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The International Norm–Practice Relationship, Contested States, and the EU's Territorial (Un)Differentiation toward Palestine and Western Sahara

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This article addresses the relationship—and incongruences—between international norms and practices in EU foreign policy with a particular focus on the EU's dealing with situations of contested statehood resulting from foreign occupation. To this purpose, we revisit the literature on the international norm–practice nexus, dynamics, and mismatches—including debates on hypocrisy—and we conceptualize territorial (un)differentiation from the perspective of both norms and practices. We then examine the extent to which and how normative change and practical change have taken place, and mutually interacted, in the EU's territorial (un)differentiation toward Israel–Palestine and Morocco–Western Sahara. We draw on the scholarship on the international norm life cycle, which we also replicate as an analytical framework to empirically track the processes of emergence, cascade, and internalization of practices. Based on our case studies, we argue that, while emerging EU territorial differentiation toward Israel–Palestine has resulted from a process in which normative change and practical change have become entangled in a feedback loop, and the norm–practice gap has tended to be closed, in the case of Morocco–Western Sahara there has been substantial normative change but practices have remained unaltered, which has led such gap—and the perception of EU hypocrisy—to widen.

Cet article s'intéresse à la relation—et aux incongruences—entre les normes et pratiques internationales dans le cadre de la politique étrangère de l'UE, en se concentrant plus particulièrement sur la gestion européenne de situations de statut d'État contesté à la suite d'une occupation étrangère. À cette fin, nous consultons à nouveau la littérature sur les liens entre normes et pratiques internationales, leurs dynamiques et leurs discordances, y compris les débats sur l'hypocrisie, avant de conceptualiser la différenciation et l'indifférenciation territoriale du point de vue des normes et des pratiques. Nous analysons ensuite la portée des changements normatifs et pratiques, ainsi que la façon dont ils ont été mis en place et dont ils interagissent, dans le cadre de la différenciation et l'indifférenciation territoriale de l'UE au sujet d'Israël/Palestine et du Maroc/Sahara occidental. Nous nous fondons sur les travaux de recherche relatifs au cycle de vie des normes internationales, que nous répliquons aussi comme cadre analytique pour suivre empiriquement les processus d'apparition, de multiplication et d'assimilation des pratiques. En nous basant sur nos études de cas, nous affirmons que bien que la différenciation territoriale émergente de l'UE quant à Israël/Palestine ait débuté par un processus au sein duquel changements normatif et pratique se sont trouvés emmêlés dans une boucle de rétroaction, dans ce cas et dans celui du Maroc/Sahara occidental, des changements normatifs importants ont eu lieu, mais les pratiques sont restées inchangées. Ainsi, l'écart entre normes et pratiques s'est élargi, et la perception d'hypocrisie de l'UE s'est intensifiée.

Este artículo aborda la relación—y las incongruencias— entre las normas y las prácticas internacionales en el marco de la política exterior de la UE, con atención particular al tratamiento que reciben por parte de la UE aquellas situaciones de Estado disputadas resultado de la ocupación extranjera. Con este fin, revisamos la bibliografía existente sobre el nexo, la dinámica y los desajustes entre normas y prácticas internacionales, incluyendo los debates sobre la hipocresía, y conceptualizamos la (in)diferenciación territorial desde la perspectiva de las normas y desde la perspectiva de las prácticas. A continuación, examinamos en qué medida y cómo se han ido produciendo cambios tanto normativos como prácticos, y como estos han interactuado entre sí, en la (in)diferenciación territorial de la UE con relación a Israel-Palestina y a Marruecos-Sáhara Occidental. Nos basamos en los trabajos existentes sobre el ciclo de vida de las normas internacionales, el cual también replicamos como marco analítico que nos sirve para rastrear empíricamente los procesos de emergencia, cascada e internalización de las prácticas. Teniendo en cuenta los estudios de caso que hemos llevado a cabo, argumentamos que, si bien la diferenciación territorial emergente de la UE con relación a Israel-Palestina comenzó con un proceso en el que el cambio normativo y el cambio práctico se imbricaron en un ciclo de retroalimentación mutua, tanto en este caso como en el de Marruecos-Sáhara Occidental ha existido un cambio normativo sustancial pero las prácticas se han mantenido inalteradas. Esto que ha llevado a que se amplíe la brecha entre normas y prácticas y, consecuentemente, la percepción de hipocresía de la UE.

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Introduction

In January 2019, just over two years after the Court of Justice of the EU (CJEU) established that Western Sahara has a "separate and distinct status" as a non-self-governing territory (Court of Justice of the EU 2016), which legally rules out its automatic inclusion in all European Union (EU)–Morocco cooperation deals, protocol amendments to the EU–Morocco agricultural agreement were passed to preserve such doubtful longstanding practice. As the national liberation movement internationally representing the Sahrawi people, the Polisario Front condemned the renegotiated deal and the European Parliament's positive consent vote "in spite of the overwhelmingly evidence that such an agreement would violate EU law." The "narrow, cynical, and counter-productive approach" taken by the EU institutions on this matter, they added, "undermines the EU principles and values" (Polisario Front 2019). Although such a blatant ignorance of a CJEU decision has not happened in the case of Palestine, the gaps between norm-based discourse, policies, and practice have long been one of the main characteristics of the EU's involvement in the so-called Israeli–Palestinian conflict (Tocci 2005; Bouris 2014; Bicchi and Voltolini 2018; Huber 2018). These cases are illustrative of the wider tensions between the EU's practices and self-articulated normative commitments to promote an international order based on international law (Newman and Visoka 2018), as part of the building of the EU's self-identity as a liberal actor and a key player in the context of the liberal international order (LIO). What are the effects of the norm–practice gap and the ensuing perception of EU hypocrisy upon such normative order?

This article examines the relationship—and gaps—between international norms and practices in EU foreign policy, with a particular focus on the EU's dealing with contested states in its immediate "neighborhood" whose territory has been subject to decades-long foreign occupation in the context of protracted decolonization conflicts. More specifically, the question we address is: To what extent and how have normative and practical change taken place, and mutually interacted, in the EU's territorial (un)differentiation between Israel and Palestine, on one hand, and Morocco and Western Sahara, on the other?

Besides the non-secessionist origin of contested statehood and the presence of longstanding foreign occupation, from an international normative standpoint Palestine and Western Sahara/Sahrawi Arab Democratic Republic (SADR) share a substantial degree of "titular recognition"—understood as "the wide formal acceptance (at the multilateral level) of an entity's right of or title to statehood" (Geldenhuys 2009, 25). Indeed, what distinguishes these two cases from other cases of contested statehood is an actual denial of the right to self-determination by colonial/occupying powers and their international enablers. This has led to a vibrant literature applying the interpretive framework of settler colonialism to the situation of Palestine (see, for example, Pappe 2012; Salamanca et al. 2012; Hilal 2015; Gordon and Ram 2016; Tatour 2019; Dominguez de Olazabal 2023) and to some extent to Western Sahara (Mundy and Zunes 2015)—and also directly interacts with debates on hypocrisy on the side of the EU. Also, in geopolitical terms, the two contested states' proximity to Europe, combined with postcolonial ties, provides the EU with a distinct presence and influence in their respective regions as well as a particularly close economic, political, and security interdependence with the respective occupying powers, namely Israel, and Morocco. The tension between interdependence with the latter two countries and the two contested states' titular recognition is what ultimately lies at the heart of the conflicting territorial (un)differentiation pressures faced by the EU.

Consequently, the paper's primary aim is to empirically trace processes of change at the level of the relevant EU norms and practices, or the combination of both, identifying key milestones and turning points as well as the driving logics in each of the cases. To this purpose, we revisit the literature on the international norm–practice relationship, dynamics, and mismatches—including debates on hypocrisy ("The Relationship between International Norms and Practices: Dynamics and Mismatches" section)—while situating our analysis in the particular context of contested statehood in Palestine and Western Sahara. This allows us to conceptualize what we call territorial (un)differentiation from the perspective of both norms and practices ("Contested Statehood in Palestine and Western Sahara and EU Territorial (Un)Differentiation" section), engaging with broader debates on diplomacy, sovereignty, and international recognition. Then, we draw on the scholarship on international norm dynamics and the "life cycle" of norms theorized by Finnemore and Sikkink (1998), which we furthermore replicate and apply to the genealogy, diffusion, and institutionalization of international practices (Adler and Pouliot 2011, 18–9). We use this analytical framework to zoom into the two case studies of Israel–Palestine ("The Genealogy and Life Cycle of EU Territorial Differentiation Practices toward Israel–Palestine" section) and Morocco–Western Sahara ("Normative Change Without Practical Change in the EU's Territorial Undifferentiation of Morocco–Western Sahara" section) to track how specific territorial (un)differentiation norms and practices are born, diffused, and consolidated in EU foreign policy and external relations, chiefly in economic and sectoral cooperation with third parties. While not pursuing a systematic comparison of the two cases due to the strikingly dissimilar pathway and extent of the processes of practical change witnessed in each of them, we also consider their parallels and overlaps, especially in terms of norm dynamics and hypocrisy.

From a methodological perspective, our tracking of the processes of normative and practical change witnessed in each of our two cases relies on analyzing and establishing the respective turning points. The data we use to this purpose include a broad range of official documents, e.g., EU international agreements and court rulings on legal cases, media reports, and secondary literature. These are complemented by semi-structured interviews with EU officials in Brussels and Jerusalem, Palestinian and Sahrawi representatives in Brussels, and civil society organizations such as the Mattin Group, which has been playing a key role in these processes since the early 1980s.

Based on our findings, we argue that, while emerging EU territorial differentiation toward Israel–Palestine started with a process in which normative change and practical change became entangled in a feedback loop (i.e., a mutually reinforcing relationship), in both this case and that of Morocco–Western Sahara there has been substantial normative change, but practices have remained unaltered, which has led the norm–practice gap—and the perception of EU hypocrisy—to widen. Given its analytical potential to explain both continuity and change (Bueger and Gadinger 2015, 456), international practice theory helps us deal with the

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question of "[h]ow does the ordinary unfolding of practice generate transformations" (Adler and Pouliot 2011, 18). Through our analysis, we also look at how a shifting practice can potentially lead to a new norm, but also how a practice can be resilient and in continuous need of being "irritated" in order to change. Furthermore, the examination of these two cases allows us to draw some insights into how temporality matters and how specific norms and practices can accelerate or slow down legal and political processes.

The Relationship between International Norms and Practices: Dynamics and Mismatches

Within the social dynamics that shape world politics, we see co-existence and interaction between international norms and international practices. Generally defined as "collective expectations" (Katzenstein 1996, 5) or "standard[s] of appropriate behavior for actors with a given identity," norms may be either regulative—when they "order and constrain behavior"—or constitutive—when they more fundamentally "create new actors, interests, and categories of action" (Finnemore and Sikkink 1998, 891). In international relations, constitutive norms represent a "direct expression of the actor's identity," while regulative norms tend to translate into "explicit *rules* to encourage compliance and reciprocity" in the face of collective action problems, chief among which are those of (international) law (Barnett 1998, 30, emphasis added; see the norms vs. rules distinction in Krasner 1983, 2).[1] On the other hand, practices are located in behavior itself. They emerge as "socially meaningful patterns of action which, in being performed more or less competently, simultaneously embody, act out, and possibly reify background knowledge and discourse in and on the material world" (Adler and Pouliot 2011, 6). The broader concept of international socialization, understood as the "process that is directed toward a state's internalization of the constitutive beliefs and practices institutionalized in its international environment" (Schimmelfennig 2000, 111–2; see Checkel 2006), arguably encompasses and brings together both norm and practice dynamics.

More particularly, when it comes to the EU's foreign policy and external relations, looking at the international norm–practice relationship opens a productive pathway to critically advance evergreen debates on this actor's purportedly distinctive "normative power." Originally defined as the "ability to shape conceptions of "normal" in international relations," Manners (2002) conceived of the EU's normative power as stemming from both normative aims (its founding principles) and non-coercive means of international action (various norm diffusion procedures). The eventual implementation or translation of those norms into practice was apparently taken for granted. Subsequent critical reconsiderations of this concept have problematized the extent to which EU foreign policy is driven by norms or interests—including the difficulties of empirically disentangling such two logics and the multilevel or intergovernmental construction of the latter—as well as the issue of the EU's perennially inconsistent behavior (Diez 2013; see Diez 2005; Hyde-Price 2006; Manners 2006; Whitman 2011). Inconsistencies have been generally attributed to the interests/norms divide or to global and intra-EU norm contestation, with the specific operation and role of practices thus remaining largely neglected as a distinct, albeit interacting, logic.

Yet, in general, the international norm–practice relationship is a complex one in which there are two main opposing theoretical views. The first one grants causal primacy—or at least a structuring role—to norms. According to Wendt (1999, 82), "norms are causal insofar as they regulate behaviour." "Norms are expectations that constrain action within a specific social context," nuances Barnett (1998, 30). Consequently, from a dynamic perspective, normative change precedes, drives, and ultimately subsumes practical change. Advertently or not, this is the assumption that has prevailed in the burgeoning scholarship on international socialization since the late 1990s. In much of this field, norm dynamics took a life of their own due to the tendency to "separate norm existence or strength from actual behavioural change in [. . .] operationalization" (Finnemore and Sikkink 1998, 892). Alternatively, when research has addressed the latter change, or the lack thereof, it has been mostly in terms of "normative institutionalization-implementation gaps." In other words, the central research question remained "how international norms change practice" (Betts and Orchard 2014).

The opposite theoretical view posits that practical change precedes, drives, and ultimately subsumes normative change. Finnemore and Sikkink (1998, 905) already cursorily acknowledged that what they call "iterated behavior and habit"—or "procedural changes that create new political processes"—could precede and act as an "indirect and evolutionary" route to "gradual and inadvertent" normative change. More recently, such reverse causal relationship has received greater attention as a result of the so-called "practice turn" in IR. The proponents of this theoretical approach and empirical agenda advocate it as a way of bridging gaps and overcoming longstanding dichotomies such as ideas vs. matter, agency vs. structure, and continuity vs. change (Adler and Pouliot 2011, 10–17). The core epistemological commitments of international practice theory—e.g., prioritizing process and performance over stasis, anchoring practices in the material world, conceiving of knowledge as inextricably connected to action and produced through collective processes, and understanding the world in a performative fashion (Bueger and Gadinger 2015, 453)—grant a central role to what Pouliot (2008) calls the "logic of practicality." In his view, such habitual know—how would act as a more elementary logic of social action that precedes and even carries "ontological priority" over the three logics traditionally considered in IR, i.e., those of consequences (instrumental rational choice), appropriateness (norm compliance), and arguing (communicative action) (March and Olsen 1998; Risse 2000; Pouliot 2008). For her part, though not adhering to such a hardcore or "comprehensive form" of the practice approach (Bourbeau 2017, 171), Wiener (2018, 27) also asserts that "the norm lies *in* the practice and all practices are norm-generative" (emphasis in original).

Faced with the dilemma above, this paper adopts a "complementary" view of the norm–practice relationship, and one that remains agnostic as to the nature and direction of the causal relationship(s) between them. We agree with the general premise that "since norms, discourses, and practices are not necessarily competing logics, the interaction among them need not be mutually exclusive" (Bourbeau 2017, 171). To this end, we argue that practices help in explaining diplomatic dynamics and performances but also contribute to tracing and disentangling the emergence of discourses, policies, and norms in the real world (see, for example, Adler-Nissen 2016). Furthermore, we consider that the two logics may at times operate independently, intersect,

[1] See also Price (2024) in this special issue.

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or clash with each other. And when they push in the same direction, normative change does not necessarily precede and cause practical change, nor the other way around. Mutual interactions and feedback loops are more likely to take place.

As an analytical framework, and irrespective of the complex relationship discussed above, in this paper we posit that there exist parallels between the respective life cycles of international norms and international practices. Adler and Pouliot (2011, 18–9) suggest that the life cycle of international practices comprises three stages, i.e., genealogy (generative relationships), diffusion, and institutionalization, but do not elaborate on the nature and the processes involved in each of them. In order to shed more light on the "how" question, we draw on Finnemore and Sikkink's (1998) work on norm dynamics and political change. We adapt and apply to international practices what these authors theorize as a three-stage process, akin to the one proposed by Adler and Pouliot (2011). The first stage is one of norm or practice "emergence," which is instigated by entrepreneurs who have strong notions with regard to the "appropriateness" of certain behavior (Finnemore and Sikkink 1998, 896)—or know-how about its practicality. The construction of cognitive frames is an essential component of their political strategies and this is largely based on a "logic of appropriateness" (Finnemore and Sikkink 1998, 897). Any effort to promote a new norm is based on the logic of "appropriateness"—in other words, "commonly" accepted practices. The aim here is to construct predicaments and "activate" elements within the system. The second stage of the life cycle is the norm or practice "cascade." Here, socialization is a dominant mechanism and, after a norm or practice has reached its tipping point, "contagion" leads to more actors adopting and following it (Finnemore and Sikkink 1998, 902). These actions are opposed to instrumentally (power) driven performative cascades; in other words, norm propagation by passive enforcement or practice-embedded normativities. The final stage is norm or practice "internalization." At this point, which is difficult to reach, a norm becomes so widely accepted and assumed that it is "taken for granted" and conformance becomes almost automatic at the level of practices (Finnemore and Sikkink 1998, 904). The way the norm "travels" at this stage is from obedience training to conformity and compliance, which leads to eventual obedience. In other words, this behavior is eventually socially standardized and repetitive thus becoming a "ritual" (Kertzer 1988, 9). These performative rituals and practices exert strong institutional pressure on decision-makers and limit their agency by inviting them to repeat the same practices and decisions without question.

Besides their mutual causal links and their respective dynamics, one final way to look at the international norm–practice relationship is by focusing on the outstanding, persistent discrepancies between the two of them in any given area. Such lack of fit may well be captured by the concept of hypocrisy, as it is consistent with the definition of hypocrites as "persons who have, by *mismatch between judgments and actions*, undermined their claim to moral authority" (Isserow and Klein 2017, 193, emphasis added). In philosophy, this gap has been interpreted as resulting from either the deceiving simulation "to be morally better than one is" (pretence-centered accounts) or the application of different moral standards to oneself and to others (exception-seeking accounts) (Isserow 2020). In IR, the most well-known scholarly engagement with the omnipresent albeit elusive notion of hypocrisy is its application by (Krasner 1999) to the study of sovereignty. While not specifically conceptualizing it, Krasner uses the term hypocrisy to refer to the divergence and clash between March and Olsen's (1998) logics of appropriateness and consequences. He argues that "[o]utcomes in the international system are determined by rulers whose violation of, or adherence to, international principles or rules is based on calculations of material and ideational interests," concluding that what he calls "organized hypocrisy" is thus "the norm" (Krasner 1999, 9, 42; see Finnemore 2009).

This is a powerful argument and a promising start, yet in our view, Krasner neglects two important elements: philosophical criticism of the assumption that hypocrisy always originates from self-interest (Isserow 2020) and the presence of other logics besides those of appropriateness and consequences, not least the own logic of "taken-for-granted practices" (Krasner 1999, 9). The alternative we propose, based on the practice approach, is to conceive of hypocrisy as the mismatch between self-articulated norms and practices, irrespective of the (combination of) logics driving the latter. Our emphasis on normative self-articulation is in line with existing research, also informed by the practice approach, on the "gap between discourse and practice"—or between discursive and implementation practices—in EU foreign policy (Bicchi and Voltolini 2018, 127–9). What matters for the perception of hypocrisy is not generally applicable norms—including but not limited to international and internal law (see Müller and Slominski 2017)—but the specific normative claims or parameters that an actor enunciates in its own discourse. As to our focus on practices, it is justified because hypocrisy emerges much more distinctly when one looks at patterned behavior rather than specific, isolated actions that may deviate from the norm on a one-off basis.

Contested Statehood in Palestine and Western Sahara and EU Territorial (Un)Differentiation

Most of the literature on contested states focuses on those resulting from secession (Berg and Toomla 2009; Caspersen 2009; Ker-Lindsay 2015).[2] Palestine and Western Sahara, however, are two particular cases of contested statehood in which the dispute derives from foreign occupation—coupled with different forms of settlement or settler colonialism—in the wake of (unfulfilled) decolonization from European powers. This means that compared to typical secessionist-contested states, the Palestinian and Sahrawi hand is substantially stronger from a constitutive statehood perspective—based on their "titular recognition" (Geldenhuys 2009, 25)—and in terms of "international legal sovereignty" (Krasner 1999). At the same time, three significant differences need to be taken into account concerning the normative-legal structure in these two contexts. First, occupation is not equivalent to a full de jure annexation (under the occupier's domestic law) in the case of Palestine, as despite their de facto military subjugation since they were occupied in 1967, neither the West Bank nor Gaza have been formally annexed by Israel—this has only happened in the case of East Jerusalem, in violation of international law and without conferring citizenship to its Palestinian inhabitants (Huber 2018, 354–5). By contrast, the occupation of Western Sahara came hand in hand with straightforward de jure annexation and the granting of Moroccan citizenship to indigenous Sahrawis after Rabat's two-stage takeover of three-quarters of the territory of the former Spanish colony in 1976 and 1979.

[2] See also Kartsonaki and Pavkovic (2024) and Grzybowski (2024) in this special issue.

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Second, occupation is superimposed on protracted colonial status in the case of Western Sahara. As such, there exists duality between the laws of occupation and decolonization based on the right to self-determination (articles 73–74 on non-self-governing territories of the Charter of the United Nations [UN] and the two UN human rights covenants of 1966). Although international lawyers tend to consider that these two statuses are not mutually exclusive (Wrange and Helaoui 2015, 40; Soroeta Liceras 2016, 231), in practice, this duality has produced inconsistencies. In the case of Palestine, international humanitarian law and particularly the law of occupation (IV Hague Convention of 1907, IV Geneva Convention, and 1st Additional Protocol) are emphasized as the applicable *lex specialis*. Third, for the same reasons, there is a strong international consensus on and widespread reference to the Palestinian territories as being "occupied" by Israel, with recent reports by UN Special Rapporteurs arguing that not only is the occupation illegal but it is also "indistinguishable from settler-colonialism" (Albanese 2022, 21)—Israel at the same time rejects and embraces the occupation status to challenge the applicability of the IV Geneva Convention and deny citizenship to Palestinians, respectively. By contrast, the most influential foreign states and international organizations, including the UN, generally refrain from applying the term "occupation" to the case of Western Sahara.

Upon this background, from a conceptual perspective, in this paper we propose the term *territorial (un)differentiation* to refer to all the normative and practical ways of drawing (or blurring) the borders between what the EU, in accordance with international law, formally considers to be recognized third states (Israel within the 1967 borders, and Morocco exclusive of Saguia el-Hamra and Oued ed-Dahab) and adjacent territories with a distinct legal status that are occupied by such states (the Occupied Palestinian Territories, and Moroccan-annexed Western Sahara), which in our cases are also claimed by rival contested states (Palestine, and SADR). The range of EU responses to situations of contested statehood under occupation may be unpacked into normative and practical elements. *Territorial (un)differentiation norms* derive from both international law and the EU's own legislation, and are as such regulative norms, though with varying legal effects and degrees of enforcement. They typically pertain to the EU's economic and sectoral cooperation with third parties, and the regulatory regime determining the status of economic activities and entities located in, or products originating from, the internationally recognized territory of partner third states, on the one hand, and occupied and/or non-self-governing territories, on the other hand. Examining these norms requires analyzing how the "role of law" has implications for EU foreign policy-making. We therefore zoom in on supranational policies, which have increasingly led to legal "spillovers," i.e., the transfer of supranational rules, either institutionally, discursively, or practically, into the EU's foreign policy and external relations (see Müller and Slominski 2017).

For their part, *territorial (un)differentiation practices* are specific, localized, and materially embodied patterns of action performed by the EU institutions for the same purpose. Such EU performances qualify as practices insofar as they are patterned and rely on relevant competencies. Other than this, they can be explicit or implicit, legally driven or ad hoc, de jure, or de facto (Lovatt and Toaldo 2015). They conform to or implement the regulative norms above when they are driven by the logic of appropriateness, but they also often operate independently or even clash with them due to the prevalence of the logics of consequences or practicality.

The Genealogy and Life Cycle of EU Territorial Differentiation Practices toward Israel–Palestine

The aim of this section is to reconstruct the life cycle of the EU's norms and practices of territorial (un)differentiation vis-à-vis Israel–Palestine, examining in particular the latter's genealogy (practice emergence), diffusion (practice cascade), and acceptance/institutionalization (practice internalization) (Finnemore and Sikkink 1998, 896; Adler and Pouliot 2011, 18–9). The main argument advanced is that the existing practices had to be disturbed first, and then practical change preceded and paved the way for normative/legal change.Yet, although normative/legal change advanced and was consolidated at the EU's supranational institutional level, the same did not happen with the practical change that was left in the hands of EU member states. As such, until today, most member states have failed to make the practical changes necessary to ensure the implementation of EU differentiation measures.[3] To this end, there is a clear risk that EU member states are directly supporting (and being complicit to) the maintenance and growth of Israeli settlements, their residents, and businesses in contravention of European policy positions and international law. The feedback loop is still ongoing and offers opportunities to close the gap between EU norms and practices although this process remains slow.

It has been argued that no other country in the Middle East and North Africa has managed to acquire as advanced relations with the EU as Israel, which was one of the first countries to sign an economic and trade agreement with the then EC in 1964 (Pardo and Peters 2010; Pardo 2015).[4] A five-year preferential agreement was concluded in 1970, while in 1975, another agreement was signed with the aim of abolishing trade barriers and establishing a free-trade zone in the industrial sector by 1989. In the framework of the Euro-Mediterranean Partnership, an Association Agreement (AA) was signed between the EU and Israel, which entered into force in 2000. The AA is the legal framework guiding relations between the two partners to date. The Agreement refers to the "territory of Israel" without clarifying what constitutes this territory (European Communities 2000; see also Wrange and Helaoui 2015, 9). This has allowed Israel to define the geographic extent of the AA's applicability according to how its own domestic law defines its territory, which purports to entitle Israel to apply its national legislation and domestic jurisdiction to the settlements, and runs counter to the established EU position (Harpaz 2004; Karayanni 2014; Voltolini 2015).

A first step in the *emergence* of EU territorial differentiation in the area of trade took place in 1986 when the EC enacted a Council Regulation extending free access and preferential treatment to products originating in the West Bank and Gaza Strip, and stipulating the inapplicability of all of the Community's existing Cooperation Agreements with other Mediterranean countries to those occupied territories, including its Cooperation Agreement with Israel. Change firstly emerged at the level of practices, though driven by the logic of appropriateness on the basis of international law. According to an interviewee involved in such processes, a Palestinian industry promotion organization, Mattin Ltd, had discussed its preparations to market Palestinian products in the Community with the Commission.

[3]For a detailed overview of all bilateral agreements with Israel signed by the EU, the EU's twenty-seven member states, the United Kingdom, and Norway, see the European Council on Foreign Relations' Differentiation Tracker (2019), available at https://ecfr.eu/rome/publication/differentiation_tracker/.

[4]For an analysis of EC–Israel relations before 1964, see Pardo (2013).

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They had asked the Commission to clarify whether these products could benefit from free access to the Community and how their origin should be indicated. Following the enactment of the new regulation, the Commission proposed that the origin of the products exported under it be indicated as "Ramallah," but later agreed that "West Bank" was a suitable origin marking that accorded with EC law. By mid-1987, local Palestinian Chambers of Commerce were equipped to issue certificates of preferential origin under the Regulation, and Mattin Ltd began exporting to the EC under the watchful eye of the Commission. During the same period, US officials had also formally notified the organization that under US law its exports to the United States could not be marked "West Bank" but could be marked "Israeli-occupied West Bank" (in order to reflect that products originating in the occupied territories were not eligible for tariff-free treatment under the US–Israel Free Trade Agreement in effect), and the Palestinian organization began exports to the United States on this basis (Interview with Mattin Group representative 2022).

The European Commission concentrated on resolving the obstacles that continued to prevent Palestinian agricultural exports under the 1986 regulation. Israel's legislation conferred an agricultural export monopoly on Agrexco, its parastatal agricultural marketer, and Israel was particularly set on preventing the export of West Bank and Gaza agricultural products from undermining that monopoly. The Commission understood that Israel was likely to subject Palestinian agricultural exports under the new regulation to thus far undisclosed transactional restrictions and restraints on trade in order to protect that monopoly. However, it was growing increasingly concerned that evident Israeli obstruction on the agricultural export front could complicate the European Parliament's prompt ratification of three additional protocols to Israel's Cooperation Agreement that were due to come before it in early 1988. The Commission sought ways to reassure the Parliament and discourage its involvement (Interview with Mattin Group representative 2023).

If Israel was not yet prepared to allow Palestinian agricultural exporters to export their products to the EC under freely concluded commercial contracts, the Commission hoped to quickly demonstrate that these products could at least be exported under the 1986 regulation on a non-commercial basis. Arrangements were made to export three crates of Gaza oranges to the Commissioner himself as a gift. In January 1988, a first attempt was turned back at the port. A second attempt in February was coordinated with, and pre-approved by Israel's interministerial committee. Those oranges reached Brussels airport but could not be released to the Commissioner under the EC's regular import procedures. Israel's port authorities had removed the consignment's mandatory labels and accompanying movement certificates since Israel had not agreed that Palestinian entities could be authorized to affix or issue them. The Commission nonetheless arranged the irregular release of the oranges and reportedly distributed them in their Berlaymont headquarters as a further indication of the progress that had been made on the Palestinian agricultural export front (Interview with Mattin Group representative 2022).

During that same period, various branches of Israel's military government and its port authorities began to demand that the Palestinian organization Mattin Ltd cease exporting goods with "West Bank" and "Israeli-occupied West Bank" origin markings. The organization was told that only "Ramallah" was acceptable for exports to the EC and only "Israel" was acceptable for exports to the United States. To back up their demands, they began subjecting the organization and its key personnel to a variety of punitive, restrictive, and harassing measures of increasing severity (Interview with Mattin Group representative 2022). The Commission sought to keep the European Parliament uninformed about these developments. As information regarding the actual state of play found its way into the Parliament, it triggered a confluence of free market, business-friendly, human rights, and Palestinian solidarity norms across political groups, as well as general displeasure with the European Commission's concealment. Parliamentarians' interventions with Israel secured a temporary reprieve for the Palestinian organization. Over the coming months, the Parliament used its ratification carrot to involve itself in shepherding Israel and representatives of the Palestinian agricultural exporters toward an agreement on export procedures that would enable the latter to conclude contracts freely and implement exports under the Regulation predictably and securely. Israel would itself implement the territorial differentiation of Palestinian producers, exporters, and originating products provided for in the Regulation and exclude them from the application of its legislation protecting Agrexco's monopoly. Following the agreement's conclusion in October 1988, the Parliament ratified the three protocols to Israel's Cooperation Agreement.

A second step in the *emergence* of EU practices of territorial differentiation in the area of trade took place between 1996 and 1999. An EU–Israel Interim AA had entered into effect in 1995 pending the completion of EU member states' ratifications of the full AA. The Agreement's inapplicability *by the EU* to the occupied territories, and to products originating in them, had been explicitly confirmed on numerous occasions at EU and member state levels prior to and following its enactment as EU legislation. EU member states were obligated to collect the import duties due on such products from their importers and remit them to the Community budget; and the Commission was obligated to ensure that they did. Failures to perform their respective obligations exposed both to financial liabilities, and demonstrably deliberate or negligent failures exposed them to more serious liabilities formal-administration as well as political censure.

By early 1997, the Commission and the customs authorities of several large importing member states had been presented with a series of files documenting the production of particular settlement products in the occupied territories and the presence of those products in European markets. Several EU member state customs authorities proved willing to take the next steps: identify instances where they had granted preferential treatment to settlement products, locate the relevant Israeli proofs of preferential origin, and acknowledge that the evidence files had raised "reasoned doubt" regarding the products' origin. Their foreign and finance/taxation ministries were alerted to these developments. On these grounds, several of them launched verification procedures with Israel's customs in accordance with the Interim AA's Protocol on Administrative Cooperation and the Community Customs Code. They soon discovered that Israel's responses (and failures to respond) made it impossible for them to recover the duties due on those products and shared this information with the Commission. The Commission initially attempted to cope with this situation without acknowledging or even implying that it was aware of Israel's application of the Interim AA to the occupied territories. In late 1997, it issued a notice to importers stating that "various elements have come to light which confirm a lack of effective administrative cooperation. . .and in particular certain substantial errors in the application of those

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same agreements, to the extent that the validity of all preferential certificates issued by Israel, for all products, are put in doubt" (European Commission 1997).

In May 1998, the Commission issued a communication confirming that Israel was exporting products from the occupied territories to the European Community "as if they were Israeli originating products." Change was led by the perceived need for EU practices to conform with territorial differentiation norms deriving from international law, and materialized primarily at the level of practices or implementation. The European Commission's communication provided some normative clarification by specifying that products wholly produced or substantially processed in Israeli settlements did not fall under the remit of the AA with Israel (European Commission 1998). Despite this, and although the European Commission was aware of Israel's noncompliance, it remained reluctant to address the problem and shied away from implementing its legal and normative commitments.

In 2000, the Commission even responded to a European Parliament question that the Israeli–Palestinian peace process was at a very delicate stage, and it should not be endangered by EU positions "that would result from blindly applying legal rules" (quoted in Müller and Slominski 2017, 878). However, by this time, Israel had openly declared that it was treating all products originating in settlements as entitled to preferential treatment under the AA, and exporting them to the EC as such. As the full extent of EU member states' failures to recover duties on them became evident, opening up issues of financial liability, the Commission took action. It pressed member states to conduct large-scale verifications with Israeli customs, amended the Customs Code to enable them to recover duties on settlement products "without Israel's cooperation," and issued a new notice to importers to this purpose. Israel's persisting non-cooperation with the verification procedure began to threaten the preferential access of products originating in Israel. In 2004, this brought Israel to conclude a "technical arrangement" with the Commission that served to further consolidate the EC's territorial differentiation practices at the implementation level. In January 2005, just before the technical arrangement would come into effect, the European Commission issued an additional notice reminding EU operators that "products coming from places brought under Israeli Administration since 1967, are not entitled to benefit from preferential treatment under the AA and therefore the full customs duty should apply to all Israeli settlement products" (quoted in Gordon and Pardo 2015b, 79). According to the arrangement, Israel would indicate the postcodes where the goods were produced, and EU customs authorities would be able to check the postcodes on these proofs of origin when they suspected that the goods they covered originated from outside the Green Line and, when they found settlement postal codes, refuse preferential access to those goods without having to launch laborious verification procedures. Two things are worth highlighting about the technical arrangement. First, to implement it, Israeli authorities and exporters would themselves have to distinguish goods originating in the occupied territories from goods originating within the Green Line, but would not have to disclose their distinctions to EU member states' customs authorities or importers. Second, the arrangement was also concluded outside the AA and did not involve an EU legislative act, which made it non-binding.

Although EU officials tried to downplay the 2004 arrangement as a purely "technical" matter, it clearly placed new practical and normative pressures on Israel to stop expanding its settlements in the occupied territories and enabled the EU to "grant a de facto meaning to its non-recognition of the Territories as part of Israel" (Harpaz and Frid 2004, 32–3; see also Harpaz 2004). In 2005, another effort from the civil society started targeting the EU's implementation of Israel's participation in its Framework Programmes for Research and Technological Development and the participation of Israeli entities in various EU programs under the European Neighbourhood Policy Instrument.

> Three issues were manifested across those various programmes: funding the participation of Israeli entities established in the occupied territories; funding activities conducted in the occupied territories by entities established in Israel; and presenting Israeli entities, their facilities, activities and addresses as situated in Israel when they were actually situated in the occupied territories. (Interview with Mattin Group representative 2022)

Subsequently, territorial differentiation vis-à-vis Israel–Palestine in the domain of trade took a first crucial step forward toward *institutionalization* at the normative level in 2010, when the CJEU in its ruling on the so-called "Brita case" confirmed that the EC–Israel AA should only apply to the territory of the state of Israel (as per the Green Line) and that it "must be interpreted as meaning that products originating in the West Bank do not fall within the territorial scope of that agreement and do not therefore qualify for preferential treatment under that agreement" (Court of Justice of the European Union 2010, 2). The CJEU decision was the tipping point, which provided the EU with a normative justification and created the conditions for the practice cascade and *diffusion* of territorial differentiation practices to other non-trade-related areas. In other words, there was a feedback loop and mutual reinforcement between practical change and normative change. As a result, in May 2012, the Foreign Ministers of the EU affirmed that they would "fully and effectively implement EU legislation and the bilateral arrangements applicable to settlement products" (Council of the European Union 2012a, 2). This was also followed by another step in December of the same year, when the Council of the EU declared "its commitment to ensure that—in line with international law—all agreements between the State of Israel and the EU 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" (Council of the European Union 2012c).

This led to the *diffusion* of territorial differentiation norms to EU funding with the adoption in July 2013 of the so-called "guidelines"[5] (European Commission 2013), which would prohibit the issuing of grants, funding of prizes, or scholarships, as well as loans or other investments unless the beneficiary would comply with a binding territorial exclusion provision. The guidelines, and a new generation of EU program financing regulations, settled a series of challenges raised by civil society actors and EU parliamentarians since 2007 regarding the lawfulness of the Commission's provision of financial support to particular Israeli entities and their activities in the occupied territories. The directive covers most areas of co-operation between the EU and Israel, such as science, economics, culture, sports, and academia, but it does not cover trade-related issues (Bouris and Schumacher 2013; Voltolini 2015). The logic of the

[5]For insights on the debate in the European Parliament before the adoption of the "guidelines," see Gordon and Pardo (2015a).

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"guidelines" was to shift "from just distinguishing between within and beyond the Green Line towards non-applicability in the occupied territories (i.e., Israeli settlements) of legal regimes beneficial for Israel that are set up under EU law" (Nikolov 2014, 170).

In November 2015, the *institutionalization* of territorial differentiation practices in the trade domain reached a new milestone as the European Commission (2015) issued an "Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967," which again derived from the EU's long-standing policy of no recognition of the territories that Israel occupied after the 1967 war and thus the settlements. The new policy required that

> For products from the West Bank or the Golan Heights that originate from settlements, an indication limited to "product from the Golan Heights" or "product from the West Bank" would not be acceptable. Even if they would designate the wider area or territory from which the product originates, the omission of the additional geographical information that the product comes from Israeli settlements would mislead the consumer as to the true origin of the product. In such cases the expression "Israeli settlement" or equivalent needs to be added, in brackets, for example. Therefore, expressions such as "product from the Golan Heights (Israeli settlement)" or "product from the West Bank (Israeli settlement)" could be used. (European Commission 2015)

In the run-up to the EU's research programme Horizon 2020, MEPs continued scrutinizing cooperation with Israel (Gordon and Pardo 2014). This led to the European Commission being forced to publicly admit that the Israeli cosmetics company "Ahava" had received EU research funding, although it had carried out research activities in Israeli settlements (Müller and Slominski 2017, 880). Although the economic importance of the issue was not significant (Pardo and Touval 2019), the incident was further proof of the culmination of a norm–practice internalization. What is important in terms of hypocrisy, though, is that the EU and its member states must still be wrestled down just to get them to implement their existing legislation consistently with their non-recognition of Israel's sovereignty over the occupied territories and the legality of Israel's settlements. Their limited policy of non-recognition means that trade with illegal settlements still continues (under non-preferential terms) and still contributes to the settlements becoming economically sustainable enterprises.[6] In contrast, for example, to the case of Crimea, the EU has chosen to not enact legislation prohibiting trade that contributes to sustaining the illegal situations that it refuses to recognize.

Normative Change without Practical Change in the EU's Territorial Undifferentiation of Morocco–Western Sahara

While emerging EU territorial differentiation toward Israel–Palestine has resulted from a process in which the norm–practice gap has tended to be closed at the EU's supranational level, though not at the EU member states' level, in the case of Morocco–Western Sahara, by contrast, normative change has not translated into practical change at all. This section examines two stages characterized by, firstly, aborted normative change due to the lack of norm cascading following norm emergence (2011–2012) and, secondly, significant normative transformations with legal effects that initiated a norm cascade, yet stopped short of modifying existing practices (2015–2019). Actually, and puzzlingly enough, the latter's entrenchment and resistance had led the gap between the EU's self-articulated norm and practice—which we conceptualize here as hypocrisy—to widen.

In the case of Western Sahara, both the EU's official position on the conflict and the structure of its relationships with the parties are less conducive to the emergence of territorial differentiation practices than with regard to Israel-Palestine. The EU has chosen to play a "backseat role" (Gillespie 2010, 91) and consistently expressed a minimalist position of plain and simple support for UN-led conflict resolution efforts, that is, the lowest common denominator among its member states' stances. Its relations with the two conflict parties have been deeply asymmetric. Similarly to Israel, Morocco has stood out for decades as a privileged partner in the so-called southern neighborhood, which is linked to the EU by a dense fabric of bilateral cooperation agreements. On the other hand, unlike in the case of Palestine, neither the Polisario Front nor the SADR are subject to any contractual relationship with the EU, and the EU institutions' interaction with Sahrawi actors from the refugee camps or the occupied territory is minimal (Fernández-Molina 2017). Against this backdrop, the starting point of EU territorial (un)differentiation practices vis-à-vis Western Sahara is pretty similar to that of Palestine as far as the lack of definition of Morocco's borders in EU–Morocco relations is concerned. All the bilateral cooperation agreements between the EU and Morocco, including the AA in the framework of the EMP in force since 2000, omitted any definition of Morocco's territorial borders (see article 94 of the AA) and therefore included the annexed territory of Western Sahara by default.

In the stage of *norm emergence*, the main norm entrepreneurs were the UN Office of Legal Affairs, the Polisario Front/SADR, and the NGO Western Sahara Resource Watch (WSRW). The UN Office of Legal Affairs opened the way in 2002 by producing the so-called "Corell opinion," a shorthand for the legal opinion delivered by Under-Secretary for Legal Affairs Hans Corell, in response to a request form the Security Council, on contracts signed by Morocco and foreign companies to explore for mineral resources in the annexed Western Sahara territory. Based on international case law and state practice concerning non-self-governing territories, under the framework of decolonization law, Corell concluded that while the specific non-exploitative contracts in question here were "not in themselves illegal," "if further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the international law principles applicable to mineral resource activities in Non-Self-Governing Territories." More generally, for the first time it was established that the people of Western Sahara legally retain "permanent sovereignty over natural resources" (UN Security Council 2002), which means that they must be consulted about the exploitation and administration thereof, and benefits from such economic activities must revert to them (Hagen 2015, 379). This would become a new and powerful cognitive frame

[6] In 2022, a petition under the European Citizens Initiative (ECI) was launched in favor of banning trade that benefits illegal settlements. The ECI requested from the European Commission (among others) to submit a proposal for a legal act under the Common Commercial Policy to regulate commercial transactions with entities based or operating in occupied territories by banning products originating in these territories from entering the EU single marker. More details can be found at https://europa.eu/citizens-initiative/initiatives/details/2021/000008_en.

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that set standards of legal appropriateness against which the Polisario Front/SADR and its civil society supporters could hold the EU institutions accountable for their existing territorial undifferentiation practices in their economic relations with Morocco and Western Sahara (Interview with civil society activist 2016).

The first significant demonstration of the success of the "Corell opinion" as a normative frame came through a novel parliamentary route and as part of a new "low politics" international strategy that the Polisario Front/SADR and the wider Sahrawi national movement started pursuing in the 2000s in response to the stalemate of the implementation of the UN Settlement Plan and peace negotiations in the diplomatic sphere. In December 2011, the Polisario Front/SADR's lobbying hand in hand with the NGO WSRW resulted in the European Parliament rejecting the protocol of extension of the 2006 fisheries agreement between the EU and Morocco on the legal grounds that it included the waters of non-self-governing Western Sahara without its direct benefits for the local population having been properly demonstrated—among other economic, environmental, and developmental arguments (Interview with civil society activist 2014; Interview with Polisario Front representative 2015; Interview with Polisario Front advisor 2016; Interview with civil society activist 2016; Fernández-Molina 2017; Bouris and Fernández-Molina 2018, 317).

However, the European Parliament's "no" vote was eventually inconsequential in starting a norm cascade across the various EU institutions, and even less so in triggering change in EU territorial undifferentiation practices. Quite the opposite, the problematic inclusion by omission—or by default—of Western Sahara's waters persisted in the new EU–Morocco fisheries protocol that started to be immediately negotiated and was concluded in July 2013, which was supposed to redress the environmental, financial, and legal issues of its predecessor. Furthermore, the text of the revised deal did not make any single reference to the separate legal status of the non-self-governing territory (EU–Morocco 2013). This did not prevent it from obtaining parliamentary consent swiftly this time, amid new intense lobbying campaigns both for and against. In parallel, despite facing similar legal uncertainty and lobbying due to the non-exclusion of Western Sahara's territory, the 2010 EU–Morocco agricultural trade agreement (Council of the EU 2012b) also achieved the European Parliament's consent in February 2012. The mismatch between the European Parliament's 2011 judgment and its actions in 2012–2013 may well be understood as hypocrisy, yet one driven by the logic of practicality (taken-for-granted practices) as much as, if not more than, that of consequences. Overall, in 2011–2012, EU normative change in line with the "Corell opinion" was aborted. There was no cascade of the budding territorial differentiation norm, and no change whatsoever in the domain of practices.

By contrast, what was observed in the following years was a more forceful and transformational normative change originating from inside the EU judiciary itself—which was therefore, unlike the "Corell opinion," endogenous to EU law and legally binding for EU institutions. What was at stake now were *rules* rather than looser norms subject to interpretation. This was the outcome of legal actions taken by the Polisario Front at the CJEU from 2012 onwards. In 2015 and 2016, the CJEU issued two rulings separated by one year on the same case concerning the EU–Morocco agricultural trade agreement. The first of them annulled such agreement in so far as it applied to Western Sahara due to the Council's failure to fulfill its obligation to examine whether the exploitation of the territory's natural resources was "likely to be to the detriment of its inhabitants and to infringe their fundamental rights" (Court of Justice of the EU 2015). The second ruling corrected the initial judgment by establishing, more fundamentally, that Western Sahara has a "separate and distinct status," which prevents any EU–Morocco cooperation agreements from including it in their territorial scope by default. In order for such inclusion to be legal, the CJEU specified, the rule is that "the people of Western Sahara must be regarded as a 'third party'" from which the implementation of the agreement "must receive the consent" (Court of Justice of the EU 2016; see Ferrer Lloret 2017, 21; Flavier 2017, 4; Kassoti 2017, 340; Kalimo and Nikoleishvili 2022, 378–84).

This was a watershed moment from a normative-legal perspective. The CJEU rulings on the EU–Morocco agricultural trade agreement now initiated a swift *norm cascade* in the form of accumulating case law within the EU judiciary. In February and July 2018, another two CJEU rulings on two different cases likewise concluded that the EU–Morocco fisheries agreement was valid in itself but *not* applicable to the waters adjacent to the territory of Western Sahara (Court of Justice of the EU 2018a, 2018b). In November of the same year, the CJEU ruled that the EU–Morocco Aviation Agreement does not cover Western Sahara either (Court of Justice of the EU 2018c). Altogether, the robust jurisprudence produced by these cases indicated that, thereinafter, the European Commission and the Council would be obliged to start territorially differentiating between economic activities and products originating from the internationally recognized Morocco and from the Moroccan-annexed Western Sahara territory, as in the case of Israel–Palestine. On the other hand, from an inter-institutional perspective, the extent of such norm cascade was quite limited. The EU's executive institutions and key member states passively resisted the contagion by watering down or bending the CJEU rule in order to protect existing territorial undifferentiation practices, which they saw as essential to their prevailing self-interest in the health of the EU–Morocco bilateral relationship. The logic of appropriateness became more compelling but so did the logic of consequences.

The Moroccan government announced the suspension of all contacts with the EU institutions due to its "total rejection" of the "highly political nature" and the "biased logic" of the first CJEU ruling (Royaume du Maroc 2016). Consequently, the negotiations on the required adaptations of protocols to the EU–Morocco agricultural trade and fisheries agreements affected by the court's decisions started in 2017 and 2018, respectively, in an unheard-of context of bilateral diplomatic crisis. In a demonstration of hypocrisy motivated by the logic of consequences, the European Commission and the Council strove to find a workaround to formally comply with the legal requirement of "consent" of the "people of Western Sahara" while keeping applying future bilateral deals to this territory—a non-negotiable condition for Morocco. To this purpose, the Commission and the European External Action Service undertook consultations with a series of socio-economic and political stakeholders from Moroccan-annexed Western Sahara, with which they claimed to have ensured the consent of "concerned populations" to the new agreements. However, neither the Polisario Front—recognized by the UN General Assembly as "the representative of the people of Western Sahara" (UN General Assembly 1979)—nor any pro-independence Sahrawi civil society actors accepted to participate in what they saw as a flawed and biased process aimed at ratifying Moroccan control over their territory (Court of Justice of the EU 2021).

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The results of this attempt to square the circle were mixed. On one hand, the territorial differentiation norm cascade unprecedentedly reached the letter of the new EU–Morocco deals, where the very term "Western Sahara" made its first appearance ever. The CJEU rule was formally acknowledged and incorporated in the form of accompanying exchanges of letters in which the two parties stated that the agreements had been concluded "without prejudice to the respective positions" on the status of Western Sahara (EU–Morocco 2019a). In its letter on the fisheries agreement, the EU went on to restate that it sticks to the consideration of Western Sahara as a "non-self-governing territory" and to its ensuing "right to self-determination" under international law—its self-articulated norm. In turn, Morocco's letter emphasized that "the Sahara region is an integral part of the national territory over which it exercises full sovereignty in the same manner as for the rest of the national territory" (EU–Morocco 2019b). On the other hand, the same documents made clear that nothing would change in the EU's territorial undifferentiation practices. For instance, in the case of agricultural trade, it was specified that "products originating in Western Sahara subject to controls by customs authorities of the Kingdom of Morocco shall benefit from the same trade preferences as those granted by the EU to products covered by the Association Agreement" (EU–Morocco 2019a).

The two agreements in question were annulled again by the CJEU in a two-fold ruling released in September 2021, with the Court arguing that the consultations conducted by the EU institutions with "concerned populations" did not amount to a legally valid expression of the "consent" of the "people" of Western Sahara based in international law's definitions of these two key terms, nor could the criterion of the benefits for the populations concerned replace such consent (Court of Justice of the EU 2021). These judgments demonstrate the legal strength of the territorial differentiation norm, yet the question of potential change in EU territorial undifferentiation practices remains open at the time of writing.

Conclusion

In this article, we have analyzed the relationship between international norms and practices in the EU's involvement in two particular cases of contested statehood. We have conceptualized territorial (un)differentiation from the perspective of both norms and practices in order to then trace how normative change and practical change have taken place and how the two have mutually interacted. Our empirical focus on Palestine and Western Sahara has allowed us to unpack the feedback loop between the two dynamics but also expose key inconsistencies that have led to the widening of hypocrisy of the EU as an international actor. Moreover, the analysis has exposed that, albeit to different degrees, the EU and its member states have similarly applied strategies of evasion and exhibited patterned hypocrisy in both cases. The analysis has also allowed us to shed light on processes that are not widely known to the broader public. Overall, while in the case of Palestine, we observed the full cycle of norm–practices emergence, cascade, and internalization, and the norm–practice gap has tended to be closed at the EU's supranational level—though not at the member states' level—in the case of Western Sahara, such gap has remarkably widened. In terms of causality, our findings are rather attuned with the theoretical view that asserts the precedence of practical (non)change. From that perspective, considering that "all practices are norm-generative" (Wiener 2018, 27), what we would be witnessing, especially in the second case, is the consolidation of an unspoken, un- or illegal norm alternative to the CJEU rule, whereby the EU's territorial undifferentiation practices toward Morocco–Western Sahara would remain *practically* reasonable and acceptable.

More generally, the mismatch between the EU's self-articulated norm and practice constitutes a patent instance of hypocrisy—one provoked by the decoupling between the logics of appropriateness and consequences (Krasner 1999) as well as the entrenchment of the logic of practicality itself. EU practitioners tend to align with the scholarly view that this is an "inherent problem for political organizations' and yet, at the same time, the 'normal state of affairs'" (Krasner 1999, 65–6).[7] By contrast, from the perspective of Palestinians and Sahrawis on its "receiving end" (Lawson and Zarakol 2023, 210), hypocrisy represents a fundamental challenge to the legitimacy of EU foreign policy and the stability of the LIO as a whole.

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[7] See also Sanjaume-Calvet and Lesley-Ann (2024) in this special issue.

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