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The IHRA Definition of Antisemitism: Defining Antisemitism by Erasing Palestinians

REBECCA RUTH GOULD

Abstract

The IHRA definition is one of the most contentious documents in the history of efforts to combat antisemitism. Although it first became well known in the UK as a result of disputes within the Labour Party, the definition reaches well beyond that context, and has been adopted by universities, city councils, and governments. With its intensive focus on the critique of Israel as a marker of antisemitism, the IHRA definition has been heavily implicated in the suppression of Israel-critical speech in recent years. This article is among the first to adopt a global perspective on the definition—both its history and its content—clarifying the political stakes of this definition and broader paratextual apparatus for a general audience, and provides an explanation of why it should be rejected rather than used to censor Israel-critical speech.

Keywords: antisemitism, racism, Israel, Palestine, activism, Middle Eastern politics, Labour Party

THE INTERNATIONAL Holocaust Remembrance Alliance (IHRA) definition of antisemitism—here also called the working definition—is a recently repurposed document that proposes to define, or rather to redefine, antisemitism, and to shape institutional responses to its manifestations. Its significance lies less in its content (which is not original) than in the political uses to which it has been put in recent years, which are invariably connected with Israeli politics and policies. Although not without precedent, these political uses mark a new frontier in efforts to suppress Israel-critical speech in terms of their manner of operation—the act of redefinition—and their effectiveness.

In order to best assess the working definition's impact, we should consider what exactly it is, lexically, in terms of its content, and historically, as a response to the changing meaning of antisemitism. To begin with the lexical dimension: the IHRA definition is a thirty-eight word statement about antisemitism that has come to be associated with the intergovernmental International Holocaust Remembrance Alliance. This statement defines antisemitism as 'a certain perception of Jews, which may be expressed as hatred

toward Jews'. This definition is followed by eleven examples, which are said to 'serve as illustrations'. Seven of these highlight critical statements and assessments of Israel as markers of antisemitism.¹ The extent to which these examples belong to the definition proper is disputed.

The basic text for this definition originates in an earlier context and in a different guise, as a 'non-legally binding working definition' that was briefly published on the website of the Vienna-based EU agency European Monitoring Center on Racism and Xenophobia (EUMC) in 2005. The main drafter for this working definition is Kenneth Stern, an American defence attorney who has vocally opposed recent deployments of the definition and accompanying examples in university and other contexts to censor Israel-critical speech.² The EUMC definition is fundamentally the same as the IHRA definition; the only difference is the order of the examples. The working definition was removed from the EUMC website in 2013. It resurfaced under a new name with the creation of the International Holocaust Remembrance Alliance, an organisation founded in 1998 with thirty-one member states and a rotating

chairmanship among its country members. The working definition was first presented to the world under the IHRA imprimatur on 26 May 2016, in the form of a press release issued in Bucharest by the Romanian chairmanship. This history means that the denomination 'IHRA definition' is somewhat misleading; the definition was formulated before the IHRA was founded and it was not immediately embraced by this organisation. Arguably, the rebranding served as a kind of mystification, helping to obscure its illegitimate foundations.

Although the press release included the same eleven examples recycled from the earlier EUMC version, in this document the examples are set apart from the definition adopted by the plenary in Bucharest. This format suggests that the eleven examples were not originally understood to be part of the working definition itself, even though much subsequent media coverage and commentary has treated them as an intrinsic part of the definition. The distinction between the definition and the examples matters because the latter have proven to be more divisive than the definition, although both have been criticised owing to their imprecision and internal contradictions. Adoption of the definition has sometimes occurred without the adoption of the eleven examples, such as in the UK Labour Party's early deliberations in July 2018 (although the Labour Party eventually changed its position and adopted the eleven examples two months later).

The working definition was first formulated in the early 2000s, partly in response to what has been referred to as the 'new antisemitism', a term that emerged in the 1960s and 1970s in the writings of French philosopher Pierre-André Taguieff, and US groups such as the American Jewish Congress and the Anti-Defamation League. According to its critics, the 'new antisemitism' is a form of antisemitism that is emerging on the left and which is closely linked to anti-Zionism and criticism of Israeli policies. Those who coined this term consider the 'new antisemitism' more dangerous than so-called classical antisemitism, because it is more popular among leftist groups that have traditionally been well-represented among intellectuals.

Along with this ideological context that led to the creation of the working definition, there

is an empirical one: over half a century after the Holocaust, antisemitic incidents, including arsons of synagogues, and in some cases murder, continue to proliferate in Europe. The murder of two elderly Jewish women in France in 2017 and 2018, and the increasing popularity of parties with historical ties to the Nazis across Europe (particularly in Austria where a political party with a Nazi heritage has become the ruling party), have rightly focussed Europe's attention on this issue.³ There is a clear need for a coordinated institutional response to hate crimes involving antisemitism, as well as other forms of racism.

According to its lead author Kenneth Stern, the main purpose in creating the definition was data classification: police needed this tool in order to classify antisemitic crimes as hate crimes. Although hate crime legislation was well developed in the countries where the working definition took hold, there was no widely accepted approach to classifying—let alone prosecuting—antisemitic crimes as hate crimes. Some maintain that the penalisation of antisemitism was encompassed by existing hate crime legislation, such as, in the UK context, the Race Relations Act (1965) and the Public Order Act (1986). Others, noting that Jews face forms of discrimination unlike those faced by other ethnic minorities, have argued for the need for a distinctive approach by the state and public institutions for combating antisemitism—one that differs from the approach used to document and prosecute racism.

As of May 2020, the working definition has been adopted by twenty-five countries, including the UK, Germany, Belgium, Sweden, and Italy. Notably, several IHRA member countries have not adopted the definition. It has not been adopted by any Arab or Middle Eastern country other than Israel, by any country in Latin America other than Uruguay, or by any country in Asia or Africa. The definition therefore predominates mostly in Europe, Eastern Europe, and North America (although it has not been adopted by the United States). In many countries where the definition has not been adopted by the state, it has nonetheless been incorporated into the internal policies of governmental institutions and agencies within that state, such as the US State Department and the US Department of Education. More locally, city councils, universities, media organisations, political parties,

and charities have followed suit and 'adopted' the definition.

Every instance of the working definition's adoption has taken place in the absence of a clear consensus regarding what 'adoption' actually means. Does it compel a university to discipline or fire staff who are deemed to be in violation of the definition? Does it legitimate the censorship of controversial publications, or make texts that are deemed to violate the definition or conform to its examples illegal? Can a violation of the definition lead to incarceration or civil penalties? In legal terms, the answer to all these questions is currently no, insofar as the jurisdiction in question abides by democratic norms. Even proponents of the working definition note that 'It was not designed to be transposed into European or domestic legislation'.⁴ However, when offered as a demonstration that adoption poses no risks, such assurances are misleading, given that many of the definition's proponents have attempted to ascribe legal force to its deployment. Others have treated the working definition as if it had legal force through a kind of automatic reflex, as for example when the IHRA definition was adopted by the French Parliament in December 2019 in the form of a resolution, and this was widely reported in the media as if it marked a change in the law.⁵ It is precisely with respect to the difficult-to-determine boundaries between the legal and the non-legal that the IHRA definition poses the greatest risks. Its capacity to motivate authorities to censor Israel-critical speech is linked to the imprecision of its legal status.

It is striking that, although the IHRA definition is merely a policy document, with no formal legal status, this non-legally binding definition is treated as if it had the capacity to render antisemitism extinct through criminal sanctions. In no context has the meaning of 'adoption' been adequately defined. Geoffrey Bindman, one of the UK's leading voices in civil rights jurisprudence, has clarified that, in the context of the working definition, "'adopting" seems to mean no more than encouraging its use. [The definition] continues to have no legal effect'.⁶ Another eminent jurist, Hugh Tomlinson, has gone so far as to suggest that universities that apply the definition to censor Israel-critical speech may find

themselves in breach of UK and EU laws pertaining to academic freedom.⁷ These legal assessments are among the few that clearly delineate what 'adoption' entails in practical terms. Predictably, the position taken regarding the meaning and status of 'adoption' tends to be linked to an individual's position as regards the critique of Israel.

Alongside its contradictory content, one of the many peculiarities of the definition is the ambiguity of its legal status. The precise purpose of the definition is far from transparent. Neither the definition nor the accompanying examples explicitly advocate for the censorship of Israel-critical speech, yet the chilling of speech has been its widespread effect. It describes itself as a 'legally non-binding working definition', yet this apparent caveat has turned out to be more of an evasion in practice. Since there are few, if any, precedents for such a quasi-legal document in the context of defining racism, the meaning of both 'legally non-binding' and 'working definition' have had to be determined in practice. This trial-and-error approach has resulted, predictably, in numerous errors, false accusations, and instances of censorship.

Although the IHRA press release stipulates that 'criticism of Israel similar to that levelled against any other country cannot be regarded as antisemitic', there are no effective checks in place, either within the document or within its paratextual apparatus, to prevent its abusive application. If anything, the need for a coherent institutional approach to antisemitism in Europe has increased since the development of the working definition in the 2000s. Yet, the most lethal manifestations of antisemitism in Europe—the ones that would be categorised as hate crimes—are associated with right-wing fascist movements, not with the leftist political campaigning targeted by the examples appended to the working definition.

Having considered the history of the IHRA definition, let us turn to its recent deployments. In every context in which it has been adopted or applied, the working definition has faced sharp criticism. Scholars of Jewish and Holocaust studies have played a prominent role in exposing its shortcomings. Numerous open letters have been addressed to the parliaments of Germany and France and to city councils, opposing

the adoption of the definition. While these public and principled denunciations have drawn the world's attention to the working definition's flaws, they have not been successful to-date in stopping the abusive application of the definition or in addressing its harmful effects. The limited impact of these interventions suggests the need for a more coordinated effort, a more global perspective, and for education as well as protest, that would clarify the implications of the working definition of antisemitism for Palestinians as well as for Jews, and clarify the ways in which the implementation of this document is linked to the geopolitical context of the Palestinian occupation.

In a recent expert opinion of the IHRA definition commissioned by the Rosa Luxemburg Foundation, German sociologist Peter Ullrich has documented how the weaknesses of the 'working definition' have served as the 'gateway to its political instrumentalization, for instance for morally discrediting opposing positions in the Arab-Israeli conflict with the accusation of antisemitism'.⁸ As a document that abounds in unhelpful tautologies ('Antisemitism is a certain perception of Jews'), which singles out as potentially antisemitic patterns of thought (for example, 'double standards') that have no necessary correlation with antisemitism, and abounds in caveats ('may serve', 'non-legally binding', 'taking into account the overall context') that obscure the status of its own stipulations, the working definition appears in many respects to be a document that is uniquely suited to generate misunderstanding, misapplications and, ultimately, abuses of its stated intent. In brief, the IHRA definition intervenes in public discourse by way of obfuscation.

Having discussed the history of the definition and its misapplications in a general European context, we must now consider what the definition means for Palestinians. Why should Palestinians care about the working definition? What is at stake for them in this debate? From the perspective of Palestinian rights, the most problematic part of the document is the seventh example of antisemitism: 'Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavour.' This example includes two loaded phrases that bear much of the

political weight of this contentious document: 'self-determination' and 'racist endeavour'. The first term problematically ignores the many legitimate non-antisemitic reasons for 'denying' self-determination to Jews and others, such as an aversion to nationalism. The second claim, that the characterisation of a State of Israel as 'a racist endeavour' could be an example of antisemitism, misses a crucial aspect of the adjudication of antisemitism: while it is certainly conceivable that antisemitism *could* coexist with such a statement, there is no evidence of any necessary link. This example does not assist in identifying antisemitism, because it is not *per se* antisemitic to call Israel a racist endeavour. Curiously for a definition of antisemitism, the only reference to racism in the working definition, or its accompanying examples, is the allusion to a description of Israel as a 'racist endeavour' as an example of antisemitism. While the IHRA's 2016 press release did associate antisemitism with xenophobia, a serious consideration of antisemitism within the context of racism was absent from that document as well. This isolated approach to antisemitism, which treats it as a problem in isolation from broader social issues, has the further effect of shielding Israel from criticism and deflecting discussion away from antisemitism's social origins.

While the IHRA document is marked throughout by an effort to separate racism from antisemitism, other definitions of antisemitism, such as that proposed by Independent Jewish Voices (IJV) of Canada, an organisation that has outspokenly opposed the working definition, contextualise antisemitism as a kind of racism. The IJV Canada definition states: 'antisemitism is not an exceptional form of bigotry. People who hate, discriminate and/or attack Jews, will also hate, discriminate and/or attack other protected groups—including racialized people, Muslims, LGBTQ2+, women, Indigenous peoples.'⁹ David Feldman, director of the Pears Institute for the Study of Antisemitism at Birkbeck, University of London, argued along similar lines soon after the UK government's adoption of the IHRA definition in December 2016. According to Feldman, 'the greatest flaw of the IHRA definition is its failure to make any ethical and political connections between the struggle against

antisemitism and other sorts of prejudice'.¹⁰ Feldman's critique of the working definition is distinguished by his abiding interest in integrating the study of antisemitism into a broader understanding of racism.

Feldman's critique, articulated within days of the first adoption of the definition by a state, proved prophetic, and not only for the UK, but for every country that has adopted it since. As vice-chair to the Labour Party's 2016 inquiry on antisemitism, Feldman was well-positioned to foresee the likely consequences of the adoption at a time when few were awake to its implications. Feldman's prescient warning that adoption by the UK 'will place the onus on Israel's critics to demonstrate they are not antisemitic' has been demonstrated many times over in subsequent years. In the UK, to mention just one of the widely reported examples, a charity event in aid of Palestinian children was cancelled owing to a London council's fear of breaching the IHRA definition guidelines.¹¹ Universities have been particularly affected: an Israel-critical event pertaining to Boycott, Divestment, Sanctions (BDS) was cancelled at the University of Central Lancashire; at the University of Exeter, students were banned from staging a street theatre performance during Israel Apartheid Week in 2017; at the University of Manchester, the title of a talk was changed so as to avoid criticism of Israel.

In the US, Donald Trump's executive order directing government agencies to consider the IHRA definition, signed on December 2019, immediately resulted in three complaints filed with the Department of Education targeting Palestine advocacy on university campuses.¹² In Germany, Jewish Voice for Peace had its bank account closed following the government's adoption of the definition in May 2019, and American rapper Talib Kweli had his scheduled performance at a music festival in Dusseldorf cancelled because of his refusal to denounce BDS.

These are just a few of countless examples, many of which have been documented by the UK-based group Free Speech on Israel, the US-based Palestine Legal, and in a letter from the Palestinian Human Rights Organizations Council to the UN's Office of the High Commissioner for Human Rights (OHCHR).¹³ All of these incidents followed from the working definition's adoption in

their respective jurisdictions and have contributed to a general climate of fear and intimidation for activists on Palestinian issues, and made the open discussion of Israel's violations of international law and Palestinian human rights even more challenging.

As the preceding examples suggest, the IHRA definition has been implicated in numerous free speech violations around the world, among Palestinians and pro-Palestinian activists. It has also been used to silence and defame many Jews critical of Zionism. A climate of fear and self-censorship has come to dominate many European and North American universities as a result of the increasing authority wielded by this definition. In a few short years, by rebranding itself and changing the order of its examples, the working definition of antisemitism has gone from being an obscure document known to few people, to a game-changing instrument of policy and an effective tool of censorship that functions in many contexts like a piece of legislation, with major implications for discussions of Israeli politics. Although it originated as a document intended for internal use by the police and community organisations, the working definition has become a tool of foreign policy by proxy, enabling those who wish to censor and suppress open discussion of Israel's occupation to do so with the halo of legitimacy.

I will conclude here with three recommendations for those wishing to mitigate the pernicious effects of the definition and to support the struggle for justice for Palestinians. First, we need a global perspective on the impact of the working definition. Although resistance to it may be most effective at the local level, it is important to track its effects in a global context. Viewing the damage wrought by this document solely from the perspective of domestic British, US, German, or French politics is unhelpfully myopic, given the interconnectedness of these developments. Although European countries are currently battlegrounds for the definition's application, they are not, in and of themselves, the actual sites of the conflict. Without Israel's violations of international law and Palestinians' human rights, there would be much less controversy over the definition, and much less motivation to censor and suppress Israel-critical dissent.

Rightly understood, the controversy over the definition is inseparable from what is taking place in Israel and Palestine. It is a mistake to seek to separate out these issues entirely. While antisemitism should be considered as a problem in its own right and without reference to Israel, the working definition does not permit this.

My second and related recommendation is that any discussion of the definition or examination of its impact should be integrated with an educational programme relating to Palestine. In contexts where the definition has been adopted and it is impractical to expect its annulment, the definition's exclusionary focus on Israel should be counterbalanced by an expanded focus on the ongoing human rights struggle in Palestine, and on the many domestic and international developments that stand in the way of this struggle. Palestinians can assist in these efforts by making their demands clear, as the ten-member organisation of the Palestinian Human Rights Organizations Council has already done in their open letter to OHCHR. Similar open letters and public calls could be addressed to the European Parliament, to governments contemplating adopting the definition, and to universities and to university-related organisations. Even when proposing new definitions is impractical or undesirable, it is important to document the damage done by the existing definition.

Finally, alongside a more global perspective and greater attention to Palestinian voices and Palestinian rights, the working definition's failure to stop or even to reduce antisemitism in the jurisdictions where it has been adopted shows that we need a new approach to understanding antisemitism that looks beyond the fashionable if tendentious clichés associated with the 'new antisemitism'. Although it is distinct from other kinds of racism, antisemitism is best understood as a kind of racism. The categories of xenophobia and prejudice are inadequate to understanding the roots of Jewish persecution, especially in Europe. Antisemitism studies could learn a great deal from examining how oppressed peoples of other backgrounds have found languages for documenting their marginalisation and exclusion from society. A postcolonial and anti-racist working understanding of antisemitism would look radically unlike the one that dominates public discourse today.

In their recent article for this journal, Ben Gidley, Brendan McGeever and David Feldman have also called for moving away from a purely legal approach to the problem of antisemitism. Noting that 'You can expel antisemites, but you cannot expel antisemitism', the authors document the many deficiencies of current approaches to this issue, which tend to be dominated by the search for legal definitions, as if the mere adoption of a censorious definition could offer a failsafe solution. 'The number of antisemites is not the same thing as the spread of antisemitic ideas', the authors rightly note, and suggest that instead, of conceiving of antisemitism as a virus, we understand it, and any systematic and persistent racism, as 'a deep reservoir of stereotypes and narratives, one which is replenished over time and from which people can draw with ease'. Their account of the recent controversy around antisemitism within the Labour Party supports the view advanced here that the IHRA definition is ineffective as a means of combating antisemitism precisely because it is entrenched in the viral mentality that locates antisemitism in individual culpability rather than in a broader social justice framework.¹⁴

In seeking to develop a global perspective on the IHRA definition, we may reasonably ask to what extent such a seemingly innocuous, even banal, document may be relevant to the course of future politics pertaining to Israel/Palestine. On one level, it is merely a set of words, the implications of which depend on the user and the context. At the same time, given the contentious context of Palestine/Israel in international politics, the definition operates with a predetermined significance in every jurisdiction that adopts it. Owing to its wording, its choice of examples, and its imprecision, this document is dangerously adept at quashing dissent, and in constraining activist agendas that seek justice for Palestinians. The working definition is at once a proxy for, and a symptom of, a range of issues, including the failure of international law to hold Israel accountable for its crimes, the ineffectiveness and/or indifference of international law towards the ongoing occupation of Palestine, and the unresolved legacies of the Holocaust. All of these issues are entangled into the working definition, and help to account for the speed with which it has been adopted across Europe and North

America without adequate scrutiny or democratic deliberation. They also explain its effectiveness as a weapon to silence dissent.

Finally, the working definition is also a testimony to the power of language—when endowed with quasi-legal status—to reshape the reality of observers and to prevent those who are touched by it from protesting the occupation of Palestine. With its ambiguous examples that use one tragedy to obscure another, this is a definition that operates through erasure: of Palestinians and their claims to self-determination, which are continuously under threat by the Israeli occupation, and of the fundamental human right to protest actions taken by any state. From its inception in 2003 to the present, no proponent of the working definition has been able to reconcile its exclusionary claims with fundamental human rights, to integrate it into a programmatic anti-racist agenda, or to use it to facilitate Jewish and Palestinian coexistence in the occupied territories. While rejecting this definition, we should replace it with a different understanding, not just of anti-Jewish racism, but of the relation between law and social justice.

Notes

This is the English version of an essay that appeared concurrently in Arabic in a special issue of *Qadaya Israelia* (Israeli Issues) on antisemitism, ed. and trans. by Raef Zreik, vol.78, no.2, Summer 2020.

- 1 The full text of the definition is available on the IHRA website: <https://www.holocaustremembrance.com/working-definition-antisemitism> (accessed 29 June 2020).
- 2 See K. S. Stern, 'Written testimony of Kenneth S. Stern before the United States House of Representatives Committee on the Judiciary: Hearing on examining anti-semitism on college campuses', 7 November 2017; <https://docs.house.gov/meetings/JU/JU00/20171107/106610/HHRG-115-JU00-Wstate-SternK-20171107.pdf> (accessed 29 June 2020).
- 3 J. McAuley, 'Two killings in Paris, one year apart, have inflamed the bitter French debate over antisemitism, race and religion', *The Guardian*, 27 November 2018; <https://www.theguardian.com/world/2018/nov/27/how-the-murders-of-two-elderly-jewish-women-shook-france-antisemitism-mireille-knoll-sarah-halimi> (accessed 29 June 2020).
- 4 M. Whine, 'Applying the working definition of antisemitism', *Justice*, no. 61, 2018, p. 15.
- 5 French parliament adopts controversial law linking anti-semitism and anti-Zionism', *Radio France Internationale*, 4 December 2019; <http://www.rfi.fr/en/france/20191204-french-parliament-adopts-controversial-law-linking-antisemitism-and-anti-zionism> (accessed 29 June 2020).
- 6 G. Bindman, 'Criticizing Israel is not antisemitism', *European Judaism*, vol. 52, no. 1, 2019, p. 116.
- 7 H. Tomlinson, 'Opinion: in the matter of the adoption and potential application of the International Holocaust Remembrance Alliance working definition of anti-semitism', 2017; <http://freespeechonisrael.org.uk/wp-content/uploads/2017/03/TomlinsonGuidanceIHRA.pdf> (accessed 29 June 2020).
- 8 P. Ullrich, 'On the "working definition of anti-semitism" of the International Holocaust Remembrance Alliance', Rosa Luxemburg Stiftung, Working Papers, no. 3, 2019; <https://www.rosalux.de/en/publication/id/41168/expert-opinion-on-the-international-holocaust-remembrance-alliances-working-definition-of-antisemitism/> (accessed 29 June 2020).
- 9 Independent Jewish Voices Canada, 'Why fight the adoption of the IHRA definition of antisemitism', May 2019; <https://www.noihra.ca/about.html> (accessed 29 June 2020).
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- 11 D. Gayle, 'UK council refused to host Palestinian event over antisemitism fears', *The Guardian*, 3 August 2019; <https://www.theguardian.com/uk-news/2019/aug/03/uk-council-refused-to-host-palestinian-event-over-antisemitism-fears> (accessed 29 June 2020).
- 12 US Government, 'Executive order on combating anti-semitism', 11 December 2019; <https://www.whitehouse.gov/presidential-actions/executive-order-combating-anti-semitism/> (accessed 29 June 2020).
- 13 See Free Speech on Israel, 'Selected cases of interference with free expression, 2017', 11 December 2017; <https://freespeechonisrael.org.uk/interference2017/#sthash.LJvnkT5Q.LJKU85dK.dpbs>; and Palestine Legal, 'Backgrounder on efforts to redefine antisemitism as a means of censoring criticism of Israel', 13 October 2019, updated January 2020; <https://palestinelegal.org/redefinition-efforts>; https://www.ohchr.org/Documents/Issues/Religion/Submissions/PHROC_ResponsetoReport.pdf (both accessed 29 June 2020).
- 14 B. Gidley, B. McGeever and D. Feldman, 'Labour and antisemitism: a crisis misunderstood', *The Political Quarterly*, vol. 91, no. 2, 2020, pp. 413–421.