

Free Speech on Israel

www.freespeechonisrael.org.uk

info@freespeechonisrael.org.uk

Shortcomings of the IHRA Definition of Antisemitism

This definition of antisemitism was adopted by the International Holocaust Remembrance Association (IHRA), an intergovernmental body, in May 2016. The current document reviews how the definition came into being before exploring

- its adequacy as a definition
- its legal or other impacts

1 Provenance of the definition

The IHRA definition is in essence identical to the 'EUMC Working Definition of Antisemitism' published in 2004 by a working party of the European Union Monitoring Centre on Racism and Xenophobia. The definition was never adopted by EUMC (hence its title as a 'working definition'). EUMC was folded into the EU Agency for Fundamental Rights (FAR) in 2007. In 2013 the definition was removed from that organisation's website in 'a clear-out of non-official documents'. A spokesperson stated that it had never been viewed as a valid definition and that "[We are not aware of any official definition](#)".

The origin of the EUMC initiative lay with the European Jewish Congress and the American Jewish Committee, both pro-Israel lobby groups. The principal author Ken Stern came from the latter organisation (hence the American spellings still evident in the IHRA version).

The definition has been invoked publicly on numerous occasions, and always in the context of attempts to have criticism of Israel, and in particular Boycott, Divestment and Sanctions advocacy, branded as antisemitic. See for example the high-profile [failed legal challenge](#) to the university teachers union UCU in the United Kingdom. The complainant cited the decision of UCU to decline all use of the EUMC definition for internal disciplinary procedures as the motivation for his legal action.

2 Adequacy as a definition

2.1 Wording

The value of a formal definition is in providing clarity where otherwise there might be ambiguity. The IHRA definition in effect acts in reverse mode, spreading ambiguity where previously there was relative clarity on the meaning of the word 'antisemitism'.

The IHRA definition package consists of two sections, which we will call the 'formal definition' and the 'illustrative examples'. They are linked by an interposed interpretive passage.

The opening sentence of the formal definition itself contains not one but two crucial ambiguities:

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

The phrase “certain perception” is not defined or further elaborated, and it is therefore unclear what type of perception of Jews is required to amount to anti-Semitism. And this unknown perception ‘*may*’ be expressed as hatred – which also implies that it may not. But what other types of expression might qualify as antisemitic is not specified. That is, it leaves open the use of the definition to brand as antisemitic people not at all motivated by hatred of Jews.

The interpretive passage opens with equally problematic content:

“Manifestations [of antisemitism] might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that levelled against any other country cannot be regarded as antisemitic.”

Countries are not the same; indeed Israel is unique in having a near 50-year forceful occupation that is condemned by the international community. Its internal legal and administrative system was described in a [UN report](#)¹ issued this week as “an apartheid regime that dominates the Palestinian people as a whole”. There are other countries in the world that commit ranges of deplorable acts – but the criticisms against them will not be ‘similar’ to those which apply to Israel. So this apparent acceptance of exemption from the charge of antisemitism for (some) criticism of Israel is so worded as to be virtually empty of meaning.

2.2 Illustrations

The 11 ‘contemporary examples of antisemitism’ listed as *prima facie* evidence of antisemitism represent, we believe the core message of the IHRA definition. Several are indisputable – they are the classic tropes of antisemitism through the ages. These are so well known and understood that they do not need a definition to establish their status as vicious ‘hate-speech’.

However the 7 examples in which Israel features do not fall in this category. The comments we make here serve as sample illustrations of the elisions of meaning and selectivity of reasoning that invalidate almost all of them.:

- *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)*

There is no necessary or obvious connection between the two parts of this example. Linguistic trickery blurs the distinction between a people and a state. Further, if self-determination is claimed as a right for the Jewish people it must equitably also be a right of the Palestinian people. Yet Israel’s self-definition as a ‘Jewish state’, with claims over much territory that de facto it occupies illegally, denies those rights to the Palestinians that are claimed for the Jewish occupants. It is this denial of rights, based solely on racial identity, that supports the argument that Israel as currently constituted is a racist endeavour. Indeed it is precisely the clash of these rights, and Israel’s suppression of those of the Palestinians, that generates so much criticism of Israel, including by many Jews. The motivation for the

¹ Under extreme pressure this report was disowned by the UN within days; the responsible UN Under-Secretary resigned in protest. This episode exemplifies the threats to free expression which we consider in Section 3

movement of support for the Palestinians is belief in the sanctity of human rights, not hatred for Jews.

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

The Nazi genocide is uniquely potent as a grotesque and resonant event. That is why it is so often referenced in contemporary discussions. But Hitler's regime had many other components, including slave labour, mass incarceration, a racist perspective, a populist rhetoric. Israel's President Rivlin has spoken of "an epidemic of anti-Arab racism" in his country. Israel's second most senior general has warned of the growing shoots of fascism there. Such comparisons can be hurtful and should be used only with great care, but are not in themselves evidence of antisemitic intent.

- *Applying double standards by requiring of it [Israel] a behaviour not expected or demanded of any other democratic nation.*

What is not evident from this example is that it seeks to legitimise a criticism frequently levelled at the Boycott Disinvestment and Sanctions movement. The charge is that Israel is uniquely singled out by this boycott, while countries with worse human rights records escape boycott, and that this selective targeting indicates antisemitic motivation. However this argument ignores the wide prevalence of governmental sanctions against countries which breach human rights. Israel is experiencing a growing civil society boycott, not because of rampant antisemitism, but because governments do nothing to end its actions taken in defiance of international law.

3. Legal and other impacts

The legal impact of national governments 'adopting' or 'endorsing' the IHRA definition will vary between jurisdictions. Broadly speaking, though, a simple 'endorsement' of the definition by a government, as merely a statement of policy, is unlikely to mean that other organisations, such as public bodies, within that country would be under any legal obligation also to adopt the definition.

The adoption of the IHRA definition by European level or national governments could, however, have practical implications for the behaviour of public institutions within that jurisdiction. In particular, these bodies are likely to come under political pressure to adopt or apply the definition of antisemitism as part of their routine procedures.

The public bodies most likely to be affected by pressure to operationalize the definition are local government, universities, and police forces. However any adoption of the definition by these bodies could in no way negate their obligations under the European Convention on Human Rights to respect and ensure the right to freedom of expression and assembly, including the positive obligation under the Convention "to create a favourable environment for participation in public debates".

Any public bodies that do decide to 'adopt' the IHRA definition will then be confronted with decisions as to whether particular activities - meetings, performances, demonstrations - should be permitted to take place. But in that case they will struggle to apply such an imprecisely worded and politically contentious definition. The effect is likely to be disproportionate. Administrators may well regard caution as a safer response - meaning a

preference in perceived grey areas for finding some other reason for saying 'no'. This in turn is likely to produce a secondary wave of effects, in which bodies organising meetings, performances or demonstrations begin to self-censor, reducing the bandwidth of public discussion.

These knock-on effects are not speculative. In the United Kingdom whose government adopted the IHRA definition in December 2016 they are sadly already quite visible, and are [causing alarm among academics](#).