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OSLO + 25, LESSONS LEARNED AND WAYS FORWARD

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The Oslo Accords have been the subject of considerable debate ever since the first agreement was signed in 1993. Twenty-five years later, the situation on the ground stands today as a reflection of all the insufficiencies of Oslo and allows us to identify some of the lessons that the international community could learn from the peace process for which the Accords were the launching pad. An almost desperate situation paradoxically opens a window of opportunity for Europe. The European Union (EU) and its member states must live up to their status as normative powers and move from "payer" to "player" in defence of international law once and for all.

The Oslo Accords have been the subject of considerable debate ever since the first agreement was signed in 1993, during the most promising period of the 20th century. Twenty-five years later, the situation on the ground allows us to identify some of the lessons that the international community could learn from the peace process for which the Accords were the launching pad. First of all, the Declaration of Principles on Interim Self-Government Arrangements was not a peace treaty but a negotiating agenda. The text defined a timetable within which a series of agreements had to be reached, without specifying the outcome(s) of that process. From the outset, Israel refused to accept the use of the term "occupied territories". This "constructive ambiguity" facilitated the kick-off of negotiations but prevented the talks from being successfully concluded and encouraged disparate interpretations when discussing implementation agreements.

The non-condemnation of the presence and construction of settlements paved the way for a multiplication of the number of settlers in the West Bank and East Jerusalem (in the Gaza Strip as well, although those were evacuated in 2005). Oslo did not entail mutual recognition between states, nor was it based on respect for international law as a mechanism for conflict resolution. The starting point was the distribution of forces on the ground. The process, like the conflict, was not (and has never been) symmetrical: the agreements offered no incentives for Israel to

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end the interim period of limited Palestinian autonomy, and the country could afford to maintain a delaying strategy while continuing to deepen colonisation. Depending on the preferred approach, the pact could be defended as a step towards the construction of the Palestinian state or as a way to maintain control of the territories without having to assume the burden of its administration. What was – and should have been – temporary was allowed to become permanent and, moreover, to set a precedent.

The reality on the ground, a reality of dynamic status quo, stands today as a reflection of all the insufficiencies of Oslo. Israel has imposed a fait accompli policy that defies international legality, by virtue of the expansion and construction of settlements, together with a series of annexed infrastructures and various mechanisms such as the closures and checkpoints and a series of legislations leading to a de facto annexation of large parts of Palestinian territory, a control matrix that condemns any (quasi) future Palestinian state to Bantustanization, the impossibility of territorial contiguity. Israel has not breached the letter (unlike perhaps the spirit) of Oslo, but it has used its numerous loopholes to cement a "one state and a half" reality.

The unfeasibility of a future Palestinian state is not only linked to the absence of territorial contiguity but also to an economy dependent on both Israel's and international assistance. Israel's twin strategy consists, on the one hand, of progressively blurring the borders between Israel and a future Palestine and, on the other, prioritising the so-called principle of separation that results in the creation of an intricate system in which the inhabitants are subject to different jurisdictions depending on their citizenship, place of residence and ethnic-religious affiliation. The Palestinian Authority (PA) enjoys neither legal nor empirical sovereignty and faces an increasing erosion of legitimacy among its constituency. All this against the backdrop of an estranged international community and threatened by growing illiberalism, in which continued contempt for multilateralism and fundamental rights by the Israeli authorities seems to fit perfectly.

A Window of Opportunity?

An almost desperate situation paradoxically opens a window of opportunity for Europe. The European Union (EU) and its member states must live up to their status as normative powers and move from "payer" to "player" in defence of international law once and for all. They possess important political capital and have at their disposal a combination of legal, political and economic mechanisms. Neutrality does not imply support for the status quo but rather the opposite: a more coherent policy is needed to recover the spirit (not necessarily the parameters) of the 1980 Venice Declaration. Both inaction and inadequate actions can have negative consequences on the peace process. Policies should go beyond Resolutions 242, 338 and 2334 of the United Nations Security Council, and rest on the whole corpus of applicable international law. The "compartmentalisation" of the bilateral relationship(s) with Israel should at no time be allowed.

Europe cannot afford to leave the reins of the process in the hands of the United States (no longer, if ever, an honest broker) as an intermediary of exception, and could even benefit from challenging Washington to clarify its position vis-à-vis the conflict. No equivocation should be allowed to the parties themselves, particularly in regard to the legal ambiguity surrounding the occupation. The current situation calls for privileging multilateralism once again. The United Nations (UN) and its agencies represent one of the frameworks, although not the only one, for resolving the conflict, and it is nowadays unjustifiable to maintain a commitment to the "solution agreed between the parties" when the situation is one of flagrant imbalance. In this regard, it would not be constructive to condemn the strategy of Palestinian internationalisation or criticise or question any action that goes hand in hand with international law, such as resolutions of the Human Rights Council or recourse to the International Court of Justice.

The review of modalities of EU engagement on the ground could have represented an excellent opportunity to evaluate its position vis-à-vis what remains of the peace process, but at the moment it seems to be limited to the modalities of financial assistance to the PA. Broader scrutiny is necessary, one that takes into account the respective domestic contexts, the regional context and very particularly the realities on the ground. The final objective should be to reduce levels of violence to achieve true and lasting peace and security for both parties and to restore relations of equality and mutual justice between them. A necessary step would be to progressively undo the policy of faits accomplis that defies international legality. In short, moving from the mere management of the conflict to the transformation of the conflict, for which all actors will have to face the possibility of making politically unattractive decisions in the short term.

When it comes to the blatant situation of blockade and cacophony facing the Common Foreign and Security Policy reflected in the meetings of the Foreign Affairs Council on the matter, the EU should encourage its member states to issue independent declarations of condemnation, reminding them at all times of their responsibility as members of the international community. Given the escalation of anti-EU rhetoric by several Israeli authorities, with the aim of setting the members states against each other, the recommendation is not to fall into easy provocation and maintain a firm and coherent message in line with international law, as well as promoting pedagogical initiatives at the level of civil society.

The EU and the member states must implement a strategy based on incentives, both negative and positive, in order to ultimately ensure that both the refusal to move towards peace and the structural violations of international law have a real cost, thus eroding the structure of incentives that underpins Israeli society's support for colonisation. An important step is to privilege a policy of multidimensional differentiation

that guarantees that the entities and activities of Israeli settlements are excluded at the domestic level and in a full and effective manner. An interesting debate, in this sense, hinges on the question of whether only the settlements, and not the government that finances and safeguards them, should suffer the consequences for their repeated violations of international law.

Any adjustment of the strategy vis-à-vis the Palestinian national movement would require a thorough reassessment of the different development cooperation programmes, preferably in consensus with the group of major donors to the PA. The aim would be to guarantee the effectiveness of aid both in the West Bank and the Gaza Strip, as well as progressively abandoning the mere "humanitarianisation" of the conflict. No instrument should be allowed to financially support the occupation and perpetuate the status quo.

Any strategy should also rethink relations with the PA and other Palestinian representatives. In this sense, it is essential not to allow the Palestinian Liberation Organization (PLO) to continue to be subsumed in the PA, in order to guarantee its real representativeness, and to maintain contact with all its factions, including those in the diaspora. That dialogue would also have to include Hamas, a fundamental partner for any prospect of peace. In more general terms, it is necessary to promote the so-called Track II and maintain open channels of communication with all the components within the respective companies.

With reference to the omnipresent debate on the so-called "one state" and "two states" solutions, it will come down to the parties to decide whether to dismantle Oslo and, if necessary, to replace it with another structure that reflects new balances of power or breathes new life into the agreement. In view of the lessons learned, it seems necessary to shy away from the "Oslo paradigm" and other predefined models of agreements: there can be no negotiations while the Palestinians are still subject to processes of dispossession and colonisation. The greatest threat to all is not partition or lack of it, but the perpetuation of inequality and injustice. The priority is, therefore, to focus not so much on the outcome but the process. Another debate in which it would be essential to go beyond mere symbolism is the one that revolves around a possible recognition of Palestine. Any step in that regard should take into account its real practical effects and usefulness in resolving the conflict.

Last but not least, any strategy would require not depreciating any of the final status issues beyond the drawing of borders and the construction of settlements. This includes unresolved questions when assessing past events in historic Palestine, such as the future of Jerusalem, the right of return of Palestinian refugees and the status of the Palestinian citizens of Israel. No peace would be sustainable and complete without addressing both the past and the present of its peoples.