very long time, the trade facilitation between products coming from Israel proper, within its 1967 lines, and products coming from beyond the Green Line, but I want to emphasize strongly that this is not a boycott,*” (...) “*These products are still welcome, they just need to have the correct indication of origin on them.*” in M. Lidman, ‘EU envoy insists settlement labeling purely ‘technical’, *The Jerusalem Post*, (Jerusalem 11 November 2015).

²³³ Gordon & Pardo, *supra* note 5 (a) at 422.

²³⁴ Gordon & Pardo, *supra* note 5 (b) at 82.

²³⁵ Ibid. at, 84.

rules and that the State itself makes sure that even if external players enforce differentiation, economic activity in the OPT will not be harmed.

10.10. *Two-State-Solution*

The EU has built much of its normative power on support for a Two-state-solution. While this solution seems farther away today, than it probably ever has, the time horizon for such a limited step such as labeling settlement products as pointed out before, will render any contribution towards such an outcome impossible. The EU itself has for years stressed, that specific settlement activities endanger the establishment of two states and the chance to do so seems indeed to have been surpassed by the facts on the ground.

10.11. *Subconclusion*

Labeling is perceived as the next step in enforcing the provisions flowing from prior agreements in the integration process in the spirit of the BRITA judgement. If correctly applied, it will serve its goal to inform consumers of the origin of a good. After the notion of labeling carrying a normative content was refuted, the question was whether yet the EU would come up with a policy that at least on the ground differentiated Europe from Israeli settlements. The actual application of labeling however remains completely in the hands of the member states and involves a great deal of cooperation with external actors before a good arrives on the market. The time horizon for enforcing labeling and the already established ways to deflect it, as well as the Israeli policy of reimbursing settlement businesses, make it a slow tool for the economic reassertion of the Green Line. Combined with the fact that no political conditionality was implied at its issue it is thus questionable whether labeling will be able to make a significant direct contribution to a stop of further settlement construction in the West Bank in the future. Once again a European policy in the Middle East carries great chances of in-effectivity. Such in-effectivity could lead to a fail of the EU to differentiate from settlements and by doing so, fall back into the prior patterns of inconsistency.

10.12. *Sidestepping substantial change*

Gordon and Pardo have pointed at the internal dimension of normative power, which includes its usability to bolster European self-identification as a normative power.²³⁶ The EU has taken a step that if enforced over time will be visible to the European consumers and can thus serve as a tool for self-identification with the European norms established in SQ b), granting the European project legitimacy.

²³⁶ Ibid. at, 90.

As shown in the prior section, the actual direct effect of labeling will remain marginal if applied as has been done with the ROO regulations before. The question is, whether in opposition to a practice such as settlement proliferation, which violates all norms of international conduct and is largely funded and planned by a government which is also willing to reimburse all losses associated with the European restriction, a more forceful approach would be needed if the EU were to contribute to a substantial change.

Substantial change on the ground would have considered to make a serious commitment to reasserting the Green Line, with the prospects of a TSS fading at least in so far as the deprivation of the local population and disenfranchise of the Palestinian economy by the current nature of the occupation are lifted.

Major conflicts internally and externally have been avoided, which surely would have arisen if an agenda beyond labeling would have been on the table. Yet, one needs to ask which options are left for a normative player Europe in the Middle East after having ruled out more rigorous steps such as exclusion of goods from the European market. A halt in further integration would not fit the framing of the Interpretative Notice, because it was not set up in a way that implies conditionality. Even if the Interpretative Notice had been formulated in a more political way, there remains the problem that such a conditionality would have been enforced by the gradual application of what is already in the Treaties with Israel and International Law, rather than by an explicit and specific European legal norm.

The lack of a common voice in European foreign affairs been repeatedly identified as a source of in-effectivity. The literature has pointed out that the EU has not severely enough rejected the Israeli claims of antisemitism in its policy and by straightforwardly bringing across the political reasons for the gradual exclusion of settlements from European programs and trade benefits. Labeling fits this patterns because of the very apolitical approach the countries in favor took, which basically saved them from engaging in more substantial arguments with other states and Israel. There does not appear to be an actor willing to lead the cause for resolute differentiation here.

The way labeling has been framed by the Commission which expects it to apply to under 1% of Israeli imports to the EU, so in this case the EU has not even been in the need to make a choice between significant economic interests and normative action.

11. Conclusion: Do the changes arising from labeling amount to an effect on the role of a Normative Power EU in the Middle East?

Normative power was established to flow from the force of ideas rather than economic and military capabilities of an actor in international politics. The norms along which the EU officially designs its policies are peace, liberty, democracy, rule of law and human rights. An analysis of prior European action in the Middle East has shown that before labeling, be it directly as part of Palestinian “*state-building*”, or indirectly by fostering the proliferation of settlements, the EU has hindered the development of all five. The central issue in labeling was, whether the EU would become an effective actor for the diffusion of international law by linking economic action with normative political statements against settlements. This way a conditionality concerning economic integration with Israel, which has been very much inexistent in prior integration policy could have been established, that over time would also differentiate the EU itself from Israel.

In the way the EU has framed labeling, a clear normative statement getting across a European idea and European commitment to this idea was not included. Rather, labeling represents a legalistic way of incremental policy-making on the internal level.

This results in an EU which is not acting in a way more consistent with its norms, and was only able to establish an awkwardly inbound-aimed notion of low level economic power. The EU thus behaves as a weak civilian actor rather than a credible normative one in the conflict.

While the initial conflict was that the image of a normative power EU was always contested by actions which simply just did not meet them, one aspect of normative power asks whether an actor can actually define what passes for normal, or legitimate and diffuse its own definition to others.

We have seen that out of the six channels of norm diffusion four apply to the scope of labeling. Norm diffusion through the effects of contagion, informational diffusion, procedural diffusion and transference diffusion. A non-self-interested actor aiming at spreading a norm would arguably try to use all channels. The EU has closed the channel of informational diffusion, by toning down and de-politizing the issue as much as possible. Procedural effects are not likely, because labeling has been conducted as an internal European step with no link to the institutionalized forums of European-Israeli or international policy making. When no link is apparent and the relations are in a state where an Israeli acceptance of the European norm is unlikely, a handle could be established by directly linking differentiation and integration in an

act of transference through ‘carrots’ in case of Israeli cooperation. The analysis however showed that no such thing was installed.

Contagion can never be ruled out, but the before-mentioned features of labeling do not necessarily favor a wide international imitation. Labeling apparently was not equipped with a very promising set of features promoting the European solution to the problem of settlement products as the most morally legitimate approach. Even when other actors follow the EU, it is another question if that is the result of recognized normative leadership or a result of the reluctance of other states to deal with the controversial issue when they can expect that someday the EU will come up with a position and has already taken the criticism.

Other scholars have pointed at the normative effect the EU has had previously in setting the international base on which the conflict is discussed. While the normative power notion will supposedly remain in the sense that the EU is a reference point for the rest of the international community in how it deals with the conflict, it regularly fails to make a substantial contribution to solutions of any of the problems associated with the Israeli-Palestinian conflict. So, although the EU for example has been a main proponent for the establishment of Jerusalem as a joint capital, which is now the internationally recognized consensus, none of the norms it promoted have actually brought about significant changes to the status quo on the ground. Whether European labeling rules will lead to differentiation becoming an international practice, requires further future evaluation.

Labeling does not address the larger strategic problems of the EU in the Middle East, namely being locked in the position of a donor on whose support millions of people in Gaza and the West Bank depend. This fosters the occupation rendering it cost effective for the state of Israel, and rather contributes to the status quo by not implying a conditionality that could induce incentives to give up the past settlement policy. The EU has stripped itself from a number of possible future options for action by instead of taking on the argument with Israel of settlement- exclusion as anti-Semitic, downplaying the economic significance of its action and presenting it as a legal necessity for the proper functioning of internal economic processes. The political dimension was diffused to the European consumers in a way that avoids the EU having to engage in a political argument it is not prepared for. A feature of a conditionality would have entailed the EU as a credible normative power engaging in a political argument with the Israeli political class to defend its position. However, labeling shows that there is no actor willing to make a rigorous case for differentiation and represent the European cause. This is a central issue

as dialogue is so central in norm diffusion. The EU in labeling, seems unable to get a normative message across.

The analysis has shown that there is inner European division about the actual enforcement of differentiation, a policy that in principle, officially there is an agreement on in the European Council. This is remarkable as a main conflict in normative power from the past, the one of economic interest and normative action has hardly been touched as the economic importance of settlements for the European market remains negligibly small.

In the past, the conflict between interests and norms was oftentimes decided in favor of interests, rendering the norms themselves inexistent/unimportant. The power notion stands in the sense that internally the EU has acted sufficiently to bolster self-identification within Europe due to high visibility on the market and the amount of attention paid to the Israeli criticism on the issue. It is still remarkable that it took the EU three years since the opinion shift in the Council to move forward on this most consumer visible part of differentiation.

In Conclusion, it is questionable that labeling will amount to a substantial change for the role of the EU trying to act as a normative power in the Middle East.

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