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# Can the European Agencies Combat Antisemitism Effectively?

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## Introduction

Over the past fifteen years, the European community and its intergovernmental agencies (IGOs) have enhanced the protection of Jewish communities and their institutions. They have agreed upon definitions of antisemitism and Holocaust denial, and established bias indicators that describe contemporary antisemitism. They have improved their collection of data on incidents and crimes, and have instituted a series of political and legal agreements that condemn antisemitism and call for the prosecution of perpetrators of crimes motivated by it. They have also published practical guidelines to enable criminal justice authorities to combat antisemitism. Official statistics are now augmented by large-scale polling and surveys, and training programs have been instituted for law enforcement personnel that focus on hate crime generally, and that motivated by antisemitism specifically.

Indeed, it is no exaggeration that there has never been so much analysis of antisemitism and activity to combat it as there is today. States now recognize that antisemitic hate crime constitutes an abuse of basic freedoms and human rights, and that they are obliged to prosecute perpetrators.

These improvements have been achieved within the European Union, the wider Council of Europe (CoE), the Organization for Security and Cooperation in Europe (OSCE), and by the agencies affiliated to these regional organizations, yet many states still fail to understand contemporary antisemitism or recognize the separate but related threat of terrorism targeted at Jewish communities. Governments have overcome their reluctance to separate anti-Jewish hatred from other forms of bigotry lest they be seen as creating victimhood hierarchies. Unfortunately, some remain unwilling to share security concerns and information with these communities, or to recognize that some Jewish communities have their

own longstanding security arrangements, and that their security expertise may be quite effective.

It behooves us to examine how states have strengthened the protection of their Jewish communities and the means they have employed, focusing on the legislation and political agreements. This can be done by explaining briefly how the IGOs seek to involve civil society and Jewish communities to strengthen their own capabilities, and why the adoption of collaborative approaches has been encouraged by European initiatives.

### **European Political and Legal Agreements**

As antisemitic incidents in Europe rose at the end of the twentieth and beginning of the twenty-first centuries, the OSCE was persuaded to hold an international meeting in Vienna in 2003. Prominent political leaders and Jewish activists from the United States, Canada, and Europe spoke in turn about the problem, but they had no mandate to take action.<sup>1</sup> However, the event overcame European governments' reluctance to address the issue, and thereafter they began to consider their responsibilities toward their Jewish citizens in a more effective manner. They noted the threats posed by the spillover of Middle East tensions, and the antisemitic messages promoted by the governments and media outlets of Arab states, and by Islamist bodies. The Vienna meeting had been preceded by the 2002 OSCE Ministerial Council meeting in Porto, where the rise in all types of hate crimes was discussed. The conference declaration noted their concern over "the manifestation of aggressive nationalism, racism, chauvinism, xenophobia, antisemitism, and violent extremism, wherever they may occur."<sup>2</sup> The following year, at the urging of the OSCE Parliamentary Assembly, and following a recommendation from the OSCE Human Dimension Implementation Meeting, the OSCE held the Berlin Conference in May 2004. The conference declaration committed the OSCE to collect data on antisemitism and other hate crimes, to periodically review such data, and to identify best practices to counter antisemitism. It also appointed a personal representative of the chairman in office, whose task is to report on the progress being made by participating states.<sup>3</sup>

Berlin was followed by other high-level OSCE conferences in Cordoba, Bucharest, and Astana at which the mechanisms for monitoring antisemitism were established; teaching materials on antisemitism, Jewish history, and the Holocaust were commissioned; and training for criminal justice agency personnel was put in place. Significantly, each of the initiatives is continuing, with the OSCE Office for Democratic Institutions and Human Rights (ODIHR) conveying progress on the monitoring of antisemitic hate crime as part of their annual hate crime reporting.<sup>4</sup> However, ODIHR was unwilling to combat antisemitism on its own at that point; it had to be addressed in concert with other forms of hatred. Jewish

representatives had no issue with the decision but argued instead that the longevity and uniqueness of antisemitism required focused action across a broad range of fronts, including in the realms of religion, education, and law enforcement.

Ten years after the first Berlin conference, a second was convened in November 2014 to review progress in the wake of a continuing rise in incidents and the terror attack on the Brussels Jewish Museum. That gathering focused Jewish concerns more concretely. The conference recommendations were referred to the Ministerial Council meeting in Basel, which proposed to offer member states a set of best practices to combat antisemitism, which are noted below.<sup>5</sup>

Within the framework of the EU, a similar process was also developing, sparked by the rise in antisemitic incidents. In 2002, the European Union Monitoring Centre on Racism and Xenophobia (EUMC) commissioned the fifteen National Focal Points of its Racism and Xenophobia Network (RAXEN) to collect data on antisemitism within the EU. It also commissioned Berlin's Technical University Centre for Research on Antisemitism to analyze the reports and publish a composite analysis. Their findings were not well received by the EUMC board, allegedly because they apportioned much of the blame for rising antisemitism to Europe's Muslim communities, and a clumsy attempt was made to suppress them. When the report was leaked to the media, the EUMC was obliged to commission a second report, "Perceptions of Antisemitism in the European Union," based on Jewish leaders' perceptions of the threats to their communities. This confirmed the findings of the first report.

The final composite report, "Manifestations of Antisemitism in the EU 2002–2003," finally acknowledged what the Jewish communities had sensed for some time: that tension in the Middle East led to dramatic rises in antisemitic incidents and that activists from the extreme right were no longer the primary perpetrators, at least in Western Europe. The report also called for the regular monitoring of data, and a workable definition of antisemitism for the post-Holocaust era, in which anti-Zionism often serves as a mask for Jew hatred. The latter recommendation was taken up by the EUMC, and a working definition was agreed upon after academics and activists were asked to submit ideas. Representatives of the European Jewish Congress (EJC) and the American Jewish Committee (AJC) negotiated the final wording in Vienna, alongside OSCE representatives.<sup>6</sup>

The definition was not intended as a legal one, and neither the EUMC nor its successor, the European Union Agency for Fundamental Rights (FRA), adopted it, although they published it on their websites. Although the FRA removed it from its website after several years, it was subsequently adopted, in slightly modified form, by the International Holocaust Remembrance Alliance (IHRA), the successor to the Task Force for International Cooperation on Holocaust Education, which had been founded by Swedish Prime Minister Göran Persson. This sits

alongside the IHRA Working Definition of Holocaust Denial. Both definitions have been accepted by the thirty-one member states of IHRA. Other states are being encouraged to adopt it as well, following the European Parliament and the governments of Austria, Bulgaria, Germany, Romania, Scotland, and the UK. An attempt to have the OSCE accept it in 2016 failed after the Ministerial Council was unable to achieve consensus, although a further attempt is likely to be made.<sup>7</sup>

At a political level, the Parliamentary Assembly of the Council of Europe (CoE), a body of parliamentarians appointed by their national legislatures, has passed two resolutions: in 2007, on combatting antisemitism in Europe, and again in 2016 on the renewed commitment to the fight against antisemitism in Europe. The first drew attention to the increase in antisemitism, often fuelled by Middle East tension and migrant communities, the need to “vigorous and systematically enforce legislation,” and to address the growth of online hate and antisemitism via the Additional Protocol to the CoE Convention on Cybercrime (see below).<sup>8</sup>

The 2016 resolution contains seven recommendations: the need for comprehensive legislation covering hate crime and hate speech, denial and trivialization of the Holocaust, prosecution of public figures who incite antisemitism, and enhanced penalties on conviction of such offences; the need for efficient data collection; education against antisemitism and on the Holocaust; respect for all faiths and appreciation of diversity by the media; enhancing the security of Jewish communities; promotion of CoE anti-racism initiatives; and the recognition of the role of civil society organizations and the need to support them.

The European law calling for the prosecution of those who engage in antisemitic incitement is contained within EU Framework Decision 2008/913/JHA, which established a minimum legal level for incitement based on racial or religious grounds, and denial or gross trivialization of genocide, including the Holocaust.<sup>9</sup> States were required to transpose its provisions into domestic law by November 2010. The protections it afforded were augmented in 2012 by Directive 2012/29/EU, which established minimum standards on the rights, support, and protection of victims of crime. Again, this law did not reference antisemitism specifically. However, placing the rights of victims at the heart of the criminal justice response to hate crime, including that motivated by antisemitism, depends on the use of expertise to be found in civil society, and it thereby strengthened the protection afforded to European Jews.<sup>10</sup>

The 2003 Additional Protocol to the CoE Convention on Cybercrime concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems obligates signatory states to criminalize online racial and religious incitement and the denial of genocide, including the Holocaust. The EU now requires member states to transpose this into domestic law.<sup>11</sup>

Thus, three separate but overlapping laws offer a new degree of protection to Jewish communities, while simultaneously recommending increased government and civil society cooperation. The effect of the legislation has been significantly strengthened by the case law of the Strasbourg-based European Court of Human Rights, which applies the European Convention on Human Rights to cases brought to it by CoE member states and individuals. Its judgements are binding and require governments to amend their legislation and administrative practice in a wide range of human rights-related areas. The court has ruled on a number of cases in defense of the rights of Jews. These include upholding criminal convictions against Holocaust deniers, those who promote ethnic hate against Jews, those who insult Jews on account of their religious and racial origin, and those who incite acts of terrorism.<sup>12</sup>

The 2017 European Parliament resolution on combating antisemitism calls for the adoption of the working definition of antisemitism in order to uphold law enforcement and judicial action; the enhancement of Jewish communities' security; assistance for the coordinator on combating antisemitism; the appointment of national coordinators to combat antisemitism; and the establishment of cross-party parliamentary groups to strengthen support across the political spectrum. It highlights the important role of civil society, and calls for financial backing for civil society initiatives; media respect for diversity and training for journalists; the full and proper implementation of the 2008 Framework Decision; penalty enhancement on conviction for anti-Jewish crimes where none exists; the establishment of dedicated hate crimes police units; cross-border cooperation in the prosecution of hate crimes; comprehensive and efficient hate crime data systems; the enforcement of the Code of Conduct; Holocaust teaching; and a review and funding of teaching materials to ensure that Jewish history and contemporary Jewish life are presented in a comprehensive and balanced manner. Finally, the resolution calls on member states to officially commemorate the Holocaust, and for the EC to liaise closely with other IGOs to combat antisemitism at the international level.<sup>13</sup>

### **Addressing the Data Deficit**

Despite the aforementioned advances, serious gaps remain in the collection of official data by law enforcement and other relevant authorities. According to the November 2017 FRA report, no data was available for eleven out of twenty-eight EU member states. The ODIHR report published in the same month notes that only thirty-four out of fifty-seven states submitted official data, of which only twenty-three did so on antisemitism. The FRA noted that "few record antisemitism in a way that allows them to collect adequate official data."<sup>14</sup> The lack of official records, coupled with victims' hesitance to report incidents, contributes to the gross underreporting of the extent and characteristics of antisemitism. This inevitably limits the ability of policy makers and other relevant

stakeholders at all levels to assess the effectiveness of policies or to implement new initiatives. This, in turn, allows perpetrators to think that they can carry out such attacks with relative impunity. Victims who do not report their experiences to authorities also do not receive the assistance that the 2012 directive mandates.

The FRA added that the data that does exist is generally not compatible, not least because it is collected using different methodologies and from different sources. Although official information collection systems are generally based on police records or criminal justice data, authorities do not always categorize incidents motivated by antisemitism under that heading. The FRA therefore concluded:

The current state of official data collection is such that the present report can only provide an overview of the data available on antisemitism in EU Member States. Due to gaps in data collection and high levels of under-reporting, the data presented here cannot be taken as an accurate portrayal of the prevalence of antisemitism in any given EU Member State, nor should these data be used to compare the situation in different countries. Nevertheless, the data that do exist show that antisemitism remains an issue of serious concern and that decisive and targeted policy responses are needed to tackle this phenomenon.<sup>15</sup>

Dissatisfied with the lack of progress, the EC launched the EU High Level Group in June 2016, following the conclusions of the 2015 Annual Colloquium on Fundamental Rights on “Tolerance and respect: preventing and combating antisemitic and anti-Muslim hatred,” which is designed to speed progress on outstanding issues, most importantly the data deficit. Its membership includes representatives of all the IGOs and states’ national points of contact on hate crime.<sup>16</sup>

Four training schemes assist states to identify, investigate, and record hate crimes. ODIHR offers hate crime training courses for police officers and prosecutors, and the EU Agency for Law Enforcement Training (CEPOL) launched webinar-based courses in 2017. Important though they are, these involve only a minority of officers and prosecutors, and any learning takes time to trickle down to police officers on the streets.<sup>17</sup> To reinforce these projects, the EC is now also funding “Facing all the Facts,” a partnership between three national Jewish agencies (CEJI, CST, and CIDI), three national police agencies (those of the UK, Hungary, and Italy), and the OSCE, for police officers.<sup>18</sup> This originated, in part, in a project to enable Jewish communities to gather information on antisemitism to the standards required by criminal justice authorities, and many communities’ representatives have participated in it.

Another route to gather data on antisemitism has been via surveys. The 2013 FRA poll of 5,900 Jews’ experiences of antisemitism in eight EU states demonstrated the limitations of official data collection on antisemitism. Its worrying conclusions

were that 66 percent of respondents considered antisemitism to be a problem; 76 percent considered that antisemitism had worsened; 23 percent occasionally avoided Jewish events because they felt unsafe; 64 percent who had experienced physical violence or threats of violence did not report their experience to the police or any other organization; and 82 percent who had experienced discrimination did not report it. Equally concerning was the finding that 42 to 53 percent, depending on location, were not aware of legislation that protects Jews from such forms of discrimination.<sup>19</sup>

A second survey with additional questions was launched in mid-2017 covering five more than the original eight states. Preliminary reports are due in mid-2018, and it will be instructive to see if there have been any improvements in Jews' perceptions of their security or trust in their states' law enforcement procedures following the initiatives described above.<sup>20</sup>

### **Other Effective Actions**

Other actions have been designed to reinforce the legislation and the policies they introduce.

The European Parliament Working Group on Antisemitism focuses on implementation of the April 2017 resolution. Among those who provide progress reports are the EC coordinator on combating antisemitism, who was appointed by the EC vice president and justice commissioner in December 2015. The coordinator serves as a dedicated contact point for Jewish communities. Developing overarching strategies, with a mission to produce tangible results, the coordinator has assisted members of the European Parliament in passing the April 2017 resolution and the IHRA Working Definition on Antisemitism and in identifying funding streams for civil society, and has provided valuable advice.<sup>21</sup>

States that have held parliamentary and other high-level inquiries have been able to identify the sources of antisemitism and the ways in which it manifests itself, and in so doing, have been able to propose remedial action. The UK, Italy, Germany, and Norway have all held inquiries, and their value is enhanced when they are followed by regular reviews by government or parliament to ensure that recommendations are scrutinized and acted upon. Holding governments accountable is necessary if progress is to be made. Government action plans, aimed at combating hate crime and racism, likewise focus attention and provide measurement of progress.<sup>22</sup>

Appointing high-level envoys charged with promoting action against antisemitism has also paid dividends. In the case of the UK, the envoy doubles as IHRA representative, although there is an argument for suggesting that specific appointments



by some states remove the necessity of engaging with the issue as part of their normal mission for full-time officials.

Drawing states' attention to antisemitism is part of the CoE Commissioner for Human Rights' mandate, and in 2016 he published a warning to governments about the growth in Holocaust denial, and of making any false equivalence between the Holocaust and the suffering endured under Soviet occupation of Central and Eastern Europe.<sup>23</sup> Like other CoE initiatives, the focus is on the responsibilities of governments, but with the understanding that civil society should hold officialdom to account. The European Commission against Racism and Intolerance, a CoE commission that advises governments, published its "General Policy Recommendation No. 9: The fight against antisemitism" in 2004, and an abridged version for civil society use in 2017.<sup>24</sup>

A recent development is the EC Sub-Group on Countering Hate Speech Online, which monitors the four largest social networks' application of the Code of Conduct on Countering Illegal Hate Speech Online.<sup>25</sup> In recognizing the substantial role played by social networks in promoting the spread of hate speech, including anti-semitism, and their unwillingness to adhere to European legal norms, the EC seeks to monitor their efficiency and speed in removing illegal content brought to their notice by civil society organizations. The exercise is achieving significant progress in forcing the networks to strengthen their reporting systems, training their staff to recognize and act against illegal hate speech, and increasing their cooperation with civil society. A third monitoring exercise ran from mid-November to mid-December 2017, but the results have yet to be published at the time of writing.

The "Words into Action" program was an outcome of the aforementioned OSCE Basel ministerial meeting in 2015, and is intended to strengthen states' and civil society capacities to prevent and respond to antisemitism and anti-Jewish terrorism. The three-year program is structured around three objectives: addressing communities' security needs; education about Jews and antisemitism; and coalition-building between Jews and other faiths. The work streams bring together police officers, Jewish community security experts, educators, and inter-faith activists to promote best practices.<sup>26</sup> At the time of this writing, the security program is the most advanced, and memoranda of understanding to commence training have been signed between the OSCE and several governments. The Words into Action security handbook describes OSCE commitments, human rights standards, and key government obligations toward their Jewish citizens, as well as anti-Jewish crimes and hate speech and their impact on Jewish communities. It provides practical security advice for Jewish communities, describes their security needs, and effectively draws together many of the aforementioned recommendations. Its appendices include the IHRA Working Definition of Antisemitism and the "UK Community Security Trust Police Officer's Guide to Judaism," and it is being translated into a number of languages.<sup>27</sup>

## Conclusions

Clearly, antisemitism in Europe is on the rise, and is emerging from new and different directions. The difficulty has been in persuading the IGOs to accept this truth and to move from issuing worthy declarations and resolutions to taking effective action. Indeed, the resolutions and statements they have agreed upon have pushed them to recognize the necessity of taking action, as they cannot ignore the specific character of antisemitism. This requires different and more holistic responses than those required to combat other forms of racism.

The European agencies have accordingly improved their responses and now accept that a working definition is required to analyze antisemitism effectively. They had resisted this previously, because in Western European countries at least, Muslim migrants were also the victims of racism. The IGOs now accept that Jews are the targets of a broader range of attacks than those leveled at other minorities, and that residual forms of discrimination have been reawakened as Islamist ideologies from the Middle East and Southeast Asia have moved into Europe. They also realize that longstanding antisemitism of the extreme left and extreme right is growing again in response to populist responses to economic and migratory pressures, and as the horrors of the Holocaust recede. In parallel, the threat from jihadist ideologies, which single out Jews as terrorist targets in addition to threatening everyone, is now understood.

The current challenge for governments is to apply and institutionalize the resolutions, laws, and programs so they do not fall by the wayside as government priorities change according to circumstances. There is now widespread recognition that antisemitism cannot be combatted merely by passing new laws and instituting better security alone. It requires education, and interfaith collaboration and Holocaust curricula need to be made relevant to the young. Governments have finally understood Jewish concerns and are starting to cooperate with Jewish communities. However, if states fail to apply the agreed-upon measures, or to invest enough energy in them, the ability of the European agencies to respond effectively will be weakened.

## Notes

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