



# **Draft International Convention on the Prevention and Punishment of the Crime of Anti-Semitism**

**Ambassador Alan Baker**



Jerusalem Center for Public Affairs

Cover Photo: An unidentified member of the Jewish community stands near some of the 127 graves desecrated by vandals with Nazi swastikas and anti-Semitic slogans written in German and discovered in the Jewish cemetery of Herrlisheim, France, on May 2, 2004. (Reuters/Vincent Kessler).

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## Introduction and Initial Action Plan

Clearly, and sadly, the issue of anti-Semitism has always been and remains a major recurring aspect in the international arena and narrative.

While the phenomenon is universally researched, addressed, and condemned by international and regional organizations, various NGOs, Jewish community bodies throughout the world, and even marginally and in a limited manner in some UN resolutions and declarations, and has been criminalized by certain states in their domestic legislation, **the international community has never considered criminalizing anti-Semitism as an international crime**, in a manner similar to the criminalization of genocide, racism, piracy, hostage-taking, crimes against humanity, war crimes, and terror.

With the plethora of material dealing with anti-Semitism, and in light of the horrific tragedies that it has wrought on humanity for thousands of years, and in light of the recent re-awakening of anti-Semitism, one might have expected that some effort would have been made by the international community to criminalize anti-Semitism and declare it to be an international crime – this with a view to ensuring that perpetrators, inciters, and all those involved in it would be dealt with as international criminals and not enjoy impunity.

This would have been appropriate as well as propitious in an international community that is increasingly becoming open to the concept of extending criminal jurisdiction in order to counter impunity, including through the establishment of ad hoc international criminal tribunals to deal with atrocities committed in various regional conflicts (Yugoslavia-ICTY, Rwanda – ICTR, Sierra Leone, Cambodia, and others) as well as the International Criminal Court, which, pursuant to its 1998 Statute, was established to address “the most serious crimes of concern to the international community as a whole.”<sup>1</sup>

**By its very nature, with anti-Semitism’s long, bitter, and never-ending history, and its propensity to constantly re-appear in modern forms and contexts, it cannot and should not be equated with, linked to, or treated as any other form of racial discrimination. It stands alone. It cannot and should not be relegated to any type of listing of forms of racial discrimination and xenophobia.**

In this context, attempts over the years within the international community, principally at the behest of the Muslim countries, to attach to it Islamophobia and other phenomena in various international

resolutions and declarations (including the infamous 2001 UN Durban Conference on Racism) are clearly artificial and transparent, and fail to do justice to what clearly is a unique, *sui generis* phenomenon that must be dealt with independently.

To this end, and with a view to correcting what is clearly a vast international injustice, the following draft document is intended to universally criminalize anti-Semitism within the world community, in the form of an “International Convention on the Prevention and Punishment of the Crime of Anti-Semitism.”

This convention has been drafted following the accepted format of several UN international conventions, condemning genocide, racial discrimination, terror and other most serious international criminal phenomena, and comprises the following elements:

- A detailed series of preambular paragraphs documenting the history of anti-Semitism and references thereto in international instruments, statements by senior international figures, and resolutions by relevant bodies.
- An all-embracing definition of the crime of anti-Semitism and its component elements, based upon the various definitions that have been adopted over the past years by various groups and institutions, including the European Monitoring Center on Racism and Xenophobia (EUMC – FRA), the OSCE 2004 Berlin Declaration, the U.S. State Department 2005 Report on Global Anti-Semitism, and the Coordination Forum for Countering Anti-Semitism (CFCA) in its 2014 report.
- The basic premise of this draft convention is that any manifestation of anti-Semitism **that results in, or is intended to result in, violence** should be criminalized internationally.
- An obligation by states to criminalize anti-Semitism in their own domestic law, and to prosecute perpetrators, or to extradite them.
- A commitment to cooperate and exchange information on perpetrators and actions taken.
- A commitment to institute appropriate national educational programs to combat anti-Semitism.
- Establishment of an International Anti-Semitism Monitoring Forum for monitoring and coordinating actions by states and international organizations.

With a completed and duly coordinated text of the draft convention, it will then be necessary to launch the document in a series of conferences to be held in the UN and other international organizations and in select capitals, as well as mustering the support and sponsorship of states and Jewish organizations.

The aim would be to encourage select states to sponsor the draft convention and to present it to the appropriate UN bodies for processing as an international convention.

Alternatively, the draft could be presented to an international conference or forum dedicated solely to anti-Semitism, independent of and separate from the UN, with a view to its formal adoption as a draft treaty and its submission to states for signature and ratification.

In light of the complex and legal nature of the subject matter, and the novel idea of criminalizing anti-Semitism internationally, it is anticipated that this text will be the subject of considerable discussion and debate both within the relevant bodies dealing with the issue of anti-Semitism as well as in the wider international arena where political and other issues would be injected into the discussion.

This draft should be considered as a basis for further discussion, and comments and suggestions will be welcomed.

# Draft International Convention on the Prevention and Punishment of Acts of Anti-Semitism

## The Contracting Parties,

[PP1]<sup>2</sup> *Acknowledging* that anti-Semitism is one of the oldest and most pernicious and prevalent forms of malicious intolerance and racism, which violates the precepts of human dignity and equality that are fundamental to a free and peaceful society;<sup>3</sup>

[PP2] *Aware* of the fact that anti-Semitism, including massacres, pogroms, mass murder, burning at the stake, expulsions, mob attacks, public torture and executions, lynching, forced conversions, burning of synagogues, enslavement, outlawing of the practice of Judaism, land and property confiscation, has been prevalent throughout history since the year 250 CE and up to present day;<sup>4</sup>

[PP3] *Recalling* the decrees and edicts issued during the Middle Ages in England (1290) and Spain (1492) expelling all Jews from those countries;

[PP4] *Recalling* the systematic and officially sanctioned anti-Semitism and repression instituted during the Inquisition in France, Spain, Portugal, and other European countries between the thirteenth and eighteenth centuries, sanctioned by heads of state and religious leaders, including mass torture and burning at the stake, the systematic destruction of Jewish literature and books, mass expulsion and repression of Jews, and forced conversion;

[PP5] *Recalling* the savage pogroms instigated against the Jews of Russia, Poland, Romania, and other countries in Eastern Europe, as well as in Germany, Austria, and the Balkan countries, and in Morocco, Algeria, and Persia during the nineteenth and early twentieth centuries, which included the murder of thousands of Jews, destruction and looting of property, expulsions and rape, officially sanctioned by state civil, religious, and military authorities and perpetrated by civilian groups and nationalist and religious fanatics;

[PP6] *Aware* of the fact that the intense prejudice, hatred, discrimination, dehumanization, and persecution that grew out of long-standing anti-Semitism led to the genocide of Jews in the Holocaust perpetrated in Europe by the Nazis in the 1940s, which resulted in the brutal annihilation of six million Jews as part of a declared policy of genocide of the Jewish People worldwide;

[PP7] *Acknowledging* that anti-Semitism, in light of its unique history from time immemorial, the intensity and savagery with which it has been instituted and conducted, as well as the fact that throughout history

it has been and continues to be officially sanctioned by heads of state and religious leaders, is a *sui-generis* phenomenon that cannot be equated with, or compared to, any other form of racism;

[PP8] *Recognizing* that anti-Semitism, following its most devastating manifestation during the Holocaust, has assumed new forms and expressions, which, along with other forms of intolerance, pose a threat to democracy, to the values of civilization, and, therefore, to overall security throughout the world;<sup>5</sup>

[PP9] *Noting* that the preambular provisions of the UN Charter reaffirm faith in fundamental human rights and in the dignity and worth of the human person, as well as in the practice of tolerance;

[PP10] *Recalling* that the 1948 Universal Declaration of Human Rights acknowledges in its preamble the “barbarous acts which have outraged the conscience of mankind” and proclaims that “everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, religion or other status”;<sup>6</sup>

[PP11] *Recalling* that Article 18 of the Universal Declaration on Human Rights and Article 18 of the International Covenant on Civil and Political Rights state that everyone has the right to freedom of thought, conscience, and religion;<sup>7</sup>

[PP12] *Recalling* the 1965 International Convention on the Elimination of All Forms of Racial Discrimination<sup>8</sup> and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief;<sup>9</sup>

[PP13] *Deeply concerned* that anti-Semitism by whoever perpetrated, motivated by extremism and intolerance, poses a serious and growing danger to the enjoyment of human rights, threatens the social and economic development of all states, undermines global stability and prosperity, and must be addressed urgently and proactively by the United Nations and all states, and emphasizing the need to take all necessary and appropriate measures in accordance with international law at the national and international level to protect the right to life;<sup>10</sup>

[PP14] *Recalling also* that the International Covenant on Civil and Political Rights, states *inter alia* that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”;<sup>11</sup>

[PP15] *Recalling also* that the International Convention on the Elimination of All Forms of Racial Discrimination mandates states to “declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence and incitement to such acts against any race or group of persons of another color or ethnic origin”;<sup>12</sup>

*[PP16] Deeply concerned* by the worldwide escalation of anti-Semitism in all its forms and manifestations, which endanger or take innocent human lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings;<sup>13</sup>

*[PP17] Concerned* in particular that hostility toward Jews, whether as individuals or collectively, on racial, social, and/or religious grounds, has manifested itself in verbal and physical attacks and in the desecration of synagogues and cemeteries;<sup>14</sup>

*[PP18] Affirming* that manifestations of anti-Semitism giving rise to, or intended to give rise to, violence should be determined as crimes under international law which the civilized world condemns, and for the commission of which principals and accomplices – whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds – should be punishable;<sup>15</sup>

*[PP19] Noting* that existing multilateral legal instruments do not address the violent consequences of anti-Semitism and the need to criminalize those acts giving rise to violence;<sup>16</sup>

*[PP20] Concerned* at the global campaign to advance Holocaust denial, which in itself, represents a pernicious form of anti-Semitism;

*[PP21] Noting* the prevalence throughout the world, and especially among governments of some Muslim states, of a pattern and practice of anti-Semitic propaganda including anti-Semitic drawings and cartoons published in a state-controlled newspaper, as well as anti-Semitic literature and incitement to hatred against Jews and other non-Muslims that have been documented in children’s textbooks distributed by the governments of Iran, Egypt, and Saudi Arabia;

*[PP22] Condemning* the pernicious distortion of language and meaning initiated by Muslim states designed to prevent UN bodies from coherently expressing sympathy for Jews as victims;

*[PP23] Whereas* the U.S. Department of State, in its 2004 report on Global Anti-Semitism stated, “The increasing frequency and severity of anti-Semitic incidents since the start of the 21st century, particularly in Europe, has compelled the international community to focus on anti-Semitism with renewed vigor”;<sup>17</sup>

*[PP24] Whereas* the U.S. Congress has approved the Global Anti-Semitism Awareness Review Act, which acknowledges a disturbing increase in anti-Semitism and establishes an office in the State Department to monitor and combat anti-Semitism worldwide (U.S. Department of State, 2004);<sup>18</sup>

[PP25] *Recalling* the June 2005 U.S. House of Representatives Resolution 282 calling upon the UN to “officially and publicly condemn anti-Semitic statements in all UN meetings, and hold accountable member states who make such statements,” and to urge UNESCO to “develop and implement Holocaust education programs to combat a rising worldwide tide of anti-Semitism,” and calls upon the President to direct the U.S. Permanent Representative to the UN to “continue working toward further reduction of anti-Semitic language and anti-Israel resolutions.”<sup>19</sup>

[PP26] *Recalling* the statement by former UN Secretary-General Kofi Annan that anti-Semitism is a “unique manifestation of hatred, intolerance and persecution”;<sup>20</sup>

[PP27] *Affirming* the statement by UN Secretary-General Ban Ki-Moon at the informal meeting of the General Assembly to address concerns of a rise in anti-Semitism worldwide, dated 22 January 2015, that “Grievances about Israeli actions must never be used as an excuse to attack Jews”;<sup>21</sup>

[PP28] *Noting* the State Department’s report on anti-Semitism which includes in its definition of anti-Semitism the “demonization of Israel, or vilification of Israeli leaders,” along with “hatred toward Jews”;<sup>22</sup>

[PP29] *Recalling* the definitions and condemnation of anti-Semitism in Articles 77 and 78 of the 3 Sept. 2001 World Conference against Racism NGO Forum Declaration in Durban, South Africa;<sup>23</sup>

[PP30] *Taking into account* UN General Assembly Resolutions 60/7 of 1 November 2005<sup>24</sup> and 61/255 of January 2007,<sup>25</sup> condemning genocide and Holocaust denial;

[PP31] *Recalling* “The Berlin Declaration” adopted at the OSCE Conference on Anti-Semitism held in Berlin in April 2004, which “Recogniz[es] that anti-Semitism...has assumed new forms and expressions, which, along with other forms of intolerance, pose a threat to democracy, the values of civilization and, therefore, to overall security”;<sup>26</sup>

[PP32] *Recalling also* that the Berlin Declaration stated unambiguously that “international developments or political issues, including those in Israel or elsewhere in the Middle East, never justify anti-Semitism”;<sup>27</sup>

[PP33] *Taking into account* the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) 2006 annual report, “Hate Crimes in the OSCE Region: Incidents and Responses,” in which it notes: “Anti-Semitic incidents and crimes continued to threaten stability and security in the OSCE region, remaining at high levels in terms of both frequency and intensity”;<sup>28</sup>

[PP34] *Reiterating* the OSCE Ministerial Council Declaration dated 5 December 2014 on Enhancing Efforts to Combat Anti-Semitism, which *inter alia* expressed “concern at the disconcerting number of anti-Semitic

incidents that continue to take place in the OSCE area and which remain a challenge to stability and security,” and “reject and condemn manifestations of anti-Semitism, intolerance and discrimination against Jews”;<sup>29</sup>

*[PP35] Noting the June 2007 Parliamentary Assembly of the Council of Europe Resolution 1563 on “Combating Anti-Semitism in Europe,” which expressed concern at “The persistence and escalation of anti-Semitic phenomena...[and that] far from having been eliminated, anti-Semitism is today on the rise in Europe. It appears in a variety of forms and is becoming relatively commonplace”;*<sup>30</sup>

*[PP36] Taking into account the March 2008 Contemporary Global Anti-Semitism Report released by the Office of the Special Envoy to Monitor and Combat Anti-Semitism, U.S. Department of State;*<sup>31</sup>

*[PP37] Recognizing that the crime of anti-Semitism as set forth in this convention, by whoever perpetrated, can under no circumstances be claimed to be justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and recalling the obligation of all parties to prevent such offences and, if not prevented, to prosecute and ensure that they are punishable by penalties which take into account their grave nature;*<sup>32</sup>

*[PP38] Expressing concern over the rise in recent years of anti-Semitic acts which have targeted and severely affected Jewish communities and individual Jews, whether involving the use of print, audio-visual, or electronic media or any other means, and emanating from a variety of sources;*<sup>33</sup>

*[PP39] Stressing the importance of the role of the media, the internet, civil and religious society, the business community, and educational institutions in those efforts to enhance dialogue and broaden understanding, and in promoting tolerance and coexistence, and in fostering an environment which is not conducive to anti-Semitism;*<sup>34</sup>

*[PP40] Calling upon all states to take such measures as may be necessary and appropriate and in accordance with their obligations under international law to prohibit anti-Semitism by law, and further calling upon all states to continue international efforts to enhance dialogue and broaden understanding among civilizations in an effort to prevent anti-Semitism, and to take all measures as may be necessary and appropriate and in accordance with their obligations under international law to counter all acts of anti-Semitism, including acts motivated by extremism and intolerance, and to prevent the subversion of educational, cultural, and religious institutions;*<sup>35</sup>

*[PP41] Affirming the 2009 “London Declaration on Combating Anti-Semitism”<sup>36</sup> and the 2010 “Ottawa Protocol on Combating Anti-Semitism”<sup>37</sup> adopted by the Inter-Parliamentary Coalition for Combating Anti-Semitism, which called upon governments, parliamentarians, the UN, OSCE, EU, and other international institutions, political and civil leaders, NGOs, and civil society to act against manifestations of anti-Semitism.*

**Hereby agree as hereinafter provided:**

## **Article 1**

- 1) Any state, person, or group commits an offence within the meaning of this convention if that state, person, or group unlawfully and intentionally engages in acts or manifestations of anti-Semitism, as defined in Article 2 below, through directly or indirectly engaging in, or calling upon, provoking, urging, instigating, encouraging, advocating, inciting or persuading others, whether individuals, a group or groups of persons, members of the population or the public at large, to initiate, organize, participate or engage in any such act or acts, where such conduct, whether or not directly advocating such acts or manifestations set out in Article 2, is intended to cause, causes, or may be reasonably expected to cause or spread violence or terror<sup>38</sup> vis-à-vis the targeted person, persons, group, or population.<sup>39</sup>
- 2) Any state, person or group also commits an offence if that state, person, or group attempts to commit an offence as set forth in this convention, or participates as an accomplice or in any way contributes to, or provides funds or resources enabling or facilitating the commission of, any of the acts or manifestations of anti-Semitism set forth in this convention.<sup>40</sup>

## **Article 2**

For the purpose of the present convention, the term “act or manifestation of anti-Semitism” is defined as follows:<sup>41</sup>

- 1) Any expression of hostility or demonstration of violence toward Jews individually, or as a group, a collectivity, or toward the Jewish People as a religious, ethnic, or racial group,<sup>42</sup> or toward Jewish culture, religious practices, and property that can be attributed to the Jewish religion and/or ethnicity,<sup>43</sup> including attacking, physically and in other ways, people or property – such as buildings, schools, places of worship, and cemeteries – because they are, or are perceived to be, Jewish or linked to Jews.<sup>44</sup>
- 2) Publication, broadcast, or distribution of material intended to generate acts of anti-Semitism as defined in this article, through the use of sinister stereotypes and images and negative character traits and abusive symbols, as well as falsely charging Jews with conspiring to harm humanity, and blaming Jews for various ills and occurrences; including claims of Jews having killed Jesus, or blood libels.<sup>45</sup>
- 3) Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.<sup>46</sup>

- 4) Expression in speech, writing, visual forms and actions including the utterance, publication, broadcast or circulation, by any means, of mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as a collective — including the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government, or other societal institutions.<sup>47</sup>
- 5) Harassment, vandalism, or violence against persons or communities, including attacks against synagogues, cemeteries, shrines, and other religious sites or places, Jewish community properties, cultural and educational institutions, and places of commerce identified with or serving the Jewish community.<sup>48</sup>
- 6) Any act of anti-Semitic incitement intended to generate or resulting in violence, including accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person, group or political entity, or even for acts committed by non-Jews<sup>49</sup> or by applying double standards vis-à-vis the State of Israel, by requiring of it a behavior not expected or demanded of any other democratic nation.<sup>50</sup>
- 7) Publication, distribution, broadcast, or circulation of material denying the Holocaust, including 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.
- 8) Vilification of Israeli leaders, *inter alia* through comparisons with Nazi leaders, and through the use of Nazi symbols to caricature them and any such arbitrary and general demonization of Israel, without prejudice to valid, substantive criticism of Israel's policy or policies concerning a specific and controversial issue.

### **Article 3**

- 1) The Contracting Parties condemn without reserve all acts and manifestations of anti-Semitism, and all other acts of religious or racial hatred or intolerance and incitement.
- 2) Direct or indirect incitement to commit an act or manifestation of anti-Semitism shall be considered to be an international crime.

#### **Article 4**

- 1) The Contracting Parties confirm that acts or manifestations of anti-Semitism, whenever and wherever committed, are an offence under international law which they undertake to prevent and to punish.<sup>51</sup>
- 2) The Contracting Parties declare unambiguously that international developments or political issues, including those in Israel or elsewhere in the Middle East, cannot serve to justify acts or manifestations of anti-Semitism.<sup>52</sup>

#### **Article 5**

The Contracting Parties agree that anti-Semitism, in light of its unique history from time immemorial, the intensity and savagery with which it has been instituted and conducted, as well as the fact that it has been, throughout history, and continues to be officially sanctioned by heads of state and religious leaders, is a *sui-generis* phenomenon that cannot be equated with, linked, or related or compared to any other form of racism, xenophobia or racial discrimination.

#### **Article 6**

Pursuant to Articles 1 and 2 of this convention, persons or groups engaging in acts or manifestations of anti-Semitism shall be punished, whether they are constitutionally responsible rulers, public officials, or private individuals.<sup>53</sup>

#### **Article 7**

- 1) The Contracting Parties undertake to ensure that their legal systems foster a safe environment free from anti-Semitic harassment, violence, or discrimination in all fields of life.<sup>54</sup>
- 2) The Contracting Parties undertake to enact, in accordance with their respective constitutions, the necessary legislation to give effect to the provisions of the present convention, and, in particular, to provide effective penalties for persons engaging in acts and manifestations of anti-Semitism as set out in Article 2.<sup>55</sup>

#### **Article 8**

The Contracting Parties undertake:

- 1) to promote, as appropriate, educational programs for combating anti-Semitism;

- 2) to promote remembrance of and, as appropriate, education about the tragedy of the Holocaust, and the importance of respect for all ethnic and religious groups.<sup>56</sup>

## Article 9

- 1) In order to effectively monitor and ensure due implementation of this convention, to assess the state of anti-Semitism globally, and to formulate and coordinate effective responses on the international and national levels, an International Anti-Semitism Monitoring Forum is hereby established, consisting of those states parties that have enacted domestic legislation criminalizing anti-Semitism, as well as additional states, international organizations, and research institutions requesting to be members of this forum.<sup>57</sup>
- 2) The forum will determine its administrative structure and budget, appoint an executive board, and determine membership fees and other necessary issues.
- 3) The forum will engage the assistance of appropriate professional expertise, including research and documentation staff, and will involve in its activities public figures, heads of civil society, clergy, journalists, diplomats, educators, and concerned citizens dedicated to combating anti-Semitism.
- 4) States parties, as well as international and national organizations, will submit periodic and annual reports and assessments on all instances of anti-Semitism and action taken by them.
- 5) The functions of the International Anti-Semitism Monitoring Forum will be as follows:
  - a) Receive reports from member states;
  - b) Coordinate and monitor information on trends in anti-Semitism and issue periodic reports;
  - c) Assist states in the preparation of legislation criminalizing anti-Semitism;
  - d) Hold an annual conference to consider the work of the forum, review reports by states, and adopt decisions and recommendations;
  - e) Where necessary, initiate legal action on the international level against perpetrators of acts or manifestations of anti-Semitism as set out in this convention.
  - f) Other appropriate activities as determined by the executive board.

## **Article 10**

The Contracting Parties undertake:

- 1) to collect and maintain reliable information and statistics about anti-Semitic crimes, and other hate crimes, committed within their territory and/or against their nationals, to make this information available to the public, and to report such information periodically to the International Anti-Semitism Monitoring Forum;
- 2) to systematically collect and disseminate information to all Contracting Parties through the International Anti-Semitism Monitoring Forum on best practices for preventing and responding to anti-Semitism and, if requested, offer advice to participating states in their efforts to combat anti-Semitism.

## **Article 11**

Persons charged with committing acts or manifestations of anti-Semitism or any of the other acts enumerated in Article 2 shall be tried by a competent tribunal of the state in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.<sup>58</sup>

## **Article 12**

- 1) Anti-Semitism and the other acts enumerated in Articles 1 and 2 shall not be considered as political crimes for the purpose of extradition.
- 2) The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.<sup>59</sup>

## **Article 13**

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts or manifestations of anti-Semitism or any of the other acts enumerated in Article 2.<sup>60</sup>

#### **Article 14**

Disputes between the Contracting Parties relating to the interpretation, application, or fulfillment of the present convention, including those relating to the responsibility of a state for acts and manifestations of anti-Semitism or for any of the other acts enumerated in Article 2, may be submitted to the International Court of Justice at the request of any of the parties to the dispute.

#### **Article 15**

The present Convention, of which the Chinese, English, French, Russian, Arabic and Spanish texts are equally authentic, shall bear the date of \_\_\_\_\_ .

#### **Article 16**

- 1) The present Convention shall be open until \_\_\_\_\_ for signature on behalf of any member of the United Nations and of any non-member state to which an invitation to sign has been addressed by the General Assembly.
- 2) The present convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.
- 3) After \_\_\_\_\_ the present convention may be acceded to on behalf of any member of the United Nations and of any non-member state which has received an invitation as aforesaid. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### **Article 17**

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

#### **Article 18**

- 1) On the day when the first ten instruments of ratification or accession have been deposited, the Secretary-General shall draw up a *procès-verbal* and transmit a copy thereof to each member of the United Nations and to each of the non-member states contemplated in Article 17.

- 2) The present convention shall come into force on the sixtieth day following the date of deposit of the tenth instrument of ratification or accession.
- 3) Any ratification or accession effected subsequent to the latter date shall become effective on the sixtieth day following the deposit of the instrument of ratification or accession.
- 4) Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

#### **Article 19**

The Secretary-General of the United Nations shall notify all members of the United Nations and the non-member states contemplated in Article 16 of the following:

- 1) Signatures, ratifications, and accessions received in accordance with Article 18;
- 2) The date upon which the present convention comes into force in accordance with Article 18;
- 3) Denunciations received in accordance with Article 18.

#### **Article 20**

The original of the present convention shall be deposited in the archives of the United Nations.

A certified copy of the convention shall be transmitted to all parties.

#### **Article 21**

The present convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

\* \* \*

## Notes

\* This text has been reviewed by several experts, including Prof. Dina Porat, Dr. Manfred Gerstenfeld, Adv. Talia Naamat, and others whose comments and suggestions have been incorporated. Thanks are also due to representatives of the Israel Ministry of Diaspora Affairs (Yogev Karsenti) and the Israel Ministry of Foreign Affairs (Gideon Behar), who have encouraged the development of the idea.

1. [http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome\\_statute\\_english.pdf](http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf), see preambular paragraphs and Article 1 of the statute.
2. The bracketed numbering of the preambular paragraphs is solely for ease of reference and comment, and would not appear in a final form of the convention.
3. Based *inter alia* on the Durban Conference NGO Forum Declaration Article 77 (anti-Semitism), <http://www.i-p-o.org/racism-ngo-decl.htm>
4. See detailed timeline listing all instances of Jewish persecution from the year 250 CE at <http://www.simpletoremember.com/articles/a/historyjewishpersecution/>
5. 2004 OSCE Berlin Declaration, <http://www.osce.org/cio/31432?Download=true>.
6. *Ibid.* – 2<sup>nd</sup> preambular paragraph.
7. *Ibid.*
8. UN General Assembly Resolution 2106 A (XX) of 21 November 1965. <Http://www.ohchr.org/EN/professionalinterest/Pages/CERD.aspx>
9. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief - UN General Assembly Resolution 36/55 of 25 November 1981, <http://www.un.org/documents/ga/res/36/a36r055.htm>
10. Based on 5th preambular paragraph of the Council of Europe Convention on the Prevention of Terrorism, 2005.
11. ICCPR Article 20, Section 2.
12. CERD Article 4.
13. Based on 1997 International Convention for the Suppression of Terrorist Bombings, 2<sup>nd</sup> preambular paragraph, as well as the 2nd preambular paragraph of the 2000 International Convention for the Suppression of the Financing of Terrorism, and the 4th preambular paragraph of the Draft International Convention on the Suppression of Terrorism.
14. Berlin Declaration, *op. Cit.*, 5<sup>th</sup> preambular paragraph.
15. Based on UN General Assembly Resolution 96 (I), 11 December 1946, declaring genocide to be a crime under international law, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/033/47/IMG/NR003347.pdf>
16. Based on Terrorist Bombings Convention, 8<sup>th</sup> preambular paragraph.

17. <http://www.state.gov/documents/organization/102301.pdf>
18. <http://www.rense.com/general58/sig.htm>
19. <https://www.jewishvirtuallibrary.org/jsource/US-Israel/sres282.html>
20. <http://www.unwatch.org/site/apps/nl/content2.asp?C=bdkkisinqemg&b=1330819&ct=4566483>
21. [http://www.un.org/pga/220115\\_informal-meeting-antisemitism/](http://www.un.org/pga/220115_informal-meeting-antisemitism/); see also video message by the Secretary General at <http://webtv.un.org/watch/secretary-general-ban-ki-moons-statement-at-the-general-assembly-meeting-on-the-rise-of-antisemitism/4005067296001#full-text>
22. <http://www.state.gov/g/drl/rls/40258.htm>
23. <http://www.i-p-o.org/racism-ngo-decl.htm>, see Articles 77 and 78:
  77. Anti-Semitism is one of the oldest, most pernicious and prevalent forms of racism which still exists and is even increasing in many areas of the world; recognizing the dehumanization, persecution and genocide of Jews in the Holocaust, as well as other minorities during and before World War II; deeply alarmed by the continued activities of proponents of Holocaust denial and Holocaust revisionism, Holocaust trivialization, Holocaust minimization and by the channeling of racist rhetoric and calls to violence on the Internet; noting with distress that Jewish people still suffer from persisting prejudices and are victims of a deeply rooted anti-Semitism in many countries throughout the world; distressed by the recent desecration of many Jewish cemeteries, synagogues, and Jewish communal buildings and other property, as well as an increase in harassment and assaults of Jewish people worldwide; convinced of the necessity of more effective measures to address the issue of anti-Semitism worldwide today in order to counter these phenomena and increase awareness about them.
  78. Anti-Semitism remains a pervasive and ingrained form of religious discrimination and Jewish people are increasingly a racialized minority; recognizing that Jewish populations and institutions continue to be targets of threats and acts of violence in countries around the world, and documented overt acts of anti-Semitic harassment and vandalism are on the rise; alarmed that extremist groups are proliferating at an alarming rate and propagating anti-Semitic and racist views and hate propaganda, increasingly on the Internet; deeply troubled by the electoral successes of far right parties, with an increasing presence in coalition governments; profoundly concerned that in many countries in the world, Jewish people live in fear, frequently terrorized by extremist groups, and discriminated against in employment, education, in the media and social services.
24. <http://www.un.org/en/holocaustremembrance/docs/res607.shtml>
25. <http://www.un.org/en/holocaustremembrance/docs/res61.shtml>
26. 2004 OSCE Berlin Declaration, <http://www.osce.org/cio/31432?Download=true>
27. *Ibid.*
28. <http://www.osce.org/odihr/73636?Download=true>
29. <http://www.osce.org/cio/130556?Download=true>
30. <http://assembly.coe.int/Mainf.asp?Link=/Documents/adoptedtext/ta07/ERES1563.htm>
31. <http://www.state.gov/documents/organization/102301.pdf>

32. Based on the Council of Europe Convention on the Prevention of Terrorism, 2005, 6<sup>th</sup> preambular paragraph, <http://conventions.coe.int/Treaty/en/Treaties/Html/196.htm>
33. Outcome document of the Durban Review Conference 2009, [http://www.un.org/durbanreview2009/pdf/Durban\\_Review\\_outcome\\_document\\_En.pdf](http://www.un.org/durbanreview2009/pdf/Durban_Review_outcome_document_En.pdf), para. 68.
34. UN Security Council Resolution 1624 of 14 Sept. 2005, 13<sup>th</sup> preambular paragraph, with the addition of the reference to the internet, <http://www.state.gov/j/ct/rls/other/un/65761.htm>
35. *Ibid.*, operative paragraph 1.
36. <http://www.antisem.org/london-declaration/>
37. <http://www.antisemitism.org.il/eng/%20Ottawa%20Protocol>
38. The expression “violence or terror” is a wide and vague expression which is difficult to quantify, and might require clarification as to the degree of violence that merits the classification of an act or manifestation of anti-Semitism as an international crime. In the UN Terrorist Bombings Convention, for instance, the violence is classified by an “intent to cause death or serious bodily injury” or an intent to “cause extensive destruction.” The UN Genocide Convention, in addition to referring to “killing members of national, ethnical, racial or religious group,” also refers to “causing serious bodily or mental harm.” See <https://treaties.un.org/doc/Publication/UNTS/Volume%2078/volume-78-I-1021-English.pdf>
39. Based *inter alia* on the crime of “public provocation to commit a terrorist offence” as defined in the 2005 Council of Europe Convention on the Prevention of Terrorism, Article 5(1), (2), <http://conventions.coe.int/Treaty/en/Treaties/Html/196.htm>
40. Based on Articles 2 and 3, UN Terrorist Bombings Convention, <http://www.un.org/en/sc/ctc/docs/conventions/Conv11.pdf>
41. The provisions of this article defining acts or manifestations of anti-Semitism are based on a wide selection of documents and statements, including the “Working Definition of Anti-Semitism” published by the Coordination Forum for Countering Anti-Semitism (CFCA) in its 2014 report. See <http://www.antisemitism.org.il/eng/Working%20Definition%20of%20antisemitism>
42. Merriam-Webster’s dictionary.
43. *Report on Global Anti-Semitism*, U.S. Department of State, 2005. See <http://www.state.gov/j/drl/rls/40258.htm>
44. Submission by the Coordinating Board of Jewish Organizations to the UN Special Rapporteur on Racism - UN document E/CN.4/1996/72, annex II. Definition drafted in 2004 and adopted in 2005 by the European Union Monitoring Centre on Racism and Xenophobia (EUMC – which since 2007 is succeeded the European Union Agency for Fundamental Rights [FRA]).
45. EUMC Working Definition of Anti-Semitism, <http://www.european-forum-on-antisemitism.org/working-definition-of-antisemitism/english/>
46. *Ibid.*
47. *Ibid.*
48. Articles 1 and 2, OSCE 2004 Berlin Declaration, Bulgaria, <http://www.osce.org/cio/31432?Download=true>
49. *Ibid.*

50. *Ibid.*

51. Based on Article 1, 1951 UN Genocide Convention, <http://www.preventgenocide.org/law/convention/text.htm>

52. OSCE 2004 Berlin Declaration, Bulgaria, see Article 3, <http://www.osce.org/cio/31432?Download=true>

53. Based on Article IV, Genocide Convention.

54. OSCE Maastricht Ministerial Council decision on combating anti-Semitism dated 22 April 2004, <http://www.osce.org/pc/30980>

55. Based on Article V, Genocide Convention.

56. OECD Maastricht decision, *op. Cit.*

57. The content of this provision is based on the description and functions both of the Coordinating Forum for Countering Anti-Semitism (CFCA) – see <http://antisemitism.org.il/eng/aboutus>, as well as the biennial gathering under the auspices of the Israeli Ministry of Foreign Affairs, “Global Forum for Combating Anti-Semitism” – see <http://mfa.gov.il/MFA/abouttheministry/Conferences-Seminars/GFCA2013/Pages/The-5th-Global-Forum-for-Combating-Antisemitism.aspx>. Logically, the new forum established by this provision, in light of its character and functions, could absorb to a large degree both the CFCA as well as the biennial Israeli Foreign Ministry Global Forum.

58. Based on Article VI, Genocide Convention.

59. Based on Article VII, Genocide Convention.

60. Based on Article VIII, Genocide Convention.

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## About the Author

Amb. Alan Baker, Director of the Institute for Contemporary Affairs at the Jerusalem Center for Public Affairs, participated in the negotiation and drafting of the Oslo Accords with the Palestinians, as well as agreements and peace treaties with Egypt, Jordan, and Lebanon. He served as legal adviser and deputy director-general of Israel’s Ministry of Foreign Affairs and as Israel’s ambassador to Canada.



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