

**Federica Bicchì and Benedetta Voltolini**

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## **Europe, the Green Line and the issue of the Israeli-Palestinian border: closing the gap between discourse and practice?**

Federica Bicchi (London School of Economics) and Benedetta Voltolini (Sciences Po, Paris)

### **Abstract**

The article analyses how the Europeans (meaning European states and the EC/EU) have progressively turned a discourse about the Israeli-Palestinian border into a foreign policy practice. While much of the literature highlights the existence of a 'gap between discourse and practice' when it comes to Europeans' foreign policy stance towards the Arab-Israeli conflict, we argue that the gap is dynamic and has changed across time. In the absence of an internationally and locally recognised border between Israel and Palestine, the Europeans have aimed at constructing one on the 1949 armistice line, the so-called Green Line. They have done so in stages, by first formulating a discursive practice about the need for a border, then establishing economic practices in the late 1980s-early 1990s, and most recently practicing a legal frame of reference for relations with Israel and the Palestinian Authority (PA) based on the Green Line. The outcome is that, for what concerns European countries and EU legislation, the Green Line has been increasingly taken as the Israeli-Palestinian border. However, gaps never fully close and more contemporary events seem in fact to point to a re-opening of the gap, as the article explores.

### **Introduction**

The article analyses how the Europeans (meaning European states and the European Communities (EC)/European Union (EU)) have progressively turned a discourse about the Israeli-Palestinian border into a foreign policy practice. In the absence of an internationally and locally recognised border between Israel and Palestine, the Europeans have aimed at constructing one on the 1949 armistice line, the so-called Green Line. They have done so from the early 1970s onwards and increasingly in a coordinated manner, hence the reference to Europe. Moreover, they have done so in stages, by first formulating a discursive practice about the need for a border, then establishing economic practices in the late 1980s-early 1990s, and most recently practicing a legal frame of reference for relations with Israel and the Palestinian Authority (PA) based on the Green Line. The outcome is that, for what concerns European countries and EU legislation, the Green Line has been increasingly taken as the Israeli-Palestinian border. This article traces the conceptual and practical history of this development, as well as its limitations. The aim is to provide an understanding of how European external relations evolve across time, in this case from discursive practice to economic and legal practices,<sup>1</sup> by focusing on the case of the Israeli-Palestinian border, taken not just in its legal meaning, but also as a discursive, practical and analytical device.<sup>2</sup>

The starting point of this article's analysis is the gap between the Europeans' discursive practice and implementation practices in the case of the Arab-Israeli conflict. We consider this gap to be dynamic, just as all gaps between discourse and practice in politics. This goes against much of the existing literature, especially on EU-Israel relations, which tends not only to identify a gap, but also to reify it as a permanent feature of EU foreign policy towards the area. By drawing on a variety of analytical and theoretical contributions, we aim to show that while gaps are a staple feature of politics, they open and close, though never fully. In the case

of the Europeans' stance on the Arab-Israeli conflict, the gap has been closing during the last three decades, and especially so after 2008, although it is on the verge of opening up again.

At first, this might seem a basket case. The Arab-Israeli conflict is probably one of the issues in European foreign policy in which the word "gap" has most been used, to indicate inconsistencies between Europe's words and actions. There is a 'rhetoric-practice gap'<sup>3</sup>, an 'expectations-delivery gap' in economic relations,<sup>4</sup> 'convergent parallels'<sup>5</sup> and more generally a situation of 'inglorious disarray'<sup>6</sup> and 'failure'<sup>7</sup>. Indeed, while decolonisation and the Cold War managed to create and "freeze" the vast majority of political boundaries across the globe,<sup>8</sup> this specific boundary managed to escape that fate and continues to challenge international actors. The long rehashed claim that the border will be 'subject to direct negotiations' sounds hollow and untenable.

While certainly a lot could be done to improve consistency in European foreign policy and to end the conflict, our argument is that the width of the gap between discourse and practice is changeable and it changes exactly because of the tension between different types of practice, as this case demonstrates. We argue that one way in which policy change occurs is because of a discourse (or, more accurately, a discursive practice) that opens the way to (or anchors) a change in other practices (such as economic and legal practices). As it has been suggested, we should put at the centre of our analysis the "dynamic interplay between discourse and practice",<sup>9</sup> if only because the existing tension "between the potential capacities of a given semiotic code on the one hand and, on the other, any particular specification of it".<sup>10</sup>

In particular, we aim to show that the Green Line has been the focal concept that anchored the ensuing practices. Largely independently from the situation on the ground, Europeans have progressively turned it into the Israeli-Palestinian border for what concerns European countries and EU legislation. They have done so by first conceptually and discursively justifying the need for a border and identifying it in the Green Line, more clearly so than any other international actor. Second, they have aimed to implement it in economic agreements and related practices, despite difficulties and inconsistencies. Finally, they have endowed the Green Line with partial legal meaning in a string of legal and administrative acts issued since 2010. Developments in 2016, however, are likely to challenge and possibly revert this trend.

It is important to notice that the expression 'Green Line' stands for the awkward, but more precise, formulation 'the armistice lines agreed in 1949 in separate bilateral agreements between Israel, on the one hand, and Egypt, Lebanon, Transjordan and Syria on the other.' Our focus here is on the West Bank segment that was agreed between Israel and (then known as) Transjordan.<sup>11</sup> Part of it was settled in the 1994 Peace Treaty between Israel and Jordan, but the rest constitutes the boundary between Israel and the West Bank, largely expected to constitute the boundaries of the future state of Palestine. In 1949, the Green Line was the result of military confrontations erupting right after the establishment of the State of Israel on 14 May 1948. It bears no relationship to the UN Partition Plan (UNGA Resolution 181, on 29 November 1947), nor to the acceptance of Israel to the UN (UNGA Resolution 273, on 11 May 1949), which did not specify the new state's borders. Rather, it reflects the specific position of force at the time of the armistice, which in turn mirrored "the distribution of Jewish settlements established over the previous 50 years"<sup>12</sup> As such, it has often been considered indefensible (or "rotten")<sup>13</sup>. It was wiped out by the 1967 war, which led to the acquisition by Israel of the West Bank and East Jerusalem, as well as the Golan Heights and the Sinai (including the Gaza Strip). Despite the international community's consensus around UN Security Council Resolution 242 (1967), which emphasized the "withdrawal of Israeli

armed forces from territories occupied in the recent conflict,”<sup>14</sup> facts on the ground seemed to doom the Green Line to non-existence<sup>15</sup> until the 1987 Intifada and the Oslo Accords in the 1990s, which brought it back for security and administrative purposes. However, this very short history of the Green Line as it occurred on the ground is largely independent from the account of how it became the focal point of European foreign policy and as such came to affect European practices, as we are going to see.

We explore our argument in four steps. First, we show how practice approaches contribute to a clearer understanding of policy gaps in IR, Policy Analysis and European Studies, as well as shed light on our case study. Second, we analyse the evolution of the Europeans’ discursive practice about the definition of the border between Israel and Palestine in the decade 1970-1980. Third, we examine how this discursive practice affected economic practices. We then address the shift to legal and administrative practices. Finally, we conclude by reflecting on how gaps can close, but also re-open, and what this tells us about the way in which European foreign policy – and practices more generally – evolve.

### **From discourse to practice: the border as an anchor in EU foreign policy**

While much of the existing literature on European foreign policy and the Arab-Israeli conflict (and especially on EU-Israel relations) identifies a gap between the Europeans’ discourse and their practices towards the area, we argue both on analytical and empirical grounds that this gap is not set in stone. On the contrary, as Policy Analysis, European studies and International Relations suggest, gaps are dynamic features of politics, as discourses and practices interact on the ground. Therefore, while we agree that gaps exist and matter, we aim to push the discussion further by suggesting ways in which gaps’ width can vary, by focusing on the relationship between practices. In particular, we suggest that discursive practices, when they embody constitutive rules, can anchor other types of practices.<sup>16</sup>

The first point to address is what kind of gap is under scrutiny here. Our focus is on the gap between what an actor (in this case Europe, broadly defined) says and what it does. Therefore, we are not focusing on the actual impact of an actor’s policy on the ground, often analysed in terms of ‘effectiveness’ of the Europeans’ position, because impact is at least in part beyond the actor’s reach. Analyses of Europe’s “power deficit” in the Middle East<sup>17</sup> are thus beyond the remit of our analysis.

Rather, we are scrutinising the gap between, on the one hand, practices related to text production and distribution (discursive practices) and, on the other, non-discursive practices, as in patterns of social actions that are more centred on text consumption, including acts and decisions committing resources.<sup>18</sup> This gap is often referred to as the gap between ‘discourse and practice’ or about an actor’s ‘coherence.’<sup>19</sup> But it is more appropriately understood as the difference between different types of practices, some centred on the production of discourses and some referring to those discourse to legitimise actions and actors.

There is a widespread consensus among scholars that not only there is always a gap between ‘discourse and practice,’ but also the EU is a particularly bad case and not just in terms of the Arab-Israeli conflict. Policy Analysis has long since established that ‘great expectations’ at the centre (‘in Washington’) are regularly dashed at the periphery (‘in Oakland’), when policy priorities decided by the central government come to be implemented by a different set of actors.<sup>20</sup> Brussels is not different in this respect, just slightly worse,<sup>21</sup> given the complex

nature of European cooperation as a foreign policy system. Hill identified the problem early on, in the ‘capability-expectations’ gap,<sup>22</sup> which points to the distance between what European cooperation is expected to do in foreign policy and what it is actually able to do. Toje has further elaborated on this by pointing to the ‘consensus-expectations’ gap, linking the gap to the EU unanimity rule in foreign policy.<sup>23</sup> Implementation of a foreign policy position is thus bound to create dilemmas for the EU and European actors more generally.<sup>24</sup>

The existence of a gap between what Europeans say and do in relation to the Arab-Israeli conflict dominates the specialist literature. A plurality of authors refer directly to it, in a seemingly unending string of observations: “one can make the case that nowhere has the gap between European rhetoric and action been more obvious”.<sup>25</sup> The “declaratory diplomacy” of the EU cannot hide the divergence between “rhetorical goals and actual conduct,” as the Europeans have condemned violations of human rights but not used conditionality and not disrupted economic relations with Israel,<sup>26</sup> as also stressed by Del Sarto.<sup>27</sup> The gap is not just in human rights. In international trade, there is a mismatch between “impressive European rhetoric regarding envisaged special trade relations and the EU’s much more modest willingness/ability to establish such relations”.<sup>28</sup> We might even see a “double gap” between the EU’s normative discourse about human rights and their actual promotion, on the one hand, and between the normative discourse and economic practices more generally, on the other.<sup>29</sup> In fact, there seems to be a number of gaps and contradictory discursive practices, which would make it impossible to close or narrow a gap without affecting negatively the others.

However, while gaps exist, they are not static. The relationship between discursive practices and implementing practices is dynamic and has to be analysed on the basis of a number of factors. Dynamism and transformation is the key message of Policy Analysis, according to which policy implementation continues the policy making process, just with different actors.<sup>30</sup> Even in the case of the EU, the ‘capability-expectations gap’ can close, depending on available resources.<sup>31</sup>

How can we conceptualise a dynamic relationship between discursive practices, on one hand, and other types of practices, on the other, if we go beyond the ‘no relationship’ hypothesis about discourse and practice, as well as beyond the ‘static relationship’ that characterises much of the literature on this case study? One option is represented by post-structuralism, according to which discourse determines other practices and no actual behaviour can be conceived outside of a semantic field that provides it with meaning.<sup>32</sup> Any discursive development is thus mirrored in a change in non-discursive practices, and any gap between ‘discourse and practice’ is actually a gap between different discourses, enabling (or constraining) different practices. From this perspective, it is not possible to argue that discourse and practice go in different direction, as Gordon and Pardo have argued, for instance, when they suggest that the existence of the Europeans’ normative discourse actually enables the opposite economic practice of trading with Israel thanks to the Europeans’ shallow concern for human rights.<sup>33</sup>

Constructivist and (some) rational choice scholars have also highlighted the influence of discourses, which can have the ‘unintended’ effect of fostering implementation. In the case of EU enlargement during the 1990s, for instance, Schimmelfennig has claimed that Western European countries became “entrapped by their arguments and obliged to behave as if they had taken them seriously” in order to maintain their reputation.<sup>34</sup> In his analysis, rhetorical

entrapment brings about behavioural change on the basis of a discourse that found an audience leveraging actors' credibility.

From the perspective of practice approaches, discursive practices emerge from, but also have an effect on the broader landscape of practices, especially by anchoring them to a text specifying constitutive rules. Neumann exemplifies this by quoting de Certeau and his example of story-telling rituals of the Romans, who in anticipation of political change, such as going to war or establishing a new alliance, went on a procession across the border with the future enemy/ally while narrating the future developments: "stories that 'go in a procession' ahead of social practices in order to open a field for them".<sup>35</sup> This does not entail that discursive practices always translates into non-discursive ones or that there is nothing to be understood outside discourse. Practices are interconnected in different (but always contingent) ways. The point here is that some practices can "anchor, control or organize others"<sup>36</sup> and this is the case especially when they embody "constitutive rules" specifying who is in and who is out<sup>37</sup> – a case that is particularly fitting here.<sup>38</sup> The reference to the Green Line and the pre-June 1967 border thus anchors other non-discursive practices because it narrates a specific story of inclusion and exclusion.

Therefore, we suggest that it is possible to read the empirical evidence of European foreign policy towards the Arab-Israeli conflict as the development of a discursive practice centred on the role of the Green Line, which has anchored the establishment of economic and then legal/administrative practices. In this, we see a parallel with authors such as Persson,<sup>39</sup> who has highlighted how European declarations have contributed to legitimise a specific understanding of what "just peace" means in the case of the Arab-Israeli conflict, one that would envisage the creation of a Palestinian state. We also echo (with a different theoretical apparatus and a less linear logic at work) the evolution from a community of information to a community of action that Müller describes (2011, p.28-31).<sup>40</sup>

We thus proceed to show how the Europeans' discursive practice emerged, how it anchored economic practice and, more recently, legal/administrative ones, before returning to the issue of how practices can also unravel and 'gaps' open up again.

### **An emerging anchor for future practices: the codification of the Green Line as the cornerstone of the Europeans' position**

In this section, we will follow how a discursive practice that was to serve as an anchor for other future practices emerged in the first place, and how it related to other discursive practices in the international debate of the time. It is no surprise that, given the discussion around the UN Security Council Resolution 242 (1967), the issue of the border and where should Israel retreat to was high on the agenda in 1971, right after the Europeans had started cooperating in 1970 on matters of foreign policy through European Political Cooperation (EPC). What is surprising is the degree of convergence on the French position that emerged as soon as the debate started and has been maintained until recently. While the Europeans often justified their position based on the international one, they were in fact at the forefront of the debate. Their consensus on this point not only contributed to make EPC a relative success, but also anticipated much of the UN and US positions. The often-told tale of the convergence of the Europeans during the 1970s refers to what was to happen beyond the Green Line. But the issue of borders was settled almost by the start.

At the first EPC meeting in 1970 and at the insistence of France, the then Six agreed to prepare a joint paper, which came to be known as Schumann Paper (after Maurice Schumann, French minister of Foreign Affairs). It brought together separate reports prepared on freedom of navigation, the establishment of demilitarised areas, Jerusalem and the issue of the Palestinians. The second point included a reference to the Green Line that was stronger than UNSC Res.242, as it envisaged “le retrait des forces armées israéliennes des territoires occupés lors du recent conflit, compte tenu éventuellement de rectifications mineures agréées [sic] par les parties, sur les frontières et les lignes antérieures à ce conflit.”<sup>41</sup> While consensus might have been helped by French being the main language in EPC at the time (hence playing on the difference between the French and the English version of UNSC Res.242), the Six ministers also agreed on the document at the ministerial meeting on 13 May 1971.<sup>42</sup> The Italians had doubts about the substance, but these were linked predominantly to the fact that Moro, then minister of Foreign Affairs, had only had the time to read the text while traveling to the meeting. On the contrary and despite Israeli pressure,<sup>43</sup> Scheel, the German minister of Foreign Affairs, welcomed the document, praising the fact that the Political Committee had managed to achieve a consensus on the topic, while stressing that such work would be pointless if it was not accompanied by an attempt to translate it into reality. He justified his position with reference to his meeting with the Tunisian minister of Foreign Affairs, in which the latter had stressed the need for third party mediation in the Mediterranean, along the lines of what the United States were doing in Asia. According to Scheel, if the Tunisian minister was right, a deterioration of the situation in the Mediterranean would in any case drag the Europeans more into Middle East politics.<sup>44</sup> Therefore, they might as well define a European position to guide them. The position of Belgium and Luxembourg were also in agreement, whereas the Netherlands was cautious, justified by the fact that the government had just resigned and public opinion was closer to Israel.

This unexpected convergence worried Israel. The Israeli Embassy in Paris summarised a leaked draft to the Israeli Minister of Foreign Affairs by stressing that the Europeans were preparing a document according to which final borders between Israel and its neighbours “must be identical repeat must be identical with the lines of 4 June 1967, except for minor and insignificant changes”.<sup>45</sup> The reply by the Ministry to Israeli embassies in The Hague, Rome, Bonn, Brussels and Paris highlighted that this was a “particularly serious” development and instructed them to be “particularly vehement against the draft on this point”.<sup>46</sup> While the document was *de facto* approved at the meeting of the Six in May 1971, the Europeans’ position after the meeting became very difficult once it was leaked to the German press and, under Israeli pressure, there was thus no unanimous defence of the report.

The Europeans’ commitment to the Green Line strengthened in 1973. Already before the October 1973 war, a decision was taken in Brussels to agree to hold meetings of the EEC-Israel trade committee in Israel, but only if they were not in breach of the UN resolutions (i.e. thus avoiding occupied territories). In response to the war, the by then Nine EC member states reinstated on 6 November 1973 “the need for Israel to end the territorial occupation which it has maintained since the conflict of 1967.” This text sealed the European shift in favour of the French interpretation of Resolution 242, namely that Israel’s withdrawal from the territories occupied in 1967 had to be in full, apart from minor and mutually agreed changes.<sup>47</sup>

The lead up to the Venice Declaration in 1980, which came on the back of the Camp David Agreements and the policies of the newly elected Likud government, did not change the consensus on the border. Rather, it specified what was meant to be beyond it. In Venice, the

Nine recognised the right of the Palestinian people to self-determination and the need to associate the PLO to negotiations, while stating that all parties were entitled to live “within secure, recognised and guaranteed borders.” They also stressed again that Israel had to put an end to “the territorial occupation which it has maintained since the conflict in 1967” and that Israeli settlements in the “occupied Arab [sic] territories” were “illegal under international law.”

Between 1970 and 1973, therefore, the Europeans came to establish a discursive practice that made reference to the territories occupied in 1967 and thus to the Green Line, a practice that was re-enacted in Venice – and has continued to do so until nowadays.

The establishment of this discursive practice during 1970-73 mirrored but also preceded the emergence of a similar discursive practice at the UN. While the UN had already addressed the issue of self-determination (UN GA Resolution 2672, 1970) and of PLO’s recognition (UN GA Resolution 3210, 1974), it remained vaguer in terms of where the border between the two states were to be. It was only in the period 1979-80 that the UN Security Council adopted a more clear-cut (and more strongly worded) set of positions,<sup>48</sup> culminating in Resolution 465, stating that “all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity.”<sup>49</sup>

The US moved in the same direction, generally following the Europeans’ evolution and generally in the case of Democratic Administrations. At first, the US interpretation was very close to the Europeans’ and centred on the Green Line.<sup>50</sup> In 1977 the Carter administration clarified that defensible borders referred to “substantial withdrawal of Israel’s present control over territories” and “minor adjustments in the 1967 border”.<sup>51</sup> But this changed with the arrival of Reagan,<sup>52</sup> who stated that he would not ask Israel to withdraw to the pre-1967 borders, as this would place “the bulk of Israel’s population [...] within artillery range of hostile Arab armies.”<sup>53</sup> This position was also maintained by both Bush presidents. Clinton sided with the Green Line, plus land swaps, and so did Obama who, in a speech on 19 May 2011 suggested that “the borders of Israel and Palestine should be based on the 1967 lines with mutually agreed swaps, so that secure and recognized borders are established for both states.”<sup>54</sup>

Therefore, in parallel with, but also in advance of the UN and the US, the Europeans established a discursive practice about where the future borders between Israel and the Palestinians should be and, more importantly, where they were to be for the Europeans when dealing with the parties, in the absence of a peace agreement. The discursive practice came to entail that twice per year, the Europeans would issue a declaration on the Arab-Israeli conflict (since 1990s referred to as the Middle East Peace Process, or MEPP). As we are going to see, this discursive practice has anchored economic and legal/administrative practices and the ensuing developments aimed to close the gap between the newly established discursive practice and other European practices.

### **From discourse to economic practice: trade agreements with Israelis and Palestinians**

The Europeans’ discursive practice around the Green Line first turned into economic practice. The EC/EU being a predominantly economic macro-practice (with exclusive competence over trade), economic agreements have been the obvious practice through which



Europeans have translated their position on the Green Line. As we are going to see, economic practice has come to largely align itself with the discursive practice centred on the Green Line, with one substantial limitation. As the issue of EU-Israel trade relations has been widely scrutinised,<sup>55</sup> the focus here is more on how the border has been progressively codified in the EU's economic practice towards Israel and the Palestinians.

The first opportunity for the discursive practice to affect economic practice emerged shortly after the 1973 EPC declaration examined above. Israel had signed a first five-year preferential agreement with the EEC already in 1964 and it renewed it for a further five years in 1970. In 1975, however, when a new EEC-Israel preferential trade agreement was signed, the ambiguity about whether it would include the occupied territories came to the fore. Protests by Arab countries were very vocal and FitzGerald, the Irish foreign minister at the time when Ireland was holding the EC Presidency, had to assure the Arab League secretary that the agreement would not apply to the territories occupied by Israel.<sup>56</sup> This seemed more of an Irish position than a European one, though<sup>57</sup> and the Arab League was not satisfied, as it wanted a confirmation on behalf of the EEC. It was only when this was delivered (and the British withdrew their reservations) that the Arab League gave its green light for the Euro-Arab Dialogue to restart.

The second step consisted in establishing separate economic relations with the Palestinians. The most important pieces of legislation in this respect came in 1986, when not only the EC granted preferential access to imports originating in the occupied Palestinian territories,<sup>58</sup> but also acknowledged the authority of Palestinian Chambers of Commerce for issuing documents accompanying all exports.<sup>59</sup> From this moment onwards, it was technically possible to import goods from beyond the Green Line under the granting authority of a Palestinian body and most importantly, it was no longer possible to export them under the EC-Israel Agreement. The establishment of two parallel, but legally separate, frameworks for bilateral relations was later re-affirmed within the Euro-Mediterranean framework, when the EC signed two separate Association Agreements, one with Israel in 1995 (into force since 2000) and one with the PLO in 1997 (into force in the same year).

Complications soon arose, however. Steeped in the optimism of the peace process, the EU did not formally codify its interpretation of Israel's borders in the 1995 EU-Israel Association Agreement, which (once again) referred to the "territory of the State of Israel." Following the law of treaties, this has left Israel free to define the geographical scope of its territories in accordance with domestic law, thus reflecting not only Israel's unilateral annexation of East Jerusalem and the Golan Heights, but also its de facto extension of its legislation and jurisdiction to settlements.<sup>60</sup> In addition, Israel refused to recognise the 1997 EC-PLO Interim Agreement, arguing that it was against the 1994 Paris Protocol, according to which Israel and Palestine created a single customs 'envelope'.<sup>61</sup> This sparked reactions by the EU, which argued that "the West Bank and Gaza Strip constitutes a separate customs territory since the Palestinians can and do exercise their own trade regime."<sup>62</sup>

The difference in interpretation came to the fore as Israel was suspected and then found to issue certificates for goods produced in Israeli settlements located in the occupied Palestinian territories. To overcome this impasse, the EU opted for "a practical way of handling the problem" (basically, a practice).<sup>63</sup> In 2005 it signed a Technical Arrangement with Israel, also known as the Olmert Arrangement, according to which Israel were to indicate the postcodes of the area in which the goods were produced. This did not challenge the right of Israeli customs authorities to issue EUR.1 certificates, but it provided European custom authorities

with a tool for identifying which goods originated from inside the Green Line (and were thus eligible for preferential treatment under the EU-Israel Association Agreement). This arrangement allowed the EU to “grant a de facto meaning to its non-recognition of the Territories as part of the State of Israel”.<sup>64</sup> More recently, the burden of proof shifted from (often under-resourced) custom authorities to private European importers, who have the responsibility to check goods’ origin through the postcodes’ list following the publication of Israeli postcodes on the website of DG TAXUD in August 2012.<sup>65</sup>

Therefore, through the EU economic practice, the Europeans have given substance to their discourse centred on the Green Line, establishing a set of micro-practices that reflected the Green Line’s existence. Over the course of three decades, the gap between discourse and practice significantly narrowed. A substantial limitation remained, though, as goods produced in Israeli settlements continued to enter European markets, stripped of preferential treatment. Therefore, the gap was not totally closed (nor it could have been under existing legislation, as well as because of the nature of politics in general).

### **Beyond trade: implementing the border in legal and administrative terms**

The Gaza war in 2008-09 and the election of Netanyahu in 2009 triggered a new determination amid Europeans to reinforce existing practices in order to make them fully consistent with their discursive practice. This newly found resolution was boosted by prodding of the European Parliament and non-state actors,<sup>66</sup> as well as by the European Court of Justice (ECJ) ruling in the so-called Brita case in 2010, which led to the establishment of a new practice and new measures based on law and administration.

In February 2010, the ECJ codified formally the need for two separate territorial bases in its ruling on the Brita case, which concerned the import by Brita GmbH (a German company) of goods produced by Soda Stream in its factory in Israeli settlements. The German Customs authorities required payment of duties from Brita, once it was ascertained that the goods were not coming from the pre-1967 Israel. Brita appealed the decision and the case went in front of the ECJ due to the implication of EU law. The German financial court asked for an interpretation of EU law and bilateral treaties via the preliminary reference procedure. The ECJ confirmed and strengthened the view that Israel and the West Bank/Gaza Strip constitute two separate economic entities.<sup>67</sup> Therefore, goods produced in the Israeli settlements cannot benefit from the preferential EU-Israel Agreement, as this practice would limit the effectiveness of the EU-PLO Agreement by preventing Palestinian customs authorities from exercising their competence. Although the ECJ did not explicitly mention the Green Line, the judgement is based on the assumption that, having the EU signed two separate agreements (EU-Israel and EU-PLO Association Agreements), they must have two different and separate territorial scopes (Israel and West Bank/Gaza Strip). The ECJ made clear that the scope of these agreements cannot be overlapping, as this would confer rights or impose duties on a third party without its consent (which is not possible under the law of treaties for the principle that *pacta tertiis nec nocent nec prosunt*).<sup>68</sup> The ECJ ruling thus makes an implicit but solid reference to the existence of a border between Israel and Palestine.

This legal clarification about the territorial scope of the two Association Agreements spurred EU officials to codify more explicitly the Green Line in EU legal practice and to make use of available opportunities to define the territory (and thus the borders) of the state of Israel. The first legally significant reference to the Green Line was made in 2011,<sup>69</sup> in a decision of the Commission concerning personal data protection.<sup>70</sup> In Article 2, it refers to

the State of Israel, as defined in accordance with international law [...]. [The decision] shall be applied in accordance with international law. It is without prejudice to the status of the Golan Heights, the Gaza Strip and the West Bank, including East Jerusalem, under the terms of international law.

Since then, similar territorial disclaimers have become common practice and are to be found in subsequent agreements between the EU and Israel. In the case of the Euro-Mediterranean Aviation Agreement, concluded in 2012, for instance, the “application of this Agreement is understood to be without prejudice to the status of the territories that came under Israeli administration after June 1967.”<sup>71</sup> As further clarified in the preparatory documents, “[t]he Agreement should be implemented in conformity with the European Union's position that the territories which came under Israeli administration in June 1967 are not part of the territory of the State of Israel.”<sup>72</sup> In another case (marketing standards for fruit and vegetables), the Regulation specified that Israel can issue the relevant conformity certificates only for the State of Israel as internationally defined, with the exclusion of the territories under Israel administration after 1967.<sup>73</sup>

The issue of borders emerged in the case of the agreement between the EU and Israel on pharmaceutical products, known as ACAA.<sup>74</sup> Tellingly, the question of borders was openly discussed in the European Parliament, which threatened to withhold its consent if the agreement were to cover the occupied Palestinian territories. The bone of contention was which authority was to be in charge of certifying the conformity of Israeli goods placed on or traded in the EU market. The certifying power is not a problem per se, as this competence does not formally have a territorial dimension. However, the problem emerged because the agreement was drafted in such a way that it required Israel to nominate this authority in accordance to its domestic law (instead of, for instance, appointing an external agency). Therefore Israel had no choice but to nominate the Ministry of Health, the jurisdiction of which has a territorial dimension – extending over the occupied territories.

At first, it seemed that there would be a reverse of practice. In 2012, under extensive lobby from Israeli diplomats, members of the EP voted in favour of a draft that did not contain any disclaimer concerning the territorial scope. But the consistency with the discursive practice on the Green Line was ultimately re-established. Following the advice of the EP legal service,<sup>75</sup> the Commission qualified its acknowledgement of the body nominated by Israel as the responsible authority under the ACAA. It specified that this was granted only on the basis that the occupied territories are not part of the territory covered by the Responsible Authority, stating once again that “the legitimate jurisdiction of Israeli authorities does not extend to the territories brought under Israeli administration since June 1967.”<sup>76</sup>

During 2012, the legal practice was further honed and there was “a shift from just *distinguishing* between within and beyond the Green Line towards *non-applicability* in the occupied territories (i.e. in Israeli settlements) of legal regimes beneficial for Israel that are set up under EU law”<sup>77</sup>. In the Council Conclusions in December 2012, the Council

expresse[d] its commitment to ensure that – in line with international law – all agreements between the State of Israel and the European Union must unequivocally and explicitly indicate their inapplicability to the territories occupied by Israel in 1967, namely the Golan Heights, the West Bank including East Jerusalem, and the Gaza Strip.<sup>78</sup>

This in turn led to the justly famous ‘Guidelines’<sup>79</sup> approved in July 2013, which represent the clearest and most encompassing turning point in the implementation of EU programmes.

Even though their publication was prompted by the impending approval of Horizon2020, a big EU-funded programme of research to which Israel participates, the Guidelines were drafted in such a way as to establish a consistent practice across *all* further programmes and projects the EU and Israel were to agree upon under the 2014-2020 EU budget. As the ensuing exchange of letters between the EU and Israel specified, whenever participation of Israel to EU programmes is agreed with a Memorandum of Understanding, the text will include the following specification:

In accordance with EU policy, this agreement shall not apply to the geographic areas that came under the administration of the State of Israel after 5<sup>th</sup> June 1967. This position should not be construed as prejudicing Israel's principled position on this matter. Accordingly, the Parties agree that the application of this agreement is without prejudice to the status of those areas.

This administrative act indicated how the Commission intended to execute the budget and implement EU legislation in relation to its programs and projects when it came to Israel's territorial scope. The Guidelines therefore were the first time that the EU ensured as perfect an implementation of its political position on the Green Line as possible.

Since the Guidelines, the EU has continued to apply the same principle beyond EU-funded programmes. For instance, in the case of organic farming, in October 2013, the Commission recognised the competence of the Israeli Plant Protection and Inspection Office to issue certificates for organic farming only within the Green Line,<sup>80</sup> de facto stripping organic products of their added value and making their generally higher market price less justifiable. Similarly, since February 2014 the EU has recognised the competence of Israeli Veterinary Office to provide certificates for poultry and dairy complying with EU health and safety regulations only within the Green Line, thus forcing a separation between the manufacturing lines in Israel and the settlements and de facto banning EU import of poultry and dairy from settlements.<sup>81</sup> These developments were accompanied by a number of advices to business, cautioning about risks related to economic and financial activities involving Israeli settlements.<sup>82</sup>

Further developing this legal-administrative practice, the Commission issued on 11 November 2015 an 'Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967'. Rather than a new piece of legislation, the Notice is an administrative act clarifying how member states are to apply existing EU law. In particular, it indicates that products from Palestine should be labelled as originating from either Palestine, the West Bank or Gaza, while products from Israeli settlements should clearly specify that in brackets (e.g. 'products from the West Bank (Israeli settlement)') in order not to mislead customers about their origin.

Therefore, since 2010 the Europeans, acting within the EU, have practiced a legal and administrative framework centred on the Green Line. They have done so by including a specification of the territorial scope in new agreements (or in the correspondence implementing them) and by limiting Israel's certifying authority to territories within the Green Line. While goods from Israeli settlements can in theory continue to enter the EU (without preferential treatment), the limitations on Israel's certifying authority, together with enhanced transparency for customers, have stripped them of key characteristics. Moreover, the Guidelines have established that no money from the EU budget is to go beyond the Green Line when Israeli settlements are involved. For the period 2009-2015, the discursive practice

on the Green Line thus anchored not only most of the Europeans' economic practice, but also key components of their legal practice in dealing with parties on the ground.

### **Conclusion: the gap that closed and then opened again**

This article has shown how the Europeans have acted through the EC/EU to first establish a discursive practice about the Green Line and then bring their economic and legal/administrative practices largely in line with their discourse. The early recognition of the Green Line, dating 1971-73, crystallised in a discourse that anchored the EC/EU economic relations with Israel and with the Palestinians and then legal and administrative practice too. The gap between 'discourse and practice' did not fully close, as the notable exception of goods from Israeli settlements remains. But it narrowed down considerably, especially during the period 2009-2015.

It remains open to discussion how narrow the gap was by 2015, and how relevant its content to the overall European foreign policy practice. Keeping in mind that perfect implementation does not exist (and especially not in EU politics), two elements are crucial here. One is the trend. It is a long term trend, as it took more than three decades to operationalise into practice the implications of what was agreed in the early 1970s. The trend shows a slow narrowing of the gap until 2010, when the pace accelerates up to 2015. This trend towards narrowing the gap, in our opinion, is a fact that must be acknowledged. The second element is what is left out of this trend. The issue of goods from Israeli settlements is a notable one, but, having been stripped of several key components, it has lost prominence.<sup>83</sup> More noteworthy is the issue of national foreign policies. Whereas the EU has an exclusive competence on issues related to trade, numerous other sectors (from research to visas) remain largely under shared or national jurisdiction, which makes it more difficult to follow the plot. Germany renegotiated a number of agreements with Israel in the light of the Guidelines, the UK led developments related to the business community and to labelling, but other countries, including France and Sweden (which recognised Palestine in 2015) have often avoided national practices being anchored in the same European discursive practice about the Green Line.<sup>84</sup> This is a topic on which further investigation is needed.

Moreover, it is important to stress that the gap can open up again and in fact this is exactly what begun to happen in 2016. The occasion was provided by the intention to issue a Council declaration in January 2016, making up for the 'missed' one in the second half of 2015. The three big member states (France, Germany and the UK) worked hard on a draft text that aimed at further spelling out how to implement the support to the Green Line. Unusually, the text was fully agreed already at the lower levels of the hierarchy, in the Maghreb-Machrek Working Group. However, despite being formally agreed upon by everybody, one representative reopened the discussion at the Political and Security Committee, despite the very short time span before the meeting of the ministers of Foreign Affairs on 18 January. Ultimately, the text had to be changed to secure approval. In terms of substance, the disagreements focused on the words "distinction" between Israel and "all" territories occupied by Israel in 1967 (both removed in the final text) and "united" in ensuring implementation (changed into "committed"). In a novel development, states spearheading the changes were Greece and Cyprus, with the support of the Central and Eastern European countries. Germany, among the sources of the original text, could not stop their opposition. Since then, there has been very little appetite in Brussels for another declaration. The mid-

year deadline was de facto skipped and the end of the year one was postponed. No developments in economic and legal practices emerged during 2016.

The approval of UNSC Resolution 2334 on 23 December 2016, which explicitly states “the 4 June 1967 lines”, did not reverse this trend for the Europeans, as shown by disagreements and lack of declarations in early 2017. Not only the Conclusions to the multilateral conference convened by France on 15 January 2017 did not include a reference to the Green Line, but also the meeting of the EU Foreign Affairs Council (FAC) on the following day was unable to agree on Conclusions supporting the French initiative due to the opposition of Bulgaria, Croatia, Hungary and the UK. The FAC in February blocked the planned Association Council meeting with Israel, originally pencilled for 28 February, but this was due to the opposition of Austria, Finland, France, Ireland, Sweden and the Netherlands, rather than a newly found consensus among member states. As the discursive practice centred on the Green Line is being challenged, consequences could be expected in other practices too, although practices tend to be more resilient than discourses.<sup>85</sup>

What can this tell us, then, in terms of the relationship between different types of practices and European foreign policy in particular? What makes for a ‘good anchor’? Much depends on how solid and clear an anchor is. Del Sarto suggests that the Green Line is not at all a solid anchor and argues that fuzzy borders create fuzzy implementation.<sup>86</sup> From this perspective, the border – while being socially constructed and a practice in and of itself – is an anchor not for a coherent set of practices, but rather for “incoherent implementation”. We argue, however, that the Green Line is a relatively solid anchor and has produced remarkable effects when assessed against the relentless opposition of Israel (and the often non-existent support of the Palestinians). In our view, the main issue lies in the way the relationship between practices is articulated. In this case, the direction of travel has been from discursive practice to non-discursive ones. This, in our opinion, contributes to explain the slow-going and possibly fragile link with non-discursive practices. Much of European foreign policy has actually developed in the opposite way, with bold innovations on the ground followed by codification, which seems to suggest that the shift in discourse following a shift in practice could be more direct and straightforward.

Moreover, the discursive practice has generally occurred in Brussels, which is at times isolated from other practices, both in member states and on the ground. The doings of European diplomats in Jerusalem/Ramallah or in Tel Aviv, for instance, might possibly deliver a stronger entry into the web of practices that is European foreign policy.<sup>87</sup>

Last but not least, the question remains of whether European practices can have an impact on the ground. There has been an undeniable change in the way in which the EU and member states relate to Israel. While a lot of tensions remains due to member states’ economic interests, the political default position in the EU and in member states has become to distinguish between Israel pre-1967 and the occupied Palestinian territories. As agreements between the EU and Israel are renewed or negotiated, this practice might continue (if only because of inertia) and might even be further codified. When looked at the Israeli occupation of the West Bank, however, Europe’s actions seem not to have affected Israel’s behaviour, as the occupation continues unabated. Some have suggested that the European position has even contributed to legitimise the continued occupation.<sup>88</sup> The point we have made here, however, is more about Europe and the Europeans’ capacity to practice the Green Line as the political default position in their external action, and to align their own economic, administrative and legal acts with their political discourse. In the absence of a negotiated agreement, the Green

Line has represented the Israeli-Palestinian border in terms of European foreign policy – so far.

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<sup>1</sup> We have focused elsewhere on how to explain how European foreign policy is made at specific points in time. See F. Bicchì, European Foreign Policy Making towards the Mediterranean (New York: Palgrave MacMillan, 2007). and B. Voltolini, Lobbying in EU foreign policy-making: the case of the Israeli-Palestinian conflict, (London: Routledge, 2016).

<sup>2</sup> For a different analysis of borders in the same case study, see R. A. Del Sarto, ‘Defining Borders and People in the Borderlands: EU Policies, Israeli Prerogatives and the Palestinians’, JCMS: Journal of Common Market Studies 52 (2014).

<sup>3</sup> N. Tocci, The Widening Gap between Rhetoric and Reality in EU Policy towards the Israeli-Palestinian Conflict, CEPS Working Paper Document (Brussels: CEPS, 2005).

<sup>4</sup> G. Harpaz and G. Heimann, ‘Sixty Years of EU-Israeli Trade Relations: The Expectations-Delivery Gap’, Journal of World Trade 50 (2016).

<sup>5</sup> C. Musu, European Union Policy towards the Arab-Israeli Peace Process. The Quicksands of Politics. (Basingstoke: Palgrave MacMillan, 2010).

<sup>6</sup> R. Miller, Inglorious Disarray: Europe, Israel and the Palestinians Since 1967 (London: C Hurst & Co Publishers Ltd, 2011).

<sup>7</sup> A. Livingston, ‘EU Failures in Economic Relations: The Case of Israel and Palestine’, European Foreign Affairs Review 19 (2014).

<sup>8</sup> J. A. Agnew and L. Muscarà, Making Political Geography (Plymouth: Rowman & Littlefield, 2012), p. ix.

<sup>9</sup> I. B. Neumann, ‘Returning Practice to the Linguistic Turn: The Case of Diplomacy’, Millennium - Journal of International Studies 31 (2002), p. 630.

<sup>10</sup> E. D. Ermarth, ‘Agency in the Discursive Condition’, History and Theory 40 (2001), p. 44.

<sup>11</sup> For an overview of the entire Green Line, see D. Newman, Boundaries in Flux: The ‘Green Line’ Boundary Between Israel and the West Bank - Past, Present and Future (Durham: IBRU, 1995).

<sup>12</sup> D. Newman, ‘The Geopolitics of Peacemaking in Israel–Palestine’, Political Geography, 21 (2002), p. 636. For details, see Newman, Boundaries in Flux (note 11); M. A. Tessler, A History of the Israeli-Palestinian Conflict (Indiana University Press, 1994); A. Shlaim, The Iron Wall: Israel and the Arab World (New York: W. W. Norton & Company, 2001); E. L. Rogan and A. Shlaim, eds., The War for Palestine: Rewriting the History of 1948 (New York: Cambridge University Press, 2001); U. Bar-Joseph, The Best of Enemies: Israel and Transjordan in the War of 1948 (London ; Totowa, N.J: Routledge, 1987).

<sup>13</sup> As quoted in F. Brenchley, Britain, the Six-Day War and Its Aftermath (I.B.Tauris, 2005), p. 87.

<sup>14</sup> Wells on ink have been used to analyse the meaning, the justifications, and the implications of the omitted article in front of ‘territories’ and why there is a difference between the English text and the French one, which reads “des territoires” (cf. S. D. Bailey, The Making of Resolution 242 (Brill Archive, 1985)).

<sup>15</sup> Israel has continued to make an internal distinction in terms of internal law, though, with the notable exception of the annexed parts to which internal law is applied (Jerusalem and Golan Heights).

<sup>16</sup> A. Swidler, ‘What Anchors Cultural Practices’, K. K. Cetina, T. R. Schatzki, and E. von Savigny, eds, The Practice Turn in Contemporary Theory (New York: Routledge, 2001).

<sup>17</sup> E.g., E. Aoun, ‘European Foreign Policy and the Arab-Israeli Dispute: Much Ado About Nothing?’, European Foreign Affairs Review 8 (2003); N. Gordon and S. Pardo, ‘Normative Power Europe and the Power of the Local’, JCMS: Journal of Common Market Studies 53 (2015); M. Pace, ‘The Construction of EU Normative Power’, JCMS: Journal of Common Market Studies 45 (2007); B. A. Roberson, ed., Middle East and Europe: The Power Deficit (London ; New York: Routledge, 1998).

<sup>18</sup> We could get very technical here, as e.g. I. B. Neumann, ‘Returning Practice to the Linguistic Turn: The Case of Diplomacy’ p. 628 argues that all practices have a discursive component, a point on which we agree, but this thread would require a separate treatment. We will continue on the basis of this broad generalisation differentiating the two.

<sup>19</sup> But in the case of the EU, coherence is often used to identify the existence of ‘single voice,’ rather than the match between discourse and action (cf. E. da Conceição-Heldt and S. Meunier, ‘Speaking with a Single Voice:

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Internal Cohesiveness and External Effectiveness of the EU in Global Governance’, Journal of European Public Policy 21 (2014).

<sup>20</sup> J. L. Pressman and A. B. Wildavsky, Implementation: How Great Expectations in Washington Are Dashed in Oakland. (University of California Press, 1984).

<sup>21</sup> For the case of Canada’s Middle East policy, for instance, see M.-J. Zahar, ‘Talking One Talk, Walking Another: Norm Entrepreneurship and Canada’s Foreign Policy in the Middle East’, in P. Heinbecker and B. Momani (eds.), Canada and the Middle East: in theory and practice, (Waterloo, Ont: Wilfrid Laurier University Press 2007).

<sup>22</sup> C. Hill, ‘The Capability-Expectations Gap, or Conceptualizing Europe’s International Role’, JCMS: Journal of Common Market Studies 31 (1993).

<sup>23</sup> A. Toje, ‘The Consensus—Expectations Gap: Explaining Europe’s Ineffective Foreign Policy’, Security Dialogue 39 (2008).

<sup>24</sup> Cf. F. Bicchi, ‘Dilemmas of Implementation: EU - Democracy Assistance in the Mediterranean’, Democratization 17 (2010).

<sup>25</sup> Miller (note 6) p. 2.

<sup>26</sup> Tocci (note 3) p. 1.

<sup>27</sup> R. A. Del Sarto, ‘Israel and the European Union: Between Rhetoric and Reality.’, C. Shindler, ed, Israel and the World Powers: Diplomatic Alliances and International Relations beyond the Middle East (London: I.B.Tauris, 2014).

<sup>28</sup> Harpaz and Heimann (note 4) p. 449.

<sup>29</sup> N. Gordon and S. Pardo, ‘Normative Power Europe Meets the Israeli-Palestinian Conflict’, Asia Europe Journal 13 (2015).

<sup>30</sup> P. DeLeon, ‘The Missing Link Revisited’: Review of Policy Research 16 (1999); B. Ferman, ‘When Failure Is Success: Implementation and Madisonian Government’, D. J. Palumbo and D. J. Calista, eds, Implementation and the Policy Process: Opening Up the Black Box (Greenwood Press, 1990); M. Hill and P. Hupe, Implementing Public Policy: An Introduction to the Study of Operational Governance (SAGE, 2002); R. E. Matland, ‘Synthesizing the Implementation Literature: The Ambiguity-Conflict Model of Policy Implementation’, Journal of Public Administration Research and Theory 5 (1995); H. Püzl and O. Treib, ‘Implementing Public Policy’, F. Fischer and G. J. Miller, eds, Handbook of Public Policy Analysis: Theory, Politics, and Methods (Boca Raton: Routledge, 2007).

<sup>31</sup> C. Hill, ‘Closing the Capabilities-Expectations Gap’, J. Peterson and H. Sjursen, eds, A Common Foreign Policy for Europe? (London: Routledge, 1998).

<sup>32</sup> See, e.g., contributions in J.-F. Morin and C. Carta, eds., EU Foreign Policy through the Lens of Discourse Analysis: Making Sense of Diversity (Ashgate Publishing, Ltd., 2014).

<sup>33</sup> Gordon and Pardo (note 29).

<sup>34</sup> F. Schimmelfennig, ‘The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union’, International Organization 55 (2001), p. 65.

<sup>35</sup> Neumann (note 9) p. 635.

<sup>36</sup> On other analyses focusing on the different functions that EU’s normative discourses can have, see T. Diez, ‘Normative Power as Hegemony’, Cooperation and Conflict 48 (2013); R. Del Sarto, ‘Normative Empire Europe: The European Union, Its Borderlands, and the “Arab Spring”’, JCMS: Journal of Common Market Studies 54 (2016).

<sup>37</sup> Swidler (note 16) p. 79.

<sup>38</sup> Sending and Neumann embrace a broader version of anchoring practices, by suggesting that anchoring practices “draw their strength from how they produce stable signposts and resources for a plethora of actors” . in Sending, O. J., & Neumann, I. B., ‘Banking on power: how some practices in an international organization anchor others.’ In E. Adler & V. Pouliot (Eds.), International Practices. Cambridge: Cambridge University Press, 2011), p.239.

<sup>39</sup> A. Persson, The EU and the Israeli–Palestinian Conflict 1971–2013: In Pursuit of a Just Peace (Lanham: Lexington Books, 2015).

<sup>40</sup> P. Müller, EU Foreign Policymaking and the Middle East Conflict : The Europeanization of National Foreign Policy (Routledge, 2012), pp. 28–31.

<sup>41</sup> This is the text under art.II.2, in the document Consultation à Six sur le Moyen-Orient. Rapport du Comité Politique, file n° 375 (ref. 436QO/375), Ministère des Affaires étrangères français, Direction Europe.

<sup>42</sup> See Coopération Politique, Reunion des Six Ministres des Affaires Etrangères, 13 et 14 Mai 1971, Ministère des Affaires étrangères français, Secrétariat général, Entretiens et messages, Vol. 48 (Archives Historiques de l’Union Européenne, MAEF Reel 240).

<sup>43</sup> Miller (note 6) p. 20.



- <sup>44</sup> Idem. See also “La Tunisie souhaite <une globalisation> des rapports entre les pays d’Europe et ceux du Maghreb », *Le Monde*, 10 May 1971.
- <sup>45</sup> S. Pardo and J. Peters, *Israel and the European Union : A Documentary History* (Lanham, MD ; Plymouth: Lexington Books, 2012), p. 98.
- <sup>46</sup> Ibid, p. 99.
- <sup>47</sup> D. Allen, ‘Political Cooperation and the Euro-Arab Dialogue’, D. Allen, R. Rummel, and W. Wessels, eds, *European Political Cooperation: Towards a New Foreign Policy for Western Europe*. (Bonn: Institut für Europäische Politik, 1982); Miller (note 6) p. 34.
- <sup>48</sup> Including UNSC Resolution 446 (22 March 1979) and UNSC Resolution 452 (20 July 1979). The issue of Jerusalem was instead addressed by the UNSC during 1968-1971.
- <sup>49</sup> UNSC Resolution 456 (1 March 1980).
- <sup>50</sup> It was at this point that the US signed with Israel two important agreements about research cooperation limiting its authority to the Green Line. See K. Y. Nikolov, ‘ASHTON’S SECOND HAT: The EU Funding Guidelines on Israel as a Post-Lisbon Instrument of European Foreign Policy Making’, *Diplomacy* 11 (2014), p. 171; Gordon and Pardo, ‘Normative Power Europe and the Power of the Local’, pp. 5–6.
- <sup>51</sup> Shlaim (note 12) p. 355; S. L. Spiegel, *The Other Arab-Israeli Conflict: Making America’s Middle East Policy, from Truman to Reagan* (Chicago: University Of Chicago Press, 1986), p. 331.
- <sup>52</sup> D. Gold, ‘U.S. Policy toward Israel in the Peace Process: Negating the 1967 Lines and Supporting Defensible Borders’, *Jewish Political Studies Review* 24 (2012), p. 12; Spiegel (note 51) pp. 419–420.
- <sup>53</sup> Speech by Reagan, 1 September 1982, available at <http://www.cfr.org/israel/reagan-plan-us-policy-peace-middle-east/p14140> (last accessed 24/04/2015).
- <sup>54</sup> Gold (note 52) p. 18. More specifically, it was Secretary of State Clinton that on 25 November 2009 introduced a US position “based on the 1967 lines.” Cf. D. C. Kurtzer et al., *The Peace Puzzle: America’s Quest for Arab-Israeli Peace, 1989–2011* (Ithaca, NY: Cornell University Press, 2012), p. 253. In Oren’s view (former Israeli Ambassador to the US), this move emboldened the Palestinians to “pocket” concession in two rounds of peace talks without offering any in return (M. B. Oren, *Ally: My Journey Across the American-Israeli Divide*. (New York: Random House Trade Paperbacks, 2016)).
- <sup>55</sup> E.g., I. Greilsammer, *Israel et l’Europe. Une Histoire Des Relations Entre La Communauté Européenne et l’Etat d’Israel*. (Lausanne: Fondation Jean Monnet Pour l’Europe, 1982); G. Harpaz and A. Shamis, ‘Normative Power Europe and the State of Israel: An Illegitimate EUtopia?’, *JCMS: Journal of Common Market Studies* 48 (2010); R. Hollis, ‘The Politics of Israeli- European Economic Relations’, *Israel Affairs* 1 (1994); S. Minerbi, ‘The EEC and Israel’, A. Shlaim and G. N. Yannopoulos, eds, *The EEC and the Mediterranean Countries*. (Cambridge: Cambridge University Press, 1976); S. Pardo and J. Peters, *Uneasy Neighbours: Israel and the European Union* (Lanham, MD: Lexington Books, 2010).
- <sup>56</sup> G. FitzGerald, *All in a Life : An Autobiography*. (London: Macmillan, 1991).
- <sup>57</sup> Miller (note 6) p. 62.
- <sup>58</sup> Council Regulation No. 3363/86 “on the tariff arrangements applicable to imports into the Community of products originating in the occupied [Palestinian] territories” for which the EC established a preferential import regime.
- <sup>59</sup> Regulation No. 4129/86 addressing EUR.1 documents.
- <sup>60</sup> E. Benvenisti, *Legal Dualism: The Absorption of the Occupied Territories into Israel* (Westview Press, 1989); M. Karayanni, *Conflicts in a Conflict: A Conflict of Laws Case Study on Israel and the Palestinian Territories* (OUP USA, 2014).
- <sup>61</sup> Cf. A. Bertrand-Sanz, ‘The Role of the European Union in the Resolution of the Israeli-Palestinian Issue: Towards an Engagement Based on Respect for International Law and Human Rights’ (PhD, London: School of Oriental and African Studies, 2010); L. Zemer and S. Pardo, ‘The Qualified Zones in Transition: Navigating the Dynamics of the Euro-Israeli Customs Dispute’, *European Foreign Affairs Review* 8 (2003).
- <sup>62</sup> European Commission, Communication SEC(1998) 695 final, Brussels, 12.05.1998, p.10.
- <sup>63</sup> Reply to Oral question no 106 by Said El Khadraoui (H-0544/05) on ‘The Amendment of the Protocol on Origin of the EU-Israel Association Agreement’, European Parliament, 7 July 2005. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20050707&secondRef=ANN-01&language=EN&detail=H-2005-0544&query=QUESTION> (last accessed 24/10/2015).
- <sup>64</sup> 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’, *Journal of World Trade* 38 (2004); G. Harpaz and R. Frid, ‘Israel: Exported Products to the EU – An Agreement Reached over the Treatment of Products Exported to the EU From the Golan Heights, East Jerusalem, the West Bank and the Gaza Strip (the Territories)’, *International Trade Law and Regulation* 10 (2004), pp. 32–33; B. Voltolini, ‘Territorial Borders and Functional Regimes in EU-Israeli Agreements’, R. A. Del Sarto, ed,

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Fragmented Borders, Interdependence and External Relations. The Israel-Palestine-European Union Triangle (Basingstoke: Palgrave MacMillan, 2015).

<sup>65</sup> Updated in 2013 and 2015.

<sup>66</sup> B. Voltolini, Lobbying in EU Foreign Policy-Making: The Case of the Israeli-Palestinian Conflict (London: Routledge, 2016); B. Voltolini, 'Non-State Actors and Framing Processes in EU Foreign Policy: The Case of EU-Israel Relations', Journal of European Public Policy 23 (2016).

<sup>67</sup> Opinion of Advocate General Bot, delivered on 29 October 2009, case C-386/08, Brita GmbH v Hauptzollamt Hamburg-Hafen; Judgment of the Court (Fourth Chamber) in Case C-386/08, Reference for a preliminary ruling under Article 234 EC, from the Finanzgericht Hamburg (Germany), made by decision of 30 July 2008, received at the Court on 1 September 2008, in the proceedings Brita GmbH v Hauptzollamt Hamburg-Hafen, 25 February 2010.

<sup>68</sup> For an analysis of the territorial scope of EU-Israel agreement in relation to settlements good, see B. Voltolini, 'Territorial Borders and Functional Regimes in EU-Israeli Agreements', R. A. Del Sarto, ed, Fragmmented Borders, Interdependence and External Relations. The Israel-Palestine-European Union Triangle (Basingstoke: Palgrave MacMillan, 2015).

<sup>69</sup> The precedent here is the accession of Israel to the OECD, which took place on the agreement that Israel will provide disaggregated statistical data for Israel pre-1967 and occupied territories (see Nikolov (note 50) p. 171).

<sup>70</sup> Commission decision of 31 January 2011 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data by the State of Israel with regard to automated processing of personal data.

<sup>71</sup> Article 1(26).

<sup>72</sup> Proposal for a Decision of the Council and of the Representatives of the Governments of the Member States, meeting within the Council on the conclusion of the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the Government of the State of Israel, of the other part, Brussels, 20 December 2012.

<sup>73</sup> Commission Implementing Regulation (EU) No 594/2013 of 21 June 2013 amending Implementing Regulation (EU) No 543/2011 as regards marketing standards in the fruit and vegetables sector and correcting that Implementing Regulation.

<sup>74</sup> The agreement is called Agreement on Conformity Assessment and Acceptance (ACAA) of industrial products between the EU and Israel. It dealt with pharmaceutical products and was finally approved by the European Parliament in October 2012.

<sup>75</sup> Legal opinion of the European Parliament Legal Service, 16 March 2012. The document, which is a confidential legal opinion, was seen by one of the authors during interviews.

<sup>76</sup> Letter of notification by the European Commission to the Israeli Ministry of Industry, Trade and Labour, 4 February 2013.

<sup>77</sup> Nikolov (note 50) pp. 170–171.

<sup>78</sup> Council conclusions on the Middle East Peace Process – 3209<sup>th</sup> Foreign Affairs Council meeting, 10 December 2012, Brussels.

<sup>79</sup> The precise title is "Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards."

<sup>80</sup> Commission Implementing Regulation (EU) No 594/2013 of 21 June 2013 amending implementing Regulation (EU) No 543/2011 as regards marketing standards in the fruit and vegetables sector and correcting that Implementing Regulation. OJEU L170, 22 June 2013. See also Nikolov (note 50).

<sup>81</sup> Commission Implementing Regulation (EU) No 166/2014 of 17 February 2014 amending Regulation (EC) No 798/2008 as regards certification requirements for imports into the Union of meat of farmed raptines for human consumption and the entries for Israel and South Africa in the list of third countries or territories. OJEU L54, 17 February 2014.

<sup>82</sup> E.g. see the UK report available here: <https://www.gov.uk/government/publications/overseas-business-risk-israel/overseas-business-risk-israel--3>. Last accessed 9 February 2017.

<sup>83</sup> It is impossible to double-check data, as Israel does not publish separate statistics, despite an agreement signed at the time of its accession to the OECD. Other examples are included in Del Sarto (note 2).

<sup>84</sup> For a starting point, see C. du Plessix, 'EU3 Resistance to Norms in External Action: The Case of the (Future) Borders of Israel and Palestine', European Foreign Affairs Review 20 (2015).

<sup>85</sup> E.g., A. Herranz-Surrallés, 'An Emerging EU Energy Diplomacy? Discursive Shifts, Enduring Practices', Journal of European Public Policy 23 (2016).

<sup>86</sup> R. Del Sarto, 'Borders, Power and Interdependence: A Borderlands Approach to Israel-Palestine and the European Union', R. Del Sarto, ed, Fragmmented Borders, Interdependence and External Relations: The Israel-Palestine-European Union Triangle (Basingstoke: Palgrave MacMillan, 2015).

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<sup>87</sup> F. Bicchi, 'Europe under occupation: the European diplomatic community of practice in the Jerusalem area.' European security, 25(4), (2016), pp. 461-477.

<sup>88</sup> N. Gordon and S. Pardo (note 17).