

The definition of anti-Semitism by the European Monitoring Centre on Racism and Xenophobia (EUMC): Towards a criminalisation of criticism of Israeli policy?

Following the report published by the EUMC in March 2004 (EUMC – Report on European anti-Semitism 2002-2003, March 2004; hereinafter “EUMC Report 2004”), which highlighted the difficulty of collecting and comparing data on anti-Semitism within the Member States of the European Union in the absence of a common definition of the concept, the EUMC published a working definition of anti-Semitism (hereinafter “EUMC Document 2005”) in March 2005. According to this document, this definition is intended to provide a “practical guide for identifying incidents, collecting data and supporting the implementation and enforcement of legislation dealing with antisemitism.”

After having defined anti-Semitism generally as a “certain perception of Jews, which may be expressed as hatred of Jews,” the EUMC document indicates that this can also be aimed at the Israeli state, conceived as a “Jewish collectivity”. Some examples of this particular form of anti-Semitism are mentioned:

- “- 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 Israël.”

The EUMC document states however that, “criticism of Israel similar to that leveled against any other country cannot be regarded as anti-Semitic.”

As it is currently formulated, the definition adopted by the EUMC is likely to cast suspicion and discredit upon any organisation that advocates respect for Palestinian rights, or any opinion criticising the policy pursued by the Israeli government. This definition is very much in line with the so-called “new Judeophobia” thesis, which sees in the defence of the Palestinian cause, or of that of anti-racism, the means by which a long repressed, unconscious antisemitism can express itself. Any teacher, researcher, scientist or activist working on the issue of the Israeli-Palestinian conflict may be particularly concerned about the impact this may have on the exercise of their

freedom of expression. In the following lines, we would like to show the questions raised by the method employed by the EUMC to (1) construct its definition, as well as (2) the numerous problematic aspects contained in it relating to criticism of Israel.

1. A highly questionable methodology

Firstly, it is necessary to underline the total lack of transparency with regard to the method and criteria used by the EUMC to establish its definition of anti-Semitism. The introductory text that one finds on the Internet site of the EUMC is limited in this respect to indicating:

“The EUMC and OSCE/ODIHR consulted Jewish organisations like the European Jewish Congress, the American Jewish Committee, other major Jewish NGOs and prominent academics. Informal discussions were held with a view to develop a common “working definition” in line with the theoretical arguments elaborated in the EUMC’s antisemitism report, whose author was also consulted to ensure that the working definition is compatible with the theoretical considerations outlined in the report, which was adopted by the EUMC’s Management Board.”

The report made by the EUMC in March 2004 lists, in a very nuanced manner, the different positions relating to the emergence of a “new anti-Semitism”¹. On this question the report concluded:

“But let us return to the primordial question of the character of contemporary anti-Semitism and its various forms and appearances, as defended by the partisans of the “new anti-Semitism”: we must recognize that the data currently available impose clear limits on the possibility of drawing empirically valid conclusions. If we recapitulate our conceptualization of the term “new” in “new anti-Semitism” mentioned in the chapter entitled “Definitions, Concepts and Theories”, we can distinguish between “novelty” linked to the very nature of anti-Semitism itself (especially in redefining the stereotype of the “Jew”) and “novelty” in relation to the public appearance of anti-Semitism in the fields of politics, the media and everyday life (not necessarily based on an evolution of the nature of antisemitism). In this chapter, we have also referred to those who argue that, as far as the nature of anti-Semitism is concerned, there has been a fundamental evolution in Europe in recent years (or in recent decades). Nevertheless, if we consider the available data on the perception of Jews in the EU, the evidence supporting this point of view is rather weak.” (Report, p. 324)

The 2004 Report contains equally cautious findings regarding the links between “anti-Semitism” and “anti-Zionism”:

“ If we stick to our definition²,” then, strictly speaking, we should qualify the hostility towards

1

EUMC – Report on anti-Semitism in Europe 2002-2003, March 2004, p. 227 ff.

2

The definition of anti-Semitism used in the report reads as follows: Antisemitism is essentially characterized by “acts or attitudes based on the perception of any social subject (whether an individual, group, institution or a state)

Jews as “Israelis” as anti-semitic only if it is based upon the underlying perception of Israel representing “the Jew”. If this is not the case, then we should consider the hostility towards the Jews as “Israelis” as not really anti-semitic, because this hostility is not based on the antisemitic stereotypes of the Jews.” (Report, p. 242)

The Rapporteur clarifies further:

“What should not be regarded as anti-Semitic, and which therefore does not need to be examined as such, is hostility toward Israel as a country that one criticises with regard to its concrete politics. For those who, like us, wish to attribute the label of anti-Semitism without being mistaken, it matters little that criticism of Israel for what it is, and what it does, is unfair, balanced or tendentious. In most political cultures, political representatives wish above all to present their case in the most convincing and not the most balanced way possible. It would, for example, be in the interest of the Palestinian representative to make a tendentious criticism of Israel and to paint an exaggerated picture of its human rights violations, without this tendentious criticism being in itself even anti-Semitic. It becomes anti-Semitic only if the underlying reference point is the assimilation of Israel to the “Jew” (of the stereotype). The criticism of Israel because of its policy may concern both Israel itself and those who care about its good reputation. There is, however, one important exception: criticism of Israel should become a matter of public concern when there is explicit evidence that it provokes attacks on Jews.” (Report, pp. 242-243)

How did one get from this cautious approach, expressed in the Report of March 2004, to the definition contained in the document published in March 2005? The only indication of this is that the definition is the product of “informal discussions” with some Jewish NGOs and “renowned academic personalities”, whose identities and theories are not specified. Nothing gives us any insight into the criteria that led the EUMC to position itself, in the current debate, on the side of a very broad assimilation of the criticism of Israel to anti-Semitism. In this regard, it is surprising to read that the definition obtained would be in line with the theoretical foundations set out in the 2004 Report (“in line with the theoretical arguments elaborated in the EUMC’s antisemitism report”), the author of which was also consulted. Indeed, it must be noted that the definition adopted largely contradicts the conclusions of the 2004 Report, and that it is not possible to know the theoretical foundations, which led to such a result. In the 2004 Report, the definition of anti-Semitism ultimately adopted is based on the work of Brian Klug, a lecturer in philosophy at Saint-Xavier University in Chicago³. It is interesting to refer to the conclusions outlined in the report, which this author derives from its definition as to the qualification of anti-Semitism:

“In his article, Klug argues that anti-Zionism and anti-Semitism are independent variables, that is say anti-Semitism can take the form of anti-Zionism, but that there is also anti-Zionism that is not based on anti-Semitism. In support of his thesis, Klug points out that the term “anti-Zionism” refers to very different attitudes towards Israel and its status as a Jewish state:

as “the Jew” (deceitful, corrupt, conspirator...)” (p.240)

“Among these attitudes is the idea that the state of Israel has no right to exist, that to begin with it should not have been created, that it should not continue to exist, or that it should not survive as a specifically Jewish state. For Klug, “there is nothing fundamentally or inevitably anti-Semitic” in these anti-Zionist positions. Klug also points out that even when the State of Israel is unfairly targeted, it does not automatically follow that the hostility towards Israel is anti-Semitic. Whilst the Palestinians have become the symbol of the Third World struggle for self-determination, Israel is perceived by many as a European creation and the result of a colonialist movement. This is why, according to Klug, hostility towards Israel expresses in many cases “territorial, economic and political interests, but also principles of justice and human rights and not anti-Semitic prejudices.” Klug believes that his view is confirmed by the fact that hostility towards Israel fluctuates according to the political situation in the Middle East. He also mentions how difficult it is to “verify the anti-Semitic character of the new wave of hostility towards the Jews, whose epicentre is in the Middle East.” According to Klug, the main question which arises in this context is whether the erroneous belief that all Jews are Zionists, or that all Jews who identify with Israel support all of its policies, is a reflection of anti-Semitic attitudes (based on prejudices), or whether it is a generalisation (based on hasty and unfounded conclusions). According to Klug, such a generalisation, although reprehensible, is not anti-Semitic” (Report 2004, pp. 233-234).

It is striking to note that the definition drawn up by the EUMC in 2005 contradicts point by point the conclusions of Brian Klug, the author who served as a point of reference for the definition of anti-Semitism proposed in the 2004 Report: the negation of the right to self-determination of the Jewish people or Israel's right to exist, any comparison with Nazism, the application to Israel of a “double standard”, the assimilation of Jews to Israel suddenly became proven forms of anti-Semitism, without, it must be emphasised once again, the EUMC's approach having been explained in any way.

The method followed is also questionable in that it is stated that the only NGOs consulted in order to establish a definition of anti-Semitism were Jewish NGOs. There is no doubt that these NGOs have a special role to play in the fight against anti-Semitism, but limiting consultations to these organisations alone constitutes a dangerous drift towards a “communitarianisation” of this problem. As a form of racism, anti-Semitism is not only about the Jewish community, but concerns the whole of society; it should be expected that a broader panel of NGOs, including NGOs active in the fight against racism, should also be solicited. In this regard, the effective struggle against anti-Semitism presupposes a definition of this concept, which can be the subject of a broad consensus within society, not a definition that is the subject of controversy by engaging in the debate on the Israeli-Palestinian conflict. We can therefore seriously question the privileged consultation of organisations - the European Jewish Congress, the American Jewish Committee - which are characterised by a particularly militant defence of the policy of the State of Israel⁴. As a result,

4

The publications of these two organisations available on their websites are a perfect example. For example, both organisations continue to support Israel's construction of the separation wall, despite the fact that this wall was condemned as contrary to international law by the European Union, and then by the International Court of Justice. Cf. “ ‘The Security Barrier’: How to protect against terror? ”, <http://www.eurojewcong.org/english/analysis/analysis.php>;

both organisations advocate a definition of anti-Semitism that broadly equates it with criticism of the State of Israel and anti-Zionism.

One of the latest publications of the American Jewish Committee devoted to this issue – “European Anti-Semitism Reinvents Itself”⁷⁵ - is emblematic in this regard of theories aimed at imputing to all movements of the Left, or of the defence of the Palestinian cause, allegedly anti-Semitic views, camouflaging under the "respectable" facade of criticism of the policy of the State of Israel. According to the author of this study,

“This anti-Zionism of the radical leftist camp, profoundly discriminatory toward Jewish nationalism, has now spread into the mainstream liberal left, whose rhetoric relentlessly seeks to undermine the moral and historic legitimacy of a Jewish state. Liberal leftists portray Israel as a state born of the “original sin” of displacing, expropriating, or expelling an “aboriginal” population. Not only that, but they attribute to the Jews and Israel qualities of cruelty, brutality, bloodthirstiness, duplicity, greed, and immorality drawn straight from the arsenals of classic anti-Semitism. Such polemics transcend the question of double standards. They go far beyond the long-established media practice of singling out Israel for savage criticism never applied to any other nation-state. Indeed they constitute a clear case of *negationism*—denying the humanity of Israelis in order to stigmatize, defame, and morally disintegrate the Jewish state, as a prelude to its physical destruction.” (p. 12)

If, for the author, the criticism of Israel can be theoretically distinguished from anti-Semitism, the fact remains that “the delegitimisation of Israel all too often falls into a general defamation of Jews” (ibid.). To this extent, the defence of the Palestinian cause appears necessarily suspicious: “Judeophobia is often the symbolic other side of the ‘Palestinophile’ coin” (p.17). For example, in Belgium, the development of this “new anti-Semitism” that is winning over the traditional political class, would find its origin in the presence of a large Muslim community, whose representatives are now elected (pp. 36-37). Since then,

“[The Anti-Zionist consensus] has permitted the liberation of traditional anti-Jewish stereotypes (religious or secular, right or left-wing) under a respectable cover; it helps some Belgians to feel better about their ugly legacy of colonial guilt; moreover, it has provided a relatively cheap and painless platform for highly selective moral posturing in the name of ‘human rights’.”

“AJC Denounces UN General Assembly Vote on Israel's Security Fence”, <http://www.ajc.org/InTheMedia/PressReleases.asp?did=1276>. Cf. also, among others, American Jewish Committee, “Israel Advocacy Guide for College Students”, August 2004, <http://www.ajc.org/InTheMedia/PubIsrael.asp?did=1315>.

We thus approach the theses defended by Oriana Fallaci in her recent writings (*La rage et l'orgueil*, “Sur l’antisémitisme”), with violently anti-Palestinian and Islamophobic content, which the author does not hesitate to cite in the epigraph of her text (p.1).

This kind of publication, published by the American Jewish Committee, would only spark indifference if the EUSC had not considered it useful to consult this body to establish its definition of anti-Semitism, and especially if one did not find a direct influence, albeit in a more attenuated form, in the definition finally adopted. Examples supposed to reveal the anti-Semitic form of criticism of Israel are indeed very similar in the two documents, published at the same time, (double standard, negation of the self-determination of the Jewish people, comparison with Nazism...).

As for the European Jewish Congress, it had not hesitated, via the voice of its President Cobi Benatoff, to accuse the European Commission of being “guilty of anti-Semitism” by “action and inaction” (Edgar M. Bronfman and Cobi Benatoff, “Europe's moral treachery over anti-Semitism”, *Financial Times*, 4 January 2004). This shows the “broad” conception that this organisation can make of the notion of anti-Semitism.

The method followed by the EUMC to formulate its definition of anti-Semitism can only leave one speechless: a change in the concept of anti-Semitism in the light of its previous report without any clarification or explanation of its approach; consultation with organisations whose well-known positions are far from guaranteeing a serious and balanced approach; a total lack of transparency as to the scientific method followed, lack of corpus of theoretical reference...

The shortcomings of the methodology were directly reflected in the content of the definition established by the EUMC in its March 2005 document. This will be the subject of the second point.

2. A very questionable definition of anti-Semitism in its relation to the criticism of Israel

As already mentioned, the definition of a notion as important, and delicate, as anti-Semitism should be established by taking maximum scientific precaution, so as to arrive at an acceptance that can be generally agreed upon. Anti-Semitic discourse constitutes a criminal offence in the States of the European Union, and is excluded as such from the benefit of freedom of expression. It is therefore understandable that this concept should be defined strictly so as to cover only acts or opinions of racial discrimination or hatred. On the other hand, it is not a question of including acts

or opinions that can simply be judged, from one or other point of view, as politically or morally reprehensible, as inappropriate, as exaggerated... As the European Court of Human Rights has repeatedly stated, “ the freedom of expression enshrined in Article 10 [of the European Convention on Human Rights] [...] applies not only to “information” or “ideas” which are favourably received or considered as harmless or indifferent, but also to those which offend, shock or disturb: thus pluralism, tolerance and the spirit of openness, without which there is no ‘democratic society’.” (Note the case of *Lehideux v. France*, judgment of 23 September 1998.)

In the Garaudy case, the European Court of Human Rights was able to draw the line between the legitimate criticism of Israel and anti-Semitism (cf. the *Garaudy v. France*, 24 June 2003). The Court held that Mr. Garaudy, author of the pamphlet *The Founding Myths of Israeli Politics*, was not entitled to invoke freedom of expression on the grounds that his writings were markedly negatory. The Court found that the pamphlet concerned was “far from being limited to a political or ideological criticism of Zionism and the actions of the State of Israel”, but was an “acute” form of “racial defamation” and “incitement to hatred” towards the Jewish community. The Court thus draws a distinction between “political or ideological criticism of Zionism and the actions of the State of Israel”, which is permissible, and “racial defamation” or “incitement to hatred”, which are clearly reprehensible and do not fall within the scope of freedom of expression.

It is this distinction that is totally ignored by the definition of anti-Semitism established by the EUMC: by combining a generic and traditional definition of anti-Semitism - aimed at the hatred of the Jews - with elements designed to cover the “new Judeophobia” and concerning various forms of criticism that could be expressed with regard to Israel. As the 2004 EUMC report notes, “the adherents of a ‘new anti-Semitism’ [...] argue that the last decades have seen the cover-up of anti-Semitism in anti-Zionism or in criticism of Israel, such as anti-racism or anti-imperialism ”(p. 241). The notional shift effectuated by the EUMC ‘s definition will inevitably have the effect, *a priori*, of making suspect of anti-Semitism any group, or association, active in defence of the rights of the Palestinians and any criticism of Israeli State policy, and all the more so, as will be seen, because the proposed criteria are mostly blurred and most debatable.

The EUMC had, however, itself warned of the confusion that might result from combining the definition of anti-Semitism with elements concerning anti-Zionism and criticism of Israel. In 2003, the EUMC refused to publish a draft report that it had commissioned from the Berlin Research Centre on Anti-Semitism. Among the reasons for this refusal, the EUMC raised the problem of the definition adopted by the authors of the draft report:

“**Definitions:** the report authors recommend the use of Helen Fein’s definition of antisemitism

[...], but the analysis of the reports from individual countries and the general analysis do not make clear and consistent use of this definition. *References to anti-Zionism, criticism of Israeli policies and anti-Americanism add to the confusion.*" (EUMC, "Statement on the Draft Study", <http://eumc.eu.int/eumc/FT.htm>, our emphasis)

However, the elements of definition given in this regard by the 2003⁶ draft report were not fundamentally different from those given in the 2005 working definition, and were even less extensive. (For example, one did not find the case of the "double standard" mentioned in it.)

A rapid examination of the various examples presented as manifestations of anti-Semitism in relation to the State of Israel, makes it possible to appreciate the extent of the confusion produced by the definition of the EUMC. It is not a question of denying that the criticism of Israel or the defence of the rights of the Palestinians can adopt anti-Semitic forms on the part of certain radical groups or individuals, which are absolutely reprehensible. The case of Roger Garaudy, mentioned above, attests to this. But, it is with regard to the generic definition of anti-Semitism that these cases must be identified. This criterion is also found in the second part of the 2005 document of the EUMC, in the following formulation: "Using the symbols and images associated with classic antisemitism (eg, claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis." It is sufficient in itself to distinguish admissible criticisms of Israeli policy from those of an anti-Semitic character. It is in a similar sense that the EUSC 2004 Report expressed itself, stating that criticism of Israel only becomes anti-Semitic when it resorts to traditional stereotypes of anti-Semitism (pp.242-243). In fact, the other examples mentioned are problematic when it comes to assimilating them to forms of anti-Semitism:

- *Denying the Jewish people their right to self-determination*

Implicitly, this example leads us to equate anti-Zionism with anti-Semitism. The right of the Jewish people to self-determination [in the land of Israel] is in fact a central foundation of Zionism. The relevance of the example mentioned therefore assumes an *a priori* adoption of a Zionist point of view. From a more general point of view, it should be noted that the right of the Jewish people to self-determination, understood as a right to establish a Jewish state in the land of Palestine, has never been recognised as such, at the time of the establishment of the British mandate, nor at the time of the vote on the partition plan. This is clear from the work of the United Nations Special Commission for Palestine (UNSCOP) in 1947, which culminated in the proposal of a plan of partition. In contemporary international law, the right of peoples to self-determination,

understood as the right to create one's own state, was recognised only in the case of decolonisation or the liberation of foreign domination or a racist regime. On the other hand, the Israeli people (including citizens of Palestinian origin) enjoy a right to internal self-determination, which means in particular the free choice of the political and economic form of the State of Israel. The debate on the “right of the Jewish people to self-determination” can therefore only refer to a more general debate of a political, ideological and legal nature, which can in no way be associated with anti-Semitism. The question of the critique of Zionism is so complex and plural (anti-Zionism, post-Zionism, a-Zionism, Israel conceived as a “Jewish” state, an “Israeli” state, a “bi-national” state...) that wanting to relate it to anti-Semitism appears both absurd and to censor a perfectly legitimate debate.

- *Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation:*

This is the criterion of the “double standard” that is frequently found in the literature of supporters of the “new Judeophobia” thesis. It remains unclear how this example can be compared in any way to an anti-Semitic opinion. Does this mean that every condemnation of Israeli policy should be accompanied by a critical analysis of the behaviour of all other (“democratic”) states on the planet, in order to escape the suspicion of anti-Semitism? Does this imply that NGOs dealing with the Palestinian question must necessarily extend their activities to other conflicts (Sudan, Congo, Chechnya, etc.) so as not to be exposed to the accusations of the “double standard”? One might think so when one reads the general clause purporting to distinguish acceptable criticism of the State of Israel from that of anti-Semitism: “however, criticism of Israel *similar to that levelled against any other country* cannot be regarded as anti-Semitic” (emphasis added). So it is only to the extent that it is similar to that issued to any other country that the criticism addressed to the place of Israel would not reveal anti-Semitism! In practice, this criterion would obviously be impossible to verify (since comparing very different situations), but it certainly aims at discrediting any condemnation of Israeli policy, presuming that this condemnation - specifically targeting Israel - would be motivated by repressed anti-Semitism and not by the fact that it violates international law by occupying and colonising the Palestinian territories, and by violating human rights and humanitarian law.

- *Drawing comparisons of contemporary Israeli policy to that of the Nazis:*

Drawing a parallel between Israeli occupation policy and the Nazi policy of extermination is certainly a deplorable method and out of context. But it must be noted that since Nazism became

the referent of absolute crime, comparisons with the latter, or with the Second World War, tend to become widespread in many conflicts (Kosovo, Iraq, Chechnya...) and to be mobilised in order to convince a public opinion of the correctness or the urgency of a particular cause (one can associate with it the increasingly widespread reference to the notion of “genocide”). But again, the use of an exaggerated or shocking comparison, if it is morally or politically reprehensible, is not as such a matter of anti-Semitism. As pointed out in the 2004 EUMC Report, criticism of Israel “as regards its concrete policy” should not be regarded as anti-Semitic, even if this criticism may appear “unjust, balanced or tendentious” (p.243). In this respect, we find in the very heart of Israeli society comparisons drawn with Nazism, intended to castigate certain features of the policy of the government. It will be recalled that the famous Israeli philosopher Yeoshua Leibowitz, Zionist and religious, evoked the emergence of a "Jewish-Nazi" mentality to condemn Israel's war in Lebanon in the 1980s. To give another example, the Israeli MP Tommy Lapid rebelled in 2002 against the practice by the Israeli army of registering a number on the arms of Palestinian prisoners, referring to his status as a survivor of the Nazi concentration camps: “I told the head of state that the fact of putting numbers on the arm of the detainees is unbearable for someone who has escaped the Shoah.”⁷

These elements show again that the example used cannot, as such, be considered as indicative of an underlying anti-Semitism. As pointed out, the European Court of Human Rights has emphasised that freedom of expression must also include shocking or disturbing opinions. It is only if it is duly proven that this opinion constitutes racial defamation, that it ceases to be a matter of freedom of expression.

-Holding Jews collectively responsible for actions of the State of Israel:

As regards the latter example, reference is made to the writings of Brian Klug, referred to in the 2004 EUMC Report: “According to Klug, the main question in this context is whether the erroneous belief that all Jews are Zionists, or all Jews who identify with Israel support all policies, reflect anti-Semitic attitudes (based on prejudice) or whether it is a generalisation on hasty and unfounded conclusions). According to Klug, such a generalisation, although reprehensible, is not anti-Semitic.” Let us recall once again that Brian Klug is the author who served as a reference for the definition of anti-Semitism in the 2004 EUMC Report. Unfortunately, his nuanced opinion was left aside when formulating the definition of the EUMC document of 2005.

Conclusions:

The definition of anti-Semitism, as currently drafted in the EUSC working paper, raises the greatest concern for the preservation of freedom of expression in the legitimate debate on the Israeli-Palestinian conflict. This definition could only have the effect of casting suspicion on any critical discourse with regard to Israeli policy, suspected of masking the expression of latent anti-Semitism. It would therefore be appropriate to limit oneself to a "traditional" definition of anti-Semitism, as set out in the first part of the EUSC document. This definition would be perfectly sufficient to target genuinely anti-Semitic drifts that could be included in the discourse relating to the State of Israel. It is certain that by opting for such a polemical conception of anti-Semitism, the EUMC risks weakening the necessary fight against this form of racism, rather than strengthening it.

François Dubuisson

Centre for International Law, ULB

July 2005.