

Submission by Rabbi Andrew Baker

Personal Representative of the OSCE Chair-in-Office On Combating Anti-Semitism

(Prepared October 19, 2009)

I want to commend MP Scott Reid, Chair of the Canadian Parliamentary Coalition to Combat Antisemitism, and MP Mario Silva, Vice Chair of the Coalition and Chair of its Inquiry Panel. I am certain that the work they are undertaking will contribute significantly to understanding and combating anti-Semitism in Canada as well as in countries around the world with whom Canada is connected through multilateral and bilateral relations and whose policies and approach to this problem it may influence. I very much appreciate this opportunity to share with them and with the members of the Coalition some thoughts and reflections on the problem drawn both from my current role with OSCE as well as from long experience in my work with international Jewish communities.

Anti-Semitism in Public Discourse

An essential element of the problem in many countries is the presence of anti-Semitism in public discourse. It is offensive and pernicious in its own right, but it can also contribute to a climate which poses a security threat to Jews and Jewish institutions. The capacity to counter this anti-Semitism is frequently lacking.

Many European countries have laws which restrict or punish hate speech. They are intended to address incitement to racial or religious hatred which may appear in public speeches, in books, newspapers and other media, and on the Internet. This includes fomenting anti-Semitism and, in some cases, Holocaust denial. Rarely is the problem the legislation itself, but rather it is the infrequent and often unsuccessful record of employing it.

By way of example and drawing from some of my OSCE country visits and other personal experience,

- In Spain there have been only two successful cases of prosecuting Holocaust denial in the last twenty years, and both of them took over seven years to adjudicate. In a country where the Jewish population is less than one one-hundredth of one percent the society is likely to know Jews only from their depictions in the press and media. As it is generally

accepted that the Spanish media frequently depicts Israel in a negative light, some officials have suggested that this contributes to the population's low opinion of Jews.

- In Lithuania in 2004, the General Prosecutor opened a case against the publisher, Vitas Tomkus, after his newspaper ran a series of articles entitled "Who Rules the World?" loosely based on the *Protocols of the Elders of Zion* and illustrated with Nazi-like cartoons. Political leaders, although privately disgusted with the articles, remained publicly silent as the months-long investigation proceeded. A year later, when the case came to trial Mr. Tomkus was found guilty. But he was not required to appear in court and the \$1,000 fine had little deterrent value to this multi-millionaire publisher. Such articles still appear regularly in his newspapers.
- During this last year the Jewish Community of Greece appealed to a 1979 hate speech law in its case against the author Kostas Plevris, who wrote that the Holocaust is a "profit making myth" invented by the Jews. He was initially found guilty, but the decision was reversed on appeal. In July in an event that underscored faithfulness to Holocaust history, the Greek Foreign Ministry held a public ceremony in Athens where it honored Greek Holocaust survivors.
- In September I sat in the Jewish Community offices in Bucharest while the President of the Jewish Federation described the personal attacks on him in the newspaper of the right-wing Greater Romania Party. Nearly two years have passed since he filed suit, but so far the public prosecutor has not responded. (Ironically, on my first visit to Romania in 1993, I sat in the same room and heard the late Rabbi Moses Rosen describe similar personal attacks on him from the very same newspaper.) I met later with the Justice Minister/Foreign Minister Catalin Predoiu during this visit, who readily acknowledged the lack of clarity in the law and its limited effectiveness. To his credit the Minister used the occasion of my visit to issue a statement stressing the moral obligation of public officials to speak out against acts of anti-Semitism.
- We also witnessed a similar example of this problem in Sweden earlier this year, when the newspaper *Aftonbladet* published a report from Gaza claiming that Israeli soldiers were harvesting organs from Palestinians they had killed. This updated version of the medieval blood libel charge was openly denounced by political leaders in the United States and in some European capitals. However, the Swedish Foreign Ministry maintained that its press freedom laws did not permit its own public officials to criticize

the article, and it rebuked its Ambassador to Israel for doing so. It did indicate that an official ombudsman had the authority to investigate and bring charges if it was determined that racial incitement laws were violated. It was quickly decided that they were not.

- The Internet is often cited as an unchecked source for all manner of hate speech including anti-Semitism. Even those countries with some experience at reining in extremist material in traditional media admit to difficulties when it comes to this source. But it is not only impressionable young people—the most frequently cited target—who are affected by it. Three years ago the Government of Latvia and its Jewish Community reached an agreement on legislation that would resolve all outstanding property restitution claims. But by the time the bill reached Parliament, opposition to the legislation—much of it spread via the Internet and anti-Semitic in nature—so unnerved its Members that it failed to pass. During my visit to Riga Latvian authorities conceded that whenever the subject of Jewish property restitution is raised in public they anticipate a spike in anti-Semitism.

We can certainly reach some general conclusions from these examples.

Put simply, many hate speech laws have the unintended consequence of letting political leaders off the hook. In the United States, Canada and other countries with strong free speech protections, manifestations of racism, anti-Semitism, and other extremist views in public discourse are generally addressed (or can only be addressed) by strong and swift rebukes from political and civic leaders. In this way such hateful speech is marginalized and isolated. But in countries with legislative remedies some political leaders will refer to the legal process as a reason or excuse not to speak out. As we see in practice those legal decisions are generally months or years away. In the meantime, there is no clear message being delivered that such hateful speech is unacceptable. Consider too that even some decent, mainstream political leaders, fearing the success of extremist movements, see calculated benefits in maintaining an ambiguous stance.

The OSCE Representative on Freedom of the Media, speaking at a Roundtable on the problem of anti-Semitism that we convened on March 17, 2009 in Vienna, also cited special difficulties in countries with a Communist or authoritarian past. Because all speech was once monitored and controlled, he argued, prosecutors and judges are often reluctant today to pursue cases or

impose penalties on those who violate hate speech laws despite having legislation to do so. Some of them have difficulty understanding that it is possible to limit some forms of speech while still vigorously protecting the principle itself.

In nearly all places anti-Semitic speech is understood to be included within the larger categories of inciting racial, ethnic or religious hatred. But virtually no penal code includes a specific or detailed description of anti-Semitism, which means it is not always recognized by prosecutors or judges or (as witnessed in Sweden) by official ombudsmen.

Where they do exist, Holocaust denial laws are not uniform. In some places denial alone is illegal; while other countries require proof that the denial of the Holocaust is part of an intentional effort to inflict pain on survivors or members of the Jewish community. As a result prosecution under such a law can also vary widely.

Canada is among those countries whose courts have acknowledged that for the purpose of controlling particularly offensive hate speech (i.e., speech that willfully expresses vilification and detestation of ethnic or religious groups) the constitutional guarantees of free speech can be abrogated. However, the current debate underway in Parliament over the hate speech provisions of the country's human rights law illustrates the difficulties that even a mature democracy with a strong tradition of civil liberties must face.

Monitoring Anti-Semitism

Accurate and recognized monitoring of anti-Semitic incidents is frequently lacking or incomplete. The newly-released ODIHR Hate Crime Report reveals that many governments are still lax in monitoring and recording hate crime data or in disaggregating the data they do have so as to better understand who are the perpetrators and the victims. But the problem is especially acute when the goal is to combat anti-Semitism. (A summary of the findings with regard to anti-Semitic incidents is appended to this report.)

In countries where hate speech is not restricted, government authorities are unlikely to record such incidents. The poor record in many countries which do have such laws frequently deters citizens from even filing suit. Physical attacks on persons or the vandalizing of synagogues and cemeteries may be monitored (although with all the same gaps and limitations of hate crimes more generally), but they still ignore the anti-Semitism that appears in the press, on television, at public demonstrations, on the Internet and in anonymous hate mail. When these anti-Semitic

incidents are not recorded or are underreported it conveys the misimpression to political leaders and policy makers that the problem itself is not so important.

Governments must be encouraged to do a better job of monitoring and recording anti-Semitism, and we should continue to do everything to urge them to live up to their commitments. But in the interim we can do more to assist local Jewish leadership in various countries or regions to develop their own monitoring centers and to do so in a standardized and internationally recognized way so that public authorities can accept their results.

A Working Definition of Anti-Semitism

In 2004, when the European Monitoring Center (EUMC) conducted its first study of anti-Semitism in the then 17-member European Union, it recognized the need for an operative and common definition of the phenomenon. At the time more than half of its national monitors had no definition at all, and of those that did no two were alike. In light of this the EUMC, now the EU Fundamental Rights Agency, developed a working definition, which has been adopted by the ODIHR, by the US State Department Special Envoy for Combating Anti-Semitism, and by Parliamentary Committees in Germany and the UK, among others. This definition (a copy of which is appended to this testimony) provides an overall framework for understanding what it is and offers a series of examples designed to aid police, monitors and NGOs in their work. It also describes where animosity toward the State of Israel can become a form of anti-Semitism.

In some countries the working definition is part of police training programs, as it is in ODIHR's Law Enforcement Officers Program (LEOP) manual, which trains police to respond to hate crimes. In nearly all meetings during my country visits I shared the definition with government officials, who welcomed it. Those of us who are focused on the problem may not fully realize that a lack of understanding on the part of these officials is not uncommon. While physical attacks on identifiable Jewish targets may be easily recognized as anti-Semitic in nature, certain public discourse or the vilification of the Jewish State may not be so readily identified. Therefore, increasing the circulation of this working definition is a useful tool that we can promote.

Increased Canadian Participation in OSCE and Global Efforts

In 2007, the Canadian Government changed its position regarding OSCE targeted efforts focused on combating anti-Semitism. Until then Canada had not supported the designation of a special representative focused on the problem, espousing instead a "holistic" approach that

folded all tolerance issues together. The establishment of this Parliamentary Inquiry and the announcement of Minister Jason Kenney to host a second inter-parliamentary conference on combating anti-Semitism next year are a further expression of Canadian interest.

Members of Parliament active in the current inquiry should also consider becoming more involved with the OSCE Parliamentary Assembly, which has also provided a venue for discussing the problem of anti-Semitism. Canada should consider additional ways it may support targeted programs of ODIHR through extra-budgetary contributions and the participation of Canadian experts in the training of police, prosecutors and judges in understanding and combating hate crimes.

As part of its Foreign Ministry activities Canada should consider developing in-service training for Foreign Service officers to acquaint and sensitize them to the problems of anti-Semitism in their countries of service. Canada should also draw on the country's own experience in combating anti-Semitism and promoting dialogue between the Jewish community and other religious and ethnic groups when developing public diplomacy programs to be carried out by embassies abroad.

I hope the Members and Staff of the Canadian Parliamentary Coalition to Combat Antisemitism find this report helpful in its work. If I can be of further assistance—whether in elaborating further on these points or providing additional information—I will be pleased to do so.

APPENDED ITEMS

From the forthcoming ODIHR publication, "Hate Crimes in the OSCE Region: Incidents and Responses - Annual Report for 2008":

- There is limited official information available on anti-Semitic hate crimes in the OSCE region.

-Nineteen participating States reported that they collect such data: Austria, Belgium, Canada, Croatia, Czech Republic, France, Germany, Italy, Liechtenstein, Moldova, Netherlands, Poland, Russian Federation, Serbia, Spain, Sweden, Switzerland, United Kingdom, and the United States.

-But only eight (Austria, Belgium, Czech Republic, France, Germany, Italy, Sweden, and the United Kingdom) submitted figures for 2008 to ODIHR.

- Austria and the Czech Republic reported an increase in incidents compared to 2007. Germany, Italy and the United Kingdom reported a decrease. (The other three countries did not report comparable figures from 2007).

- There are non-governmental sources for data on anti-Semitic crimes in 2008 in many OSCE participating States, including Austria, Belgium, Canada, Czech Republic, Germany, Greece, Italy, Russian Federation, Ukraine, United Kingdom and the United States.

- In only four cases (Austria, Czech Republic, Germany and Italy) were there sufficient 2008 data to enable ODIHR to compare NGO figures with official data from governments. In two cases the unofficial data contained twice the number of anti-Semitic incidents reported in official statistics.

- ODIHR collected media reports indicating that anti-Semitic incidents took place in 2008 in Austria, Belarus, Belgium, Canada, Croatia, Czech Republic, Denmark, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Moldova, Norway, Poland, Romania, Russian Federation, Slovakia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, and the United States.

The relevant newsletters and media reported little on the South Caucasus region and on Central Asian countries and, since the participating States did not submit figures regarding anti-Semitic hate crimes, ODIHR has no reliable information concerning these.

A WORKING DEFINITION OF ANTISEMITISM

(French Translation Follows)

(Adopted by the EUMC January 28, 2005)

The purpose of this document is to provide a practical guide for identifying incidents, collecting data, and supporting the implementation and enforcement of legislation dealing with antisemitism.

Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews.

Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.

In addition, such manifestations could also target the state of Israel, conceived as a Jewish collectivity.

Antisemitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for “why things go wrong.” It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits.

Contemporary examples of antisemitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include, but are not limited to:

- Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.
- Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.

- Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust).
- Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.

Examples of the ways in which antisemitism manifests itself with regard to the State of Israel taking into account the overall context could include:

- Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor.
- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
- Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.
- Holding Jews collectively responsible for actions of the State of Israel.

However, criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic.

Antisemitic acts are criminal when they are so defined by law (for example, denial of the Holocaust or distribution of antisemitic materials in some countries). Criminal acts are antisemitic when the targets of attacks, whether they are people or property—such as buildings, schools, places of worship and cemeteries—are selected because they are, or are perceived to be, Jewish or linked to Jews. Antisemitic discrimination is the denial to Jews of opportunities or services available to others and is illegal in many countries.