

Introduction

On May 26, 2016, five years ago, the IHRA, the International Holocaust Remembrance Alliance, adopted the Working Definition of Antisemitism. This definition came into being following the escalation in violent and virulent antisemitism and anti-Zionism resulting in the Durban, South Africa August 2001 UN World Conference against Racism. The urgent need for a definition of antisemitism in order to struggle against it was obvious, as well as the need for a definition of the cases when anti-Zionism was expressed while using antisemitic terms and symbols. A document was formulated by a host of organizations, institutes and individual scholars, joining efforts coordinated by the American Jewish Committee. It is a short document, which avoids never ending issues such as who is an anti-Semite, why and since when, or who is a Jew and what Judaism is. Instead it concentrates on a concise definition of antisemitism and provides concrete examples, that enable the identification and monitoring of antisemitic cases. It is a non-legally binding paper, a recommendation to work with, and as such it was adopted by the EUMC (the European Union Monitoring Center, situated in Vienna, today the FRA, Fundamental Rights Agency) and by the OSCE (the organization for Security and Cooperation in Europe), in 2005.

Re-adopted by the IHRA in 2016, the WDA became internationally known, used and implemented, and adopted by more than 450 governments, parliaments, local councils, universities and sport clubs worldwide. Yet the more it made its way, the more objections were voiced, especially from academic circles, claiming that it stifles freedom of speech and criticism of Israel's policies, while ignoring the main thrust of the definition, which is helping protect Jews and Jewish entities.

The following is an analysis of the WDA as adopted by the IHRA, on four levels:

- a- A mapping of its adoption worldwide.
- b- The objections, detailed and answered.
- c- Its implementations in various fields
- d- Policy Recommendations.

Marking five years since the IHRA adoption, this analysis is offered by the Kantor Center team in Tel Aviv university. This effort was coordinated and led by Dr. Giovanni Quer and adv. Talia Naamat, and we all hope that it will add a modest contribution to the struggle against antisemitism and other evils and discriminations.

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CRITICISMS OF THE IHRA DEFINITION

Since its adoption in 2016, the IHRA Working Definition of Antisemitism¹ has been harshly criticized despite the growing international consensus around it, and the criticism has recently intensified due to the increasing initiatives to adopt it. While the Working Definition was drafted in order to guide institutions and individuals in the complex task of defining what should be construed as antisemitic incidents, its validity, effectiveness, and content are often questioned. This section reviews the main disapproving arguments of the IHRA Working Definition and provides counterarguments to support it.

The IHRA Working Definition builds upon the Ottawa Protocol of December 10, 2010, adopted at the second conference of the Inter-Parliamentary Commission for Combating Antisemitism. The Ottawa Protocol endorsed the European Union's Fundamental Rights Agency's (then the European Union Monitoring Centre on Racism and Xenophobia) Working Definition of Antisemitism adopted in 2005 and unexpectedly deleted from the FRA website in 2013.

Three main categories of criticism can be identified, revolving around the Definition's scope, effectiveness, and the ramifications of its use. Many find fault with the text, claiming that it is not worded precisely enough; others dismiss the whole enterprise

¹ The Working definition, adopted on May 26, 2016, is available at <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>.

as impractical since it is a “non-legally binding” text; and, finally, it must be noted that while the grounds for criticism vary, it is apparent that the main point of contention is the examples related to anti-Israel antisemitism specified therein.

Most detractors of the IHRA Working Definition’s contend that it encroaches on the right to freedom of speech because of what is deemed to be too vague a formulation of antisemitism and, mainly, because of its references to antisemitic speech in relation to the State of Israel. According to these critics, by accusing Israel’s critics of antisemitism, the IHRA Working Definition serves to silence any voices critical of Israel and its policies.

The IHRA Working Definition has also been frequently utilized in the efforts to curb the antisemitic components of some of the anti-Israel BDS movement’s² discourse and supporters. This has finally polarized the assessment on the IHRA Working Definition along the lines of the debate on Israel-related antisemitism: Often, the detractors of the IHRA Working Definition also support the unrestrained criticism of Israel and refuse to condemn the antisemitic nature of some of the anti-Israel discourse.

THE VALIDITY OF THE IHRA DEFINITION:

The validity of the IHRA Working Definition is criticised because of what seems to some as its vagueness, imprecision, and incomprehensiveness. Such criticism usually focuses on the language of the Definition, which is deemed too general and missing certain forms of antisemitism. This could result, in the opinion of these critics, in an imprecise usage of the Definition, with adverse effects especially on the right to freedom of speech. Finally, the Definition is sometimes challenged as being the result of a political process and therefore lacking a strong scholarly basis and consensus.

On Vagueness:

An example of the vagueness argument appears in a publication commissioned by the German Rosa-Luxemburg Foundation and the NGO “Medico International”, authored by Peter Ullrich.³ According to this publication, the “immense vagueness” of

² Boycott, Divestment and Sanctions.

³ Peter Ullrich, *Expert Opinion on the “Working Definition Of Antisemitism” of the International Holocaust Remembrance Alliance*, Rosa Luxemburg Stiftung Papers, n.3 (Berlin: Rosa Luxemburg

the Working Definition construes antisemitism mainly as a “sensory experience” and would therefore disregard other essential manifestations, including: “the discursive level of antisemitism that structures meaning and which research conceptualizes as a worldview or ideology, cultural semantics, a cultural code, interpretational patterns, a collective stock of images, the structure of prejudices or (with an additional emotional component) resentment,” “attitudes,” and “(t)he dimension of mobilization in movements and parties.”⁴

In a similar fashion, the IHRA Definition and its former versions attempt to identify the core elements of diverse manifestations of Jew-hatred via one acceptable, general definition. The object of this defining process is a form of hatred, phobia, and hostility that through the centuries has tormented the Jewish people in numerous fashions and resulted in most diverse types of seclusion, discrimination, and persecution. It is, therefore, possible that the IHRA Definition is reductive, precisely because that is its purpose: to reduce to the core a centuries-long phenomenon that has constantly mutated and adapted to different cultures, ideologies, and political contexts. In light of this, the IHRA Definition seeks to define the essential aspects of this varied phenomenon, providing practical examples for clarification.

In this respect, it should be noted that the new antisemitism has not always been the subject of much scholarly debate. Only recently has academic literature begun to focus intensively on this phenomenon, and even more recently it started to analyze certain aspects of it which were considered taboo only a few years earlier. One such taboo was Israel-related antisemitism, which has manifested itself virulently especially since the beginning of the Al-Aqsa Intifada in 2000. Anti-Israel antisemitism has been enveloped in polarized political debates about the state of Israel. In this context, scholars began examining elements which have come to be known as the “new antisemitism” – which reformulates traditional forms of Jew-hatred to target the State of Israel, Jews and Israelis identified as Zionists.

Scholarly research on new antisemitism has also categorized anti-Jewish manifestations, with an ongoing debate aiming to unveil further elements and features of this phenomenon, by comparing it to other forms of hatred. While these

Stiftung), September 2019, accessed December 23 2020; available at https://www.rosalux.de/fileadmin/rls_uploads/pdfs/rls_papers/Papers_3-2019_Antisemitism.pdf.

⁴ *Ibid.*, p. 11.

debates are fascinating, scholarly research on antisemitism and its changing manifestations should also serve the purpose of actually combating antisemitism. This may not be the role of academics, but academic research should be duly transposed into use for practitioners monitoring and combating antisemitic phenomena. Thus, debates can be held about the extent to which throwing a Molotov bomb against a synagogue during an anti-Israel demonstration is antisemitic, or about the similarity between current conspiracy theories on Zionist domination and past libels, but real policies and responses must also be formulated at the same time. Policymakers are not necessarily experts and they have to rely on studies, general analyses, and comprehensive definitions.

On Imprecision:

Concerning its content, some of the Working Definition's detractors state that the Definition omits certain forms of Anti-Jewish hatred, but this argument seems to confuse the core of antisemitism with its diverse forms or scopes of manifestation. The Working Definition should include the core and not a comprehensive and exhaustive list of all forms and manifestations. According to one such argument, the Working Definition omits institutional forms of antisemitism. As such forms would presumably exhibit the core and basic elements of the Definition, there is simply no need to mention them specifically.

For the sake of argument, one may take as an example the debate on what is now called "classic," or "traditional" antisemitism. "Classic antisemitism" comprises religious anti-Jewish sentiment, which developed from false accusations of deicide, whereby Jews were responsible for the death of Christ, or of well-poisoning in the Middle Ages. Another example is "political antisemitism", which in the 19th century considered Jews a superfluous adjunct of the Levant, which perpetuates an ancient legal tradition unable to integrate into the modern Western world. In both examples one can identify a wide range of animosities towards Jews motivated by the same elements, leading to segregation policies, ghettos, persecutions and massacres through the centuries in Europe; to the Holocaust in the modern age; and to institutional forms of discrimination in the US until the late 1960s.

Evidently, these forms of antisemitism immensely differ in their outcomes, but nevertheless they seem to arise from a general negative perception or

conceptualization of the “Jew.” This same negative perception can manifest itself through different practices and is accompanied by varying levels of animosity. Moreover, such forms can also be manifested through different platforms. Therefore, claims of vagueness because the Definition does not mention institutional antisemitism as such, that may be expressed in political parties, should be readily dismissed. The Definition does not mention antisemitic hate speech carried out via the internet either, yet the Definition is easily applied to such venues.

The study of antisemitism includes various focuses: what antisemitism is, how it expresses itself, its perniciousness, and the stage on which it unfolds. The IHRA definition certainly covers the first two aspects, providing a general definition of what antisemitism is, and a number of examples of how it expresses itself. Saying that the Working Definition is imprecise because it does not include the entire spectrum of manifestations may not be helpful for maximizing its efficacy.

The Working Definition does not claim to be an absolute reference of what antisemitism is, but a *vade mecum* of how antisemitism may be expressed and how it can be identified today. Here, the use of modal verbs is crucial because the Working Definition provides examples of how antisemitic beliefs have been conceptualized in order to detect similar manifestations of such phenomena in different times and contexts.

Since the contexts of future manifestations of Jew-hatred cannot be predicted, we can only rely on what is currently understood as antisemitism. It is likely that the examples specified in the Definition as explanatory notes should be updated from time to time, and new examples should be added as manifestations of antisemitism continue to shapeshift.

When we consider the arguments put forward against the Working Definition, it becomes apparent that the real point of contention revolves around its most contemporary forms, namely the antisemitic speech directed against Israel.

The Working Definition includes five examples of Israel's demonization and delegitimization that are inherently related to other forms of antisemitism and similar to classic antisemitic tropes. Again, the Working Definition provides examples to clarify current forms of the phenomenon but does not presume to label any or all anti-Israel discourse as antisemitism, as will be discussed in section 3. Therefore, it can be

argued that the real issue at hand is not the degree of precision or lack thereof, but rather the specific content pertaining to Israel and Zionism, that infuriates some of those criticizing the Working Definition.

On Consensus:

Another argument sometimes leveled at the Working Definition is that it lacks scholarly "consensus". In light of the growing relevance of the Working Definition as a document that has been endorsed and adopted by international organizations, states, institutions, and non-governmental organizations, some patterns emerge.

First, one may observe a certain degree of condescension behind this kind of polemic. It purports the invalidity of a document for the harsh criticism against it, inspired by political considerations and mainly focusing on one single aspect of it (*i.e.*, the Israel-related antisemitism). Moreover, the fact that a group of scholars, commentators, and activists do not agree with the content of the Working Definition and even deem it detrimental, does not automatically invalidate it.

Secondly, criticism directed against the Working Definition may be used to improve its use. Indeed, weaknesses identified in the Working Definition may be corrected by proposing a certain interpretation of its content. On the other hand, if contention around the Working Definition focuses largely on the specific element of Israel-related antisemitism, then the divide becomes political and little room is left for consensus.

Finally, scholarly consensus on a certain matter is not necessary for establishing the validity of a document that deals with it. That would indeed presume a grander authority of scholars over matters that are also addressed by practitioners and politicians. That is precisely why the Working Definition was drafted by scholars in cooperation with practitioners and has never been claimed to be an academic document, but rather a practical document, a *working* definition.

Tellingly, the debate around the Working Definition intensified precisely following its adoption by more and more countries and entities, accompanied by an increasing consensus around it, while its earlier versions, which had not been as widely adopted, had not triggered a similar debate. Lack of scholarly consensus does not invalidate a document. Its validity is established by official adoptions and

implementation by practitioners responsible for combating and monitoring antisemitism.

LEGAL STANDING:

Two main arguments have been made regarding the legal standing of the Working Definition.

1. The first is that the non-legally binding nature of the document is its main weakness: lacking the capability of direct enforcement, the Working Definition is unproductive.
2. The second argument is that the quasi-legal standing of the definition infringes on the right of freedom of speech: even though the Working Definition is not legally binding, it is nevertheless employed with legal implications, affecting the activities and rights of anti-Israel activists. Let us try to elaborate on these two opposite claims:

Not Legally Binding but Efficacious:

In this respect, it should be emphasized that the Working Definition does not make legal speech illegal; it only clarifies what speech should be considered antisemitic and thus socially unacceptable.

Criticisms on the ineffectiveness of the Definition based on its non-legally binding status assume, in part, that only laws can penalize and combat hate-based phenomena. However, non-legally binding documents may be used to interpret existing laws. They may also be used to socially denounce certain phenomena, through non-legal penalization, such as calling for resignation of members, cancelling events, etc.

In this context, the Working Definition should be considered a complementary document - a guide rather than a law, and this is precisely its significance. Without entering the fascinating realm of the philosophy of law, one may just refer to the distinction of the letter of the law and its interpretation. For with regard to the field of discrimination and hate speech, legal systems of Western democracies have for decades recognized and protected basic principles such as equality and non-

discrimination. The content of what is to be understood as equality and what constitutes discrimination changes over time and reflects developments in a certain society. Therefore, it is not always necessary to change the law or to introduce new penalties; it is often sufficient to interpret the existing letter of the law in a manner applicable to changing social phenomena.

In this sense, legal systems are not deemed inadequate because they do not include laws specifically against antisemitism, providing they do have provisions condemning the broader categories of racism, hate speech, and discrimination. Antisemitism should be understood as a form of hatred that is expressed in hate speech and may lead to discriminatory practices. Here, the Working Definition acquires its value as an integrative document that interprets the scope of the existing law by clarifying what anti-Jewish hatred is and how it manifests itself, in the context of today.

The Working Definition contributes to the understanding of antisemitism in its various forms, some of which are discursive practices that may exceed the threshold of what is socially admissible, while others are ideological foundations of motives behind crimes defined by the law. An example may help in framing these questions: Let us think of a physical assault case, in which the victim is Jewish. Assault is a crime, but the very fact that the victim is Jewish does not define the act as antisemitic. However, if the perpetrator assaulted the victim out of a conviction that “Jews have money” or that “Jews get rich by exploiting the work of others,” there is an antisemitic aspect in the *motive* of the crime. Likewise, in a case of slander, in which the slanderous speech is directed at a Jew, there may be no automatic element of antisemitism involved. Yet, if the slanderous phrasing includes, for instance, stereotypes of the victim as a “Jew,” there is an antisemitic dimension that aggravates the crime. And so, *per se*, there can be no “crime of antisemitism” in that it is a form of bigotry that motivates, inspires, or aggravates illegal acts already defined by the law.

There are other forms of bigotry that are not illegal according to the law but are censured by society as offending accepted sentiments and principles. Social norms are in this sense socially and temporally contingent in that they change in time and space according to the development of a social group. One may think of the difference between Europe and the U.S. in order to understand this point. There are certain expressions that are illegal in Europe, but perfectly legal in the U.S., where

however strict standards are set for what is socially impermissible. Thus, in most European states one cannot deny the Holocaust because such denial is illegal, while in the U.S. one is free to deny the Holocaust but might lose their job for doing so. In many European countries, laws ban public speech that calls for discrimination, while in the U.S., it is the social sensitivity that sets the limit of what is considered racist. In this context as well, the Working Definition assists in identifying which expressions bear an antisemitic content and should be considered as such in the public realm.

Not all forms of hatred, however, need a law to ban them. Laws do not always guarantee efficacy and speediness in social change, especially when it comes to shared principles and collective sentiments. Certain forms of antisemitism should be called out as such because they offend society, not because they may be illegal. In this respect, social condemnation may be more compelling than a sentence issued after a years-long judicial process.

Especially nowadays, public censure, for example on social media (*i.e.*, so-called ‘shaming’), may prove to be much more powerful than a lawsuit, and is thus at the basis of several movements for social change. In the case of antisemitism, could one honestly expect states to prosecute all those who express antisemitic content in speech or writing, via a simple Tweet or a “like” on Facebook? It would be unrealistic to expect law enforcement agencies to go after all such hate-based content on digital platforms.

Not without concerns for the encroachment on fundamental freedom, the decision on what is permissible and what is not does not lie in the hands of judges, but rather in those of online forum administrators or committees within corporations. This is what happens, for instance, when contents or users are banned from social media platforms. It is therefore ever more important to raise awareness about what constitutes bigotry in any form, including antisemitism in all its manifestations, **outside the legal arena**, and especially among those practitioners who in the near future will play a crucial role in overseeing and regulating public discourse.

Detrimental to freedom of speech:

At the opposite end of the spectrum of legal criticism against the IHRA Working Definition, stand those who claim that the quasi-legal status of the document is detrimental to freedom of speech. By focusing primarily on the examples of Israel-

related antisemitism, these detractors of the Working Definition maintain that its implementation curbs fundamental freedoms of political activists against Israel.

Rebecca Ruth Gould, scholar of Islamic Studies, argues that “The IHRA definition is a policy recommendation by a cluster of interest groups that has been tacitly granted that status of a quasi-law,”⁵ and has consequently become a “a tool for censoring speech.”⁶ The author focuses exclusively on examples in which the Working Definition is employed regarding controversies involving anti-Israel speech, raising concerns about the silencing of Israel critics. With respect to the legal use of the document, the author also claims that “Viewed from a legal perspective, the IHRA document is excessively particular and lacking in the generality necessary for legal legitimacy.”⁷

It appears that in this argument, counter to the one specified above in section 1.1, the text is deemed by Gould as too specific, at least for legal adoption. Besides the fact that the introductory text is formulated in very general terms for describing the complex phenomenon of antisemitism, it must also be said that precisely because it is intended as a guide, the examples it provides are needed to complement the definition by elucidating how antisemitism manifests itself in less general terms. Here, again, the use of modal verbs leaves room for interpretation of single cases, by condensing what is to be understood as antisemitic content or aspects. That is also what legal texts do, by providing general norms to be applied to different cases, and, specifically, what soft-law documents do, when giving examples and guidance in the application of old laws to new realities, without having to be understood as laws.

It appears that the main point of this argument is to object to the “excessive particularity” of the examples of anti-Israel antisemitism. This argument actually exploits the idea of freedom of speech and assumes that the growing understanding of Israel-related antisemitism is merely a way of dismissing any criticism about Israel. Yet, as Eve Garrard points out “what the definition does do is alert us to the fact that some ways of talking about Israel are antisemitic. The only view which this definition

⁵ Rebecca Ruth Gould, “Legal Form and Legal Legitimacy: The IHRA Definition of Antisemitism as a Case Study in Censored Speech” *Law, Culture and the Humanities*, August 2018, 1–34 at 7; DOI: <https://doi.org/10.1177/1743872118780660>.

⁶ *Ibid.*, 8.

⁷ *Ibid.*, 14.

threatens is the view that criticism of Israel can never, ever, in any circumstances, be antisemitic.”⁸

Additionally, other critics have pointed out that the increasing adoption of the Working Definition by universities infringes on academic freedom. For instance, David Feldman, Director of the Pears Institute for the Study of Antisemitism, maintains that the adoption of the Working Definition mandated by governments, as in the U.S., endangers freedom of speech that universities must encourage.⁹ Other scholars claim that the institutional use of the IHRA Definition curbs academic freedom by ostensibly intimidating scholars critical of Israel.¹⁰ Again, revolving around the heated debate on antisemitic tropes expressed in anti-Israel speech, these critics focus on one single aspect of the WD, purporting that it could serve to ban any criticism directed toward Israel or Zionism. However, as David Hirsh, scholar of sociology, puts it in his response to Feldman, the “IHRA is a framework for thinking about what is antisemitic, not a machine which can automatically designate certain kinds of speech as antisemitic.”¹¹

It must be emphasized in this context that the right to freedom of speech is not absolute. While there is a general consensus that racist and xenophobic speech should be removed from any public venue, including universities, why should anti-Israeli antisemitism not be considered a form of unacceptable hate speech? Here, the main issue is acknowledging how antisemitism presently manifests itself.

Denying that anti-Israel speech often becomes a platform for expressing antisemitic tropes is a blind, ideologically driven outlook that professes to defend fundamental rights without considering the fight against antisemitism as part of that same

⁸ Eve Garrard, “The IHRA Definition, Institutional Antisemitism, and Wittgenstein” *Fathom Journal*, December 2020; available at https://fathomjournal.org/the-ihra-definition-institutional-antisemitism-and-wittgenstein/?fbclid=IwAR0uAhAuNIWHg_Ck3ZEVGdxHOp6ncJ_gzYkRdGA0OhMGv-oT8yIBgqbPiaw.

⁹ David Feldman, “The government should not impose a faulty definition of antisemitism on universities” *The Guardian*, December 2, 2020; available at <https://www.theguardian.com/commentisfree/2020/dec/02/the-government-should-not-impose-a-faulty-definition-of-antisemitism-on-universities>. In this respect, the author also argues that it would have a divisive effect, by privileging one group over the others.

¹⁰ Jasmine Zine, Greg Bird, Sara Matthews, “Criticizing Israel is not Antisemitic — It’s Academic Freedom” *The Conversation*, November 20, 2020; available at <https://theconversation.com/criticizing-israel-is-not-antisemitic-its-academic-freedom-148864>.

¹¹ David Hirsh, “Jews are asking for protection from their universities from antisemitism. David Feldman’s ‘All Lives Matter’ response is not helpful” *Fathom Journal*, December 2020; available at <https://fathomjournal.org/fathom-opinion-jews-are-asking-for-protection-from-their-universities-from-antisemitism-david-feldmans-all-lives-matter-response-is-not-helpful/>.

struggle. In this sense, antisemitism is a form of hatred that should not be tolerated even when it is expressed in Israel-related discourse.

Additionally, even when anti-Israel speech does not include expressly antisemitic tropes it can be virulent enough to inspire antisemitic attacks or atmosphere. If Jewish students on American and British campuses feel an atmosphere of harassment because of anti-Israel activities, it says something about this discourse evolving under the banner of human rights protection or freedom of speech. Likewise, if an anti-Israel demonstration leads to antisemitic attacks, it means that the anti-Israel atmosphere is poisonous enough to inspire antisemitism without necessarily being antisemitic in itself.

That is precisely why the IHRA definition is needed - to provide guidance in navigating the stormy waters of contemporary antisemitism. This leads us to the third corpus of critics, related to Israel.

THE CONTROVERSY ON ISRAEL-RELATED ANTISEMITISM:

All the arguments mentioned above have a common objection to the IHRA Working Definition: they oppose the inclusion of Israel-related antisemitism in the elucidatory examples. Indeed, the IHRA document includes anti-Israel demonization and delegitimization as illustrations of anti-Jewish hatred as it manifests today. Caught in the middle of the polarized Israeli-Palestinian web, the IHRA document is attacked as an instrument abused for advancing Zionist views and gagging pro-Palestinian voices. This criticism comprises two aspects: the line to be drawn between criticism of Israel and antisemitism, and antisemitism within certain components of the Palestinian cause.

When Does Criticizing Israel Become Antisemitic?

The IHRA Working Definition provides important insight in the arduous task of distinguishing between anti-Israel stances and antisemitic anti-Zionism, through five out of eleven examples. On the one hand, Israel's harsh critics would like to have absolutely free space to advance their ideology, ignoring the restrictions imposed on hate speech, and at times justifying their anti-Jewish animosity via the pretext of advancing the Palestinian cause. On the other, there is the risk that the IHRA definition might be abused to label any criticism of Israel as motivated by anti-Jewish hatred in a very heated debate that appears to be increasingly polarizing.

This section will address the five relevant examples from the Working Definition and discuss criticism of Israel.

- ***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.***

The usual argument refuting this example is that opposing Israel as the State of the Jewish people should not be considered antisemitic as it stems from philosophical and political considerations against nation states. Yet, in the Israeli-Palestinian debate, the only focus is against Jewish statehood, while there is no argument against Arab or Palestinian nation states. Therefore, there is a fundamentally anti-Jewish antagonism that denies Jewish statehood, conceived as incompatible with principles of pluralism or humanism. This crosses the line of criticism because it does not focus on a specific policy deemed discriminatory toward the non-Jewish citizens of Israel, whereas it ascribes to Israel's Jewishness an inevitable incompatibility with diversity. This concept echoes false accusations of Jewish supremacism and, even unknowingly, perpetuates the idea that Jews seek to dominate other peoples, expressed in this instance through anti-colonialist narratives.

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

Against the double standard argument, Israel's detractors usually claim that Israel is subject to international law standards and also maintain that the IHRA definition would silence criticism of Israel's treatment of the Palestinians. Here, again, the issue is distinguishing when criticism, even very harsh, is directed at a specific civil or criminal policy that Israel allegedly adopts or enacts toward its Arab citizens or the Palestinians and when, conversely, it is a generally formulated statement that describes Israel as a systematic violator of international standards for the capitulation of Palestinian national efforts. Subjecting Israel to different standards evidently bears anti-Jewish sentiments and its direct parallel is the 19th-century antisemitic political view whereby one should expect more from Jews and give them less.

- ***Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.***

Nobody would ever try to refute this argument, but many would simply ignore this form of antisemitism, which is the ultimate manifestation of the contemporary mutation of classical Jew-hatred into Israel-hatred. One example is the “news” published by the Swedish daily “Aftonbladet” in August 2009, which claimed that Israel had extracted organs from Palestinian victims - an overt instance of a blood libel. Likewise, the recent accusations of Israel deliberately infecting Palestinian prisoners with COVID-19 are manifestations of another historical antisemitic trope: the Jew as a plague spreader, only now adapted to Israel.

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

Among the different forms of Holocaust abuse, Holocaust inversion is the most widely used in the context of the conflict. It postulates that by embracing Zionism, Jews have become like their Nazi persecutors, while the victims are now the Palestinians. Such inversion is applied to the 1948 -1949 War, misleadingly portraying the conflict as an armed action of Zionist militias against the local Arab population, as well as to the contemporary military policy in the post-1967 territories administered by Israel.

- ***Holding Jews collectively responsible for actions of the state of Israel.***

Although certain harsh criticisms may not be imbued with antisemitic tropes, they may nonetheless convey antisemitic sentiments or create an atmosphere of anti-Jewish hostility. When Jews are requested to provide explanations for Israel’s policies; when Jews are associated with Israel and protested against in times of Israeli military operations; or when Jews are requested to disavow their Zionist identity in order to be “acceptable,” this also is a form of antisemitism because it conflates Jews with Israel. While critics of the IHRA Working Definition maintain that by exposing anti-Israel antisemitism, the IHRA document conflates Jews with Zionists, this is actually the effect of contemporary antisemitism, whereby Jews are increasingly associated with Israel’s alleged wrongdoings and blamed for Israel’s

alleged Human Rights violations. The process is twofold: Israelis are considered cruel because of the Jewish connection, and Jews are considered spiteful insofar as they are associated with the Jewish state and as long as they identify themselves as Zionists.

The Palestinian Cause and Antisemitic Speech:

The most complex position in dissent to the IHRA Definition comes from the Palestinian and Arab world, a variant of the previous argument, which postulates that the IHRA Working Definition silences criticism of Israel. The complexity of this position stems from the fact that it voices legitimate concerns of human rights violations coming from a people who is in pursuit of national self-determination. The main problem here is that the existence of the State of Israel as a Jewish State is construed as incompatible with the self-determination of the Palestinians.

This position is the continuation of the old contention consolidated in the Arab world through the decades that Zionism represents a sort of nemesis to Arab nationalism. In this view, there is no specific policy or action that is to be criticized or modified, but rather the very existence of Israel as a Jewish state must come to an end in order to restore justice for its Arab population and for the Palestinians. A significant body of literature has exposed the connections between anti-Israel speech and antisemitism, and also their manifestation in the anti-Israel movement called BDS (Boycott, Divestment, and Sanctions). Governments as well as NGOs have recently enacted policies and plans to combat this phenomenon. Yet, this is too often considered a way to fight against Palestinian campaigns.

As a group of Arab artists and intellectuals put it in a letter published in the Guardian in November 2020 against the IHRA: “The fight against antisemitism has been increasingly conducive to the Israeli government and its supporters in their effort to delegitimize the Palestinian cause and silence defenders of Palestinian rights.” Moreover, they claim that “The fight against antisemitism should not be turned into a stratagem to delegitimize the fight against the oppression of the Palestinians, the denial of their rights and the continued occupation of their land.”¹² The stern opposition to the existence of the State of Israel as a Jewish state emerges in the

¹² “Palestinian rights and the IHRA definition of antisemitism” *The Guardian*, November 29, 2020; available at <https://www.theguardian.com/news/2020/nov/29/palestinian-rights-and-the-ihra-definition-of-antisemitism>.

seven principles stated in the letter, which accuse Israel of ethnic cleansing, deny that Israel represents Jewish national self-determination, define Israel as a system of “ethno-religious discrimination,” and portray the BDS as a non-violent movement. These principles are in a nutshell the content of anti-Israel speech, which can also spread antisemitic tropes, as demonstrated above.

It is not the IHRA that conflates Judaism with Zionism, but the virulent anti-Zionist rhetoric that time and again proves its antisemitic undercurrent. It would suffice to observe how it has affected Jewish communities around the world: from terrorist attacks against Jewish communities motivated by the Palestinian struggle in the 1980s and 1990s (in Rome, Paris, and Buenos Aires), to the antisemitic violence directed at Jews and Jewish property in the context of anti-Israel rage (at least since the beginning of the al-Aqsa Intifada in 2000). And even if we put this phenomenon aside and pretend that it is not connected to anti-Israel sentiment, a look at BDS rhetoric cannot but convince us that there is more to it than the mere righteous support for Palestinians’ rights. First, the absolutism of BDS ideology has turned a self-proclaimed non-violent movement into a self-appointed tribunal deciding who is right and who is wrong, and, consequently, who must be boycotted, sanctioned, and punished.

The image conveyed through posters used in anti-Israel campaigns constantly portrays Israel as a sanguinary regime, Israelis as bloodthirsty, and Israeli products as soaked with Palestinian blood. It is not a mere conjecture to maintain that the antisemitic caricatures of Israeli leaders drinking Palestinian blood are strictly connected. Indeed, the conceptual frame is that Jews are somehow fascinated by non-Jewish children’s blood, an antisemitic accusation that accompanied European anti-Jewish hatred through the centuries and was also imported to the Middle East.

All in all, the IHRA definition is dismissed as the victory of Zionism over the Palestinians and its use is considered political to the point that it would serve to justify Israel’s policy in the post-1967 territories. Specifically, it has been argued that the IHRA definition is an instrument for supporting the annexation of areas disputed between Israel and the Palestinian Authority.¹³ The feeling of isolation and

¹³ Ismat Mansour, “The New Definition of Antisemitism: In Essence the ‘Reinforcement’ of the Occupation” *Madar Center*, (Ramallah: Palestinian Center for Israeli Studies), August 10, 2020;

abandonment is felt even more acutely considering the new amicable relations between Israel and some Arab states, which have led to normalization with the United Arab Emirates and Bahrain and an agreement with Morocco. It wasn't normalization alone that impaired Palestinian primacy in the Arab world, but also the reconsideration of traditional images of the “Jew” and “Zionist” by other states. This process is shaking the foundation of what many Palestinians and their supporters believe to be the backbone of their plea: Zionism is incompatible with Arab nationalism; Israel is incompatible with “Palestine” and other Arab nations.

As a final remark, it is quite striking that the different criticisms of the IHRA Definition do not even marginally mention the organization itself and its mandate, the Remembrance of the Holocaust. In fact, the Holocaust is largely denied or abused in anti-Israel speech, which minimalizes its scope or associates anti-Jewish persecution and extermination in Europe during the 1930s and 1940s with Palestinian suffering.

When welcoming the human rights approach that anti-Israel activists often claim to embrace, one should honestly focus on the Palestinian predicament and genuinely refer to human rights as a parameter. But, unfortunately, the denunciations of Islamist and nationalism-inspired terrorism perpetrated by many Palestinian factions, inciting, justifying, and glorifying the killing of Jews, are all in all rebuffed as “Zionist propaganda.” Numerous issues of pluralism, religion and state relations, gender rights, police violence and political violence immensely affect the Palestinian population in ways that are not connected to the conflict with Israel - which serves as an excuse not to deal with other problems. While this attitude may not have an inherent anti-Jewish intent, it produces an obsessive, fanatical focus on Jews and Israelis, generating the idea that it is “the Jew” behind all the problems of Palestinians, Arabs, and Muslims in general.

CONCLUSION:

The criticisms against the IHRA Working Definition originate mainly in opposition to the examples of Israel-related antisemitism. This stance has several consequences: it denies the ramification of anti-Jewish expressions reverberated in anti-Israel rhetoric; it deepens the political polarization around Israel for the sake of

المشهد-الأسرائيلي/تقارير،-وثائق،-تغطيات-خاصة/8597-التعريف-الجديد-للاسامية-/<https://www.madarcenter.org/> في-الجوهر-تحصين-الاحتلال

perpetuating a political position; it conversely affects the human rights world by legitimizing the abuse of international principles in the cause of anti-Zionism; and, finally, it weakens the authentic study of the phenomenon as well as the genuine will to combat it.

Denying the existence of Israel-related antisemitism, and all its ramifications, is simply ignoring current reality. Moreover, it is too often trivialized as protests of Zionist zealots and belittled as a mechanism aiming to silence opponents of Israel and any criticism against it. This pretentious outlook on antisemitism in its modern forms does not contribute to a more just world, nor does it lead to any novel insights into the Israeli-Palestinian conflict. Moreover, the fact that antisemitism has been expunged from the realm of human rights, to be associated only with the Palestinian narrative, is not a reason for dismissing the Working Definition. This position only perpetuates the abuse of international principles of justice, always used in defense of the Palestinian cause, while not consistently applied to antisemitism.

In light of the heated debate around the IHRA Working Definition, one should conclude that rather than reducing free speech, as it has been accused of doing, it has indeed stimulated the discussion on contemporary antisemitism and its anti-Israel forms. The fear that the IHRA is a camouflage for the actual pursuit of silencing anti-Israel critics is somehow antisemitic in itself, because it purports the existence of a Jewish “plot” to control and influence public speech.

Finally, despite the political controversy on Israel and even the political considerations regarding the examples included in the document, the whole enterprise of the Working Definition should not be so easily dismissed, because it represents the greatest effort in decades to produce a tangible instrument to be employed in the fight against antisemitism.

HOW IS THE IHRA WORKING DEFINITION BEING USED?

As discussed in the former chapter, a previous version of what is now known as the IHRA Working Definition of Antisemitism was used by monitoring agencies since 2005¹⁴ for purposes of data collection, monitoring and reporting antisemitic incidents. Indeed, the Definition was drafted to facilitate the work of monitoring agencies, helping them recognize when an incident should be considered and reported as antisemitic. Another goal is assisting law enforcement and the judiciary, in identifying the phenomenon of “new antisemitism,” and understanding when relevant existing laws should be applied to such cases.

During the past decade, and especially since the 2016 adoption of the Working Definition by the International Holocaust Remembrance Alliance (IHRA), there has been a significant increase in endorsements and adoptions worldwide - by governments, local authorities, organizations, companies, and NGOs.

This chapter will present some noteworthy examples of how the IHRA Working Definition has been utilized in the U.S., the U.K., Germany, and Canada.

The United States:

Since 2010, the US State Department had been using a definition similar to the *European Monitoring Centre on Racism and Xenophobia (EUMC) Working Definition of Antisemitism*.¹⁵ Since the Working Definition’s adoption by the IHRA in 2016, the US, as a member state of the IHRA, has been using it instead.¹⁶

Within the context of increasing cases of harassment of Jewish students across US campuses, in 2018 the Department of Education’s Office for Civil Rights (OCR) expanded the definition of “national origin” to also include Jewish students, thereby entitling them to protection from discrimination under Title VI of the Civil Rights Act.¹⁷ Importantly, Title VI bars institutes from receiving federal funds if they fail to

¹⁴ Before 2016, in its former version as the EUMC Working Definition of Antisemitism.

¹⁵ <https://2009-2017.state.gov/j/drl/rls/fs/2010/122352.htm>.

¹⁶ <https://www.state.gov/defining-anti-semitism/>.

¹⁷ Note that Title VI protects against discrimination on the basis of race, color, and national origin in programs and activities receiving Federal funds, including college campuses. However, religion is not included in the protected categories. Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d *et seq.*

adequately address and counter discrimination based on one of the specified categories. Any university, college or college program that receives federal funds is considered a public education entity and is therefore subject to the OCR's decisions.

On December 11, 2019, President Donald Trump issued an Executive Order on Combating Anti-Semitism (the "Executive Order of 2019"),¹⁸ directing the Education Department to use the Definition to assess the occurrence of antisemitism on college campuses. The Executive Order recognizes Jewish students as entitled to receive protection from discrimination under Title VI, and states that "It shall be the policy of the executive branch to enforce Title VI against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI." The Executive Order also cites the IHRA Working Definition for the purpose of identifying such antisemitic discrimination.

Given the OCR's 2018 inclusion of Jewish students as entitled to anti-discrimination protection and the signing of the Executive Order in 2019, it may be said that federally funded universities and colleges have been newly incentivized to adhere to the IHRA Working Definition.

It is evident that since early 2020, after the signing of the Executive Order of 2019, there has been a significant increase in the number of complaints filed with the Board of Education's Office for Civil Rights alleging antisemitic harassment and citing the IHRA Working Definition. Indeed, and as will be shown below, the Definition has been used most extensively across university and college campuses to file such complaints.

State Department Plan to Declare Certain Groups Antisemitic and Withdraw Funds - November 2020:

On November 19, 2020, the State Department announced its plan to declare certain advocacy groups engaged in BDS activities against Israel as antisemitic,¹⁹ and consequently stop federal funding to these groups. The statement issued by former Secretary of State Mike Pompeo proclaimed unequivocally that "anti-Zionism is antisemitism." The plan was based in part on a memo by Mr. Elan Carr, the State

¹⁸ <https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-combating-anti-semitism/>. <https://www.nytimes.com/2019/12/11/us/politics/trump-anti-semitism-judaism-nationality.html>. <https://www.nytimes.com/2019/12/10/us/politics/trump-antisemitism-executive-order.html>.

¹⁹ <https://il.usembassy.gov/identifying-organizations-engaged-in-anti-semitic-bds-activities/>.

Department's Special Envoy for Monitoring and Combating Antisemitism, which cited organizations whose activities fell under the IHRA Working Definition.²⁰

The plan was criticized by several human rights groups,²¹ including the Middle East and North Africa Region of Human Rights Watch, whose Deputy Director Eric Goldstein said: "The criteria they seem to be using are preposterous and we hope they will come to their senses and withdraw it."²² The plan was ultimately dropped, given the State Department's lack of time to implement it once Donald Trump had lost the Presidential elections.

Fordham University, 2019 & 2020:

In December 2020, a New York court overruled a lower court's ruling requiring Fordham University (New York) to recognize the Students for Justice in Palestine (SJP) chapter formed by some of its students.²³

The lower-court judge had ruled in 2019 that even though it was a private university, Fordham must recognize the SJP group. The University appealed this ruling, supported by an *amicus curiae* brief filed by StandWithUs, arguing that SJP's conduct was antisemitic according to the IHRA Working Definition, and was therefore in violation of Title VI of the Civil Rights Act.²⁴ It was also argued that the University had acted within its own principles and that any decision to recognize a student organization should not be subject to judicial review.²⁵

In December 2020, the New York State Appellate Division accepted the University's appeal and overruled the lower court's decision, stating that the university was within its legal rights in not recognizing a group that had reportedly engaged in "disruptive and coercive action on other campuses."²⁶

²⁰ <https://www.motherjones.com/politics/2020/10/state-departments-anti-semitism-human-rights-amnesty-oxfam/>.

²¹ https://www.washingtonpost.com/national-security/pompeo-israel-bds-movement-boycott/2020/11/19/79fe4cba-2a7d-11eb-b847-66c66ace1afb_story.html.

²² <https://www.jweekly.com/2020/10/22/in-a-striking-move-state-department-plans-to-label-3-global-human-rights-groups-as-antisemitic/>.

²³ <https://jewishinsider.com/2020/12/students-for-justice-in-palestine-fordham/>.

²⁴ https://46fc49e4-0bd9-4e5a-bf63-78204b4a07c9.usrfiles.com/ugd/69c361_640eba39a1ed42188da0eb837ac6d48b.pdf.

²⁵ <https://jewishjournal.com/news/united-states/322341/standwithus-files-brief-supporting-fordham-universitys-decision-not-to-recognize-sjp/>.

²⁶ https://jewishinsider.com/wp-content/uploads/2020/12/2020_00843_Ahmad_Awad_et_al_v_Fordham_University_et_al_DECISION_AND_ORDER_27-copy-2-With-Watermark.pdf.

University of Illinois, 2020:

In October 2020 a complaint was filed with the Department of Education on behalf of all Jewish and pro-Israel students at the University of Illinois, alleging harassment and discrimination.²⁷ The complaint cited several instances of hostility and discrimination against Jewish and pro-Israel students, including: swastikas painted on walls and cars, vandalizing a Menorah at the Chabad Center and removing a Jewish student from a referendum on divesting Israeli companies, a presentation entitled “Palestine & Great Return March: Palestinian Resistance to 70 Years of Israeli Terror”, and more.²⁸ The complaint also cited the Executive Order of 2019 and the IHRA Working Definition.

University of Arizona, 2020:

In February 2020 US Representative Paul Gosar from Arizona wrote to the Secretary of Education,²⁹ relaying alleged Title VI violations made by the University of Arizona and citing the Executive Order of 2019 and the IHRA Working Definition. The letter describes the conduct of the Center for Middle Eastern Studies and their “aggressive pursuit of the racist BDS policies”, argues that the university should take steps to comply with the Executive Order, and calls on the Education Department to examine how the university is allocating its federal funding to its various programs.

The university responded that the Center for Middle Eastern Studies’ programs reflect “diverse perspectives and a wide range of views,” claiming that their nondiscrimination policies reflect the Executive Order, and that the persons mentioned in Rep. Gosar’s letter were not employees of the Center and therefore did not receive federal funding.³⁰

Columbia University, 2019:

In December 2019 two separate complaints were filed against Columbia University with the Office for Civil Rights at the Department of Education:

- The first complaint, filed by the Lawfare Project on December 18, 2019, involved a Jewish-Israeli student named Jonathan Karten and alleged

²⁷ <https://brandeiscenter.com/university-of-illinois-jewish-students-file-complaint-with-u-s-department-of-education/>;

²⁸ <https://brandeiscenter.com/wp-content/uploads/2020/10/Summary-of-Title-VI-Complaint.pdf>.

²⁹ <https://www.meforum.org/documents/Gosar-Letter-Title-VI-DeVos.pdf>.

³⁰ <https://www.docdroid.net/EFwWgzz/rep-gosar-title-vi-inquiry-response-1-pdf>.

antisemitic abuse,³¹ citing the Executive Order of 2019 as making the complaint possible. It describes “systematic discrimination” of Jewish students by tenured professors and anti-Israel student groups, engaging in “Israel Apartheid Week,” and inviting antisemitic speakers to campus.³²

- Also in December 2019, a second complaint was filed by Jamie Kreitman, a Columbia University alumna, against Columbia’s Middle East Institute (MEI), alleging a hostile environment for Jewish students. Ms. Kreitman alleged she had been deterred from pursuing a doctorate at the school given its “climate of antisemitism, specifically among faculty in the area of Middle East Studies,”³³ arguing that the Middle East Institute was a “hub for the spread of antisemitic misinformation and the promotion of antisemitic activities,” merely cloaked as a scholarly debate on Israel, and that it fell under the IHRA Working Definition.³⁴ Among the many examples given in the complaint was a program on law, gender and sexuality in which Attorney Noura Erekat allegedly “equated Zionism with racism, demonized Jews as having a congenital tendency toward domination, advocated for the annihilation of the Jewish state, and denied the Jewish connection to the land of Israel.”

A representative for Columbia University declined to comment at the time. However, some months later, in March 2020, the university’s president stated that he opposed the referendum on a boycott against Israel held by the students, linking it to rising antisemitism.³⁵ The referendum was nevertheless passed on September 29, 2020.³⁶

New York University, 2020:

In April 2019, a New York University student named Adela Cojab filed a complaint with the Education Department’s Office for Civil Rights alleging that she had suffered “extreme antisemitism”. Ms. Cojab also stated that the university had created “an intolerable and unlawful hostile atmosphere for Jewish students.” The complaint

³¹ <https://jewishweek.timesofisrael.com/columbia-complaint-tests-limits-of-anti-zionist-speech/>.

³² <https://www.thelawfareproject.org/releases/2019/12/19/breaking-lawfare-project-files-ocr-complaint-against-columbia-university-on-behalf-of-jewish-israeli-student-first-since-issuance-of-presidents-executive-order-on-combating-anti-semitism>.

³³ <https://www.algemeiner.com/2019/12/23/columbia-university-faces-second-recent-complaint-alleging-antisemitic-discrimination/>.

³⁴ <https://www.algemeiner.com/2019/12/23/columbia-university-faces-second-recent-complaint-alleging-antisemitic-discrimination/>.

³⁵ <https://jewishweek.timesofisrael.com/bollinger-ties-bds-vote-to-rising-anti-semitism/>.

³⁶ <https://www.jpost.com/bds-threat/columbia-u-students-pass-colleges-first-ever-israel-boycott-referendum-643920>.

refers to the IHRA Working Definition and the Executive Order of 2019,³⁷ and argues that the university had allowed a climate of antisemitism on its campus, including protests against Israel that had exhibited antisemitic conduct.

In a settlement reached in October 2020, also citing the Executive Order of December 2019, the university agreed to “revise their non-discrimination and anti-harassment policy to create a more expansive definition for antisemitism”, and to “take appropriate action to address and ameliorate discrimination and harassment based on shared ancestry and ethnic characteristics, including antisemitism that involves student clubs.”³⁸

University of California, 2018:

The SJP student organization at the University of California scheduled a joint public vigil in November 2018, following the mass shooting in the Tree of Life Synagogue in Pittsburgh and Israeli airstrikes in Gaza killing three Palestinian children. Attorney Joel Siegal filed a complaint with the Department of Education and the Office for Civil Rights,³⁹ requesting cancellation of the event due to the anticipated anti-Israeli rhetoric, and the portrayal of Israel as a racist state - considered antisemitic by the IHRA Working Definition cited in the letter. The on-campus event was cancelled following the mounting pressure and the vigil was held privately.⁴⁰

University of Michigan, 2018:

In October 2018 in a guest lecture at the University of Michigan, Mr. Emory Douglas showed his artwork, including a portrayal of Israeli Prime Minister Benjamin Netanyahu and Hitler as both being guilty of genocide.⁴¹ Following the event, Ms. Alexa Smith, one of the students who had attended the lecture as part of a mandatory course, called on the university to adopt the IHRA Working Definition under which such rhetoric would be deemed antisemitic. She stated that “if the IHRA

³⁷ <https://nypost.com/2019/12/14/student-who-sued-nyu-for-anti-semitism-trump-has-empowered-jews-on-campus/>.

³⁸ <https://nypost.com/2020/10/10/nyu-settles-anti-semitism-complaint-brought-by-student/>.

³⁹ <https://www.jweekly.com/2018/11/15/uc-berkeley-students-file-complaint-to-block-sjp-pittsburgh-gaza-vigil/>.

⁴⁰ <https://www.theguardian.com/us-news/2019/oct/16/conservative-activists-want-to-outlaw-antisemitism-in-public-education-why-is-that-a-bad-thing>.

⁴¹ <https://www.ohchr.org/Documents/Issues/Religion/Submissions/AlexaSmith.pdf>.

definition were included in staff training and University policy, both would know immediately that this lecture by Emory Douglas was in fact antisemitic.”⁴²

Following additional cases in which university professors refused to sign letters of recommendation for students wishing to study in Israel, the University declared that it was strongly opposed to academic boycotts of Israel but did not adopt the IHRA Working Definition.

UCLA, 2018 & 2019:

During 2018 the Zachor Legal Institute filed a complaint against UCLA following the hosting of a conference of Students for Justice in Palestine. Based on the organization’s demonization of Israel, the complaint cited the State Department’s definition which classifies such rhetoric as antisemitic.⁴³

In October 2019, StandWithUs filed a complaint with the Department of Education on behalf of Jewish student Shayna Lavi, alleging a hostile environment based on antisemitism. The complaint refers to a lecture given at the university on May 14, 2019 by Dr. Rabab Abdulhadi, in which she described Zionism as a racist endeavor and a “colonial and white supremacist project”. The complaint cites the IHRA Working Definition to identify these comments as antisemitic in nature.

The Department of Education opened an investigation into both complaints in 2020.⁴⁴

University of Massachusetts Amherst, 2019:

In April 2019, a lawsuit was filed against the University of Massachusetts Amherst (UMass) by anonymous students.

The lawsuit requested a preliminary injunction for an event scheduled to be hosted by the University entitled “Not Backing Down: Israel, Free Speech and the Battle for Palestinian Human Rights”.⁴⁵ The lawsuit alleged that the event’s anti-Israel

⁴² *Ibid.*

⁴³ <https://zachorlegal.org/wp-content/uploads/2018/11/Zachor-Legal-Institute-Opposes-UCLA-Hosting-Anti-Semitic-Students-for-Justice-in-Palestine-National-Conference.pdf?189db0&189db0>.

⁴⁴ <https://www.washingtontimes.com/news/2020/jan/11/education-dept-investigate-alleged-anti-semitism-u/>; https://46fc49e4-0bd9-4e5a-bf63-78204b4a07c9.usrfiles.com/ugd/46fc49_47f7a61293bc4bb1b0a681b96b4edeee.pdf; <https://jewishjournal.com/news/united-states/309392/departement-of-education-to-investigate-standwithus-complaint-against-ucla/>; <https://www.jpost.com/diaspora/us-ed-dept-investigating-ucla-over-anti-zionist-sjp-conference-on-campus-613664>.

⁴⁵ <https://palestinelegal.org/case-studies/2019/5/31/umass-amherst>.

speakers had engaged in antisemitic rhetoric according to the IHRA Working Definition and the State Department definition of antisemitism, and that hosting the event contravened the University's own guidelines.⁴⁶ The lawsuit was ultimately dropped after the judge requested that the plaintiffs identify themselves in order to proceed with the case.⁴⁷

Rutgers University, 2011 & 2018:

A complaint alleging a hostile environment was filed against Rutgers University (New Jersey). Originally filed in 2011 it was dismissed, to be reopened in 2018 by the Education Department's Office for Civil Rights (OCR).⁴⁸

The complaint involved a forum held at the university in 2011, hosting both Holocaust survivors and survivors of the *Nakba*, where Jewish students were allegedly charged entrance fees while other students were not. The original complaint also included other counts of harassment. The first investigation ultimately concluded that there hadn't been enough evidence.

The OCR reopened the investigation in 2018, after adopting a broader definition of "national origin" which also includes Judaism as entitled to protection against discrimination,⁴⁹ and takes into account the State Department's adopted definition of antisemitism.⁵⁰

Indiana University, 2018:

In December 2018 Attorney Jamil Dakwar, a BDS activist, was invited to give a lecture at Indiana University. A student congress motion, citing both Indiana's Anti-BDS Law⁵¹ and the State Department's definition of antisemitism, demanded the lecture's cancellation,⁵² but the motion was dismissed.⁵³

⁴⁶ A letter preceding the lawsuit: [https://amchainitiative.org/wp-content/uploads/2019/04/UMass-80-
Org-Letter-4.23.19.pdf](https://amchainitiative.org/wp-content/uploads/2019/04/UMass-80-
Org-Letter-4.23.19.pdf).

⁴⁷ https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/5d360a08d8c3c30001312e26/1563822600819/Memorandum%26Order_6-25-19.pdf.

⁴⁸ <https://www.nytimes.com/2018/09/11/us/politics/rutgers-jewish-education-civil-rights.html>.

⁴⁹ <https://www.nytimes.com/2019/12/11/us/politics/trump-anti-semitism-judaism-nationality.html>.

⁵⁰ <https://www.nytimes.com/2019/09/19/us/politics/anti-israel-bias-higher-education.html>.

⁵¹ <https://legiscan.com/IN/bill/HB1378/2016>.

⁵²

<https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/5c4a2f5321c67ce18243e634/1548365652353/Congressional+Resolution+18-19-12.pdf>.

⁵³ <https://palestinelegal.org/news/2018/12/17/iipac-jamil-dakwar>.

The United Kingdom:

The U.K was one of the countries to adopt the Working Definition following its adoption by the IHRA in May 2016. On December 12, 2016, the UK Government adopted the Definition, after then prime-minister Theresa May gave a speech on the necessity of taking “fresh steps” to combat antisemitism.

The Conservative Party’s code of conduct was accordingly amended, to clarify that its provision against discrimination on the basis of religion or belief should be “interpreted as fully adopting the International Holocaust Remembrance Alliance’s definition of anti-Semitism which the Conservative Party adopted in December 2016”.⁵⁴ In September 2018 the Liberal Democrats also formally adopted the IHRA Working Definition.

On September 4, 2018, its National Executive Committee adopted the 11 examples cited in the definition, adding a statement, “which ensures this will not in any way undermine freedom of expression on Israel or the rights of Palestinians”.

In July 2018, the Labour Party initially adopted a definition of antisemitism that was widely criticized as falling short of the IHRA definition.⁵⁵ It did not include a number of the IHRA’s examples, such as “accusing Jewish people of being more loyal to Israel than their home country” and “requiring higher standards of behaviour from Israel than other nations.” The Labour Party subsequently adopted the IHRA Working Definition in its entirety, with the caveat that it would not “in any way undermine freedom of expression on Israel or the rights of Palestinians”.

In mid-October 2020 UK’s Secretary of State for Education Gavin Williamson advised UK universities to adopt the IHRA Working Definition by the end of the year or risk losing their funding.⁵⁶ Several universities had already adopted the IHRA Working Definition before Secretary Williamson’s statement and, after October 2020, more universities endorsed it.⁵⁷

⁵⁴ <https://commonslibrary.parliament.uk/uk-governments-adoption-of-the-ihra-definition-of-antisemitism/>.

⁵⁵ <https://www.bbc.com/news/uk-politics-45030552>.

⁵⁶ <https://www.jpost.com/diaspora/antisemitism/uk-minister-gives-universities-deadline-to-adopt-ihra-definition-645261>.

⁵⁷ For the comprehensive list of universities’ endorsements and dates, see “Adoptions of the IHRA Working Definition,” available at <https://en-humanities.tau.ac.il/kantor/resources>.

Generally speaking, in the UK there are more diverse examples of using the definition as compared with the US: while the US cases mostly involve complaints of harassment on university campuses, in the UK there were several university campus cases as well but also cases involving the cancellation of Israeli Apartheid Week events, a libel court case and resignations of several Labour party members. This may stem from the varying degrees of free-speech protections afforded in the two countries. Moreover, given that the UK endorsed the IHRA Working Definition in 2016, in the following examples we also see earlier cases of its usage.

High Court Rules on Libel Case of “Notorious Antisemite,” 2020:

In November 2020, the High Court in the UK ruled on a libel case involving Mr. Tony Greenstein, a BDS activist who had recently been expelled from the Labour party on charges of antisemitism.

Mr. Greenstein filed a libel suit against the Campaign Against Antisemitism for repeatedly calling him a “notorious antisemite” in online articles. While the court chose not to directly contend with the rightness or wrongness of the IHRA Working Definition, in point of fact it ruled that “The claimant’s tweet compares the people of Israel to the Nazis and, on any objective assessment, an honest person could have held the opinion that that was an antisemitic statement from the claimant.” That is, the court used, knowingly or unknowingly, an example from the IHRA Working Definition to prove that Mr. Greenstein’s anti-Israeli rhetoric was commonplace antisemitism and that any “honest person” could determine as much.⁵⁸

Labour Party Resignations, 2020:

Investigations for alleged antisemitism - all employing the IHRA Working Definition as adopted by the Labour party - have resulted in the resignations or expulsions of several Labour party members. Recent examples include:

1. In March 2020, Ms. Nichole Brennan, a city councilor of Brighton and Hove from the Labour party, resigned her position as deputy housing chairperson after photos had surfaced from a Town Hall rally in 2018, where she was seen holding up a sign calling Israel a “racist, apartheid state”. In the photos she was standing next to Mr. Tony Greenstein who was expelled from the Labour

⁵⁸ <https://jewishnews.timesofisrael.com/jewish-bds-activist-loses-libel-case-over-being-called-a-notorious-antisemite/>; <https://www.bailii.org/ew/cases/EWHC/QB/2020/2951.html>.

party for antisemitic behavior. She apologized to the Jewish community and said, “(a)t the time I was not as knowledgeable about the IHRA Working Definition of anti-Semitism as I am now”, and that now she fully supported the definition.⁵⁹

2. In June 2020, Ms. Rebecca Long-Bailey, also from the Labour party, was fired from her shadow cabinet position after sharing an article on an interview which included a conspiracy theory regarding the murder of George Floyd; namely, that the US police force had learned the tactic of kneeling on a man’s neck in seminars with the Israeli secret services.⁶⁰
3. In July 2020, Ms. Anne Pissaridou, also a Labour councilor from Brighton and Hove, was suspended for Facebook posts from 2016, in which she had promoted antisemitic conspiracies, among them one depicting Jacob Rothschild surrounded by bars of gold juxtaposed to an upset child taking water bottles, stating that the Rothschilds had been controlling “the world’s central banks for centuries”.⁶¹
4. Also in July 2020, Ms. Kate Knight, a councilor in Brighton, resigned from the Labour party after several complaints were made about allegedly antisemitic Facebook posts she had made between 2016 and 2019.⁶²

Council Refuses to Host an Event by Big Ride for Palestine, 2019:

In August 2019, the Tower Hamlets Council refused to host an event by Big Ride for Palestine. The official reason offered to the organizers was that the “political connotations” of the event would pose problems for the council. However, correspondences released under freedom of information requests revealed that the council feared the event would contravene the IHRA Working Definition, given that Big Ride for Palestine’s website included references to Israel’s “apartheid and ethnic cleansing”.⁶³

⁵⁹ <https://www.theargus.co.uk/news/18302417.brightons-labour-housing-chief-resigns-anti-semitism-row/>.

⁶⁰ <https://www.bbc.com/news/uk-politics-53183085>; <https://www.jpost.com/diaspora/antisemitism/uk-labour-leader-demotes-senior-mp-over-sharing-antisemitic-article-632865>.

⁶¹ <https://www.theguardian.com/politics/2020/jul/15/labour-suspends-brighton-councillor-over-alleged-antisemitism-anne-pissaridou>.

⁶² <https://www.brighton-hove.gov.uk/news/2020/councillor-kate-knight-resigns-labour-party-and-councils-labour-group-following-posts>.

⁶³ <https://www.theguardian.com/uk-news/2019/aug/03/uk-council-refused-to-host-palestinian-event-over-antisemitism-fears>.

National Union of Students Committee Member Resigns, 2018:

In 2018 Mr. Ayo Olatunji resigned as a committee member of the National Union of Students (NUS) following comments he had made on social media, including: calling Israel a racist state, promoting comparisons between Nazi and Israeli policies,⁶⁴ and tweeting that “the Israel lobby has been seen to bully the UK into changing headlines and focus, I believe it is happening right now with Jeremy Corbyn.”, and that “there are many Nazi policies and principles that are embodied within Israel’s culture and policy making, don’t allow Israel to change your mind on this.”⁶⁵ The IHRA Working Definition was adopted by the NUS in 2017, and Olatunji’s expressions were described as falling squarely under it - and therefore deemed antisemitic.

Mr. Olatunji resigned just when he was about to face a censure vote of the National Union of Students.

University of Central Lancaster Cancels Israel Apartheid Week, 2017:

In February 2017, an Israel Apartheid Week scheduled at the University of Central Lancaster, entitled “Debunking Misconceptions on Palestine and the Importance of BDS”, was cancelled.⁶⁶

In first explaining their decision, the University cited the IHRA Working Definition adopted by the UK government, and called the event “unlawful”. The university later said to the Guardian that it was cancelled also because organizers did not file to receive the necessary approval in time.⁶⁷

University of Exeter Cancels an Israel Apartheid Week Event, 2017:

Also in February 2017, the University of Exeter cancelled an Israel Apartheid Week event, specifically a staging of a “mock Israeli checkpoint theatre”. It was cancelled for “safety and security reasons”. A letter signed by 250 academics condemned the cancellation as an “outrageous interference with free expression” and academic freedom. Following the wide criticism, the University’s spokesperson stated that it

⁶⁴ <https://thetab.com/uk/2018/08/22/the-union-of-jewish-students-have-accused-an-nus-committee-member-of-antisemitism-78538>.

⁶⁵ <https://www.thejc.com/news/uk/national-union-of-students-officer-resigns-before-censure-vote-on-tweets-comparing-israel-to-nazis-1.469856?highlight=olatunji>.

⁶⁶ <https://www.theguardian.com/world/2017/feb/27/universities-free-speech-row-halting-pro-palestinian-events>; <https://www.thejc.com/news/uk/university-cancels-israel-apartheid-week-event-1.433123>

⁶⁷ <https://www.theguardian.com/world/2017/feb/27/universities-free-speech-row-halting-pro-palestinian-events>.

was “committed to free speech within the law and to allowing legitimate protest to take place on campus.”⁶⁸

“You’re Doing to the Palestinians what the Nazis Did to Me” - Changing the Name of a Holocaust Survivor’s Lecture at Manchester University, 2017:

In February 2017, a Holocaust survivor named Marika Sherwood was scheduled to give a talk during Israel Apartheid Week, entitled “You’re Doing to the Palestinians what the Nazis Did to Me”. The Israeli Embassy in the UK argued before the university that the title violated the IHRA Working Definition as adopted by the government.

A spokesperson for the university said that they had a free speech code of conduct in place, applicable to all on-campus events, and had also checked all relevant laws, including the Equality Act of 2010, before approving campus events. The event went ahead under the title “A Holocaust Survivor’s Story and the Balfour Declaration”.⁶⁹

Germany:

The Cabinet of the Bundestag adopted the IHRA Working Definition on September 20, 2017. Several local authorities also adopted the definition, including: Baden-Wuerttemberg in September 2017, the Berlin Senate in February 2018, the Nordrhein-Westphalia Cabinet in June 2019, and Sachsen-Anhalt and Hessen in October 2020. In October 2019 the German Rectors’ Conference, representing the heads of German universities, adopted the IHRA Working Definition and recommended its employment “at all university locations”. Several companies, financial institutions and sports clubs also adopted the IHRA Working Definition. In Bavaria, the State Commissioner for Jewish Life and against Antisemitism highlighted the importance of adopting the IHRA Working Definition by sending it to 100 Bavarian associations and clubs. Indeed, “as of October 2020, over 70 clubs and associations have adopted the IHRA Working Definition”, including the Association of Bavarian Newspaper Publishers and the Citizens’ Alliance of Bavaria.⁷⁰

⁶⁸ *Ibid.*

⁶⁹ <https://www.theguardian.com/education/2017/sep/29/manchester-university-censors-title-holocaust-survivor-speech-criticising-israel>.

⁷⁰ https://report-antisemitism.de/documents/IHRADefinition_Handbook.pdf.

It is noteworthy that many bank accounts linked with the BDS movement have been closed in recent years in Germany,⁷¹ and this may be linked to the parliament's adoption of a resolution in May 2019 affirming BDS (boycott, divestment, and sanctions) campaigns against Israel as antisemitic, as also stated in the IHRA Working Definition.

Following are some noteworthy examples of the IHRA Working Definition's usage in Germany.

Commissioner Felix Klein Intervenes to Stop an Achille Mbebe Speech at a Festival, 2020⁷² :

In March 2020 Mr. Achille Mbebe, a historian and philosopher who had won several awards for his books and research, was invited to give a speech at an international cultural festival in Bochum. Mr. Mbebe had written a foreword to the book "Apartheid Israel: The Politics of an Analogy".

His invitation to the event was criticized, as he had signed a petition endorsing BDS, which was declared antisemitic by the German parliament a year earlier. Moreover, Mr. Felix Klein, Germany's first appointed Commissioner for the Fight against Antisemitism argued that Mr. Mbebe had used "antisemitic clichés", relativized the Holocaust, and engaged in "Israel-focused antisemitism" in his essay "The Society of Enmity". Mr. Klein stated that therefore he should not be invited to give the opening speech at the festival. After criticisms for his intervention in the matter, Mr. Klein stated that he was "fulfilling (his) mandate as formulated in several German parliament resolutions, particularly when it comes to Israel-focused anti-Semitism."⁷³ At any rate, the event was ultimately cancelled due to Covid-19.

Bavarian Court Upholds Munich City Council's Ban of BDS Activities, 2018:

In December 2017 the Munich City Council adopted a law banning BDS activities in city-funded facilities, citing the antisemitic nature of the campaign.⁷⁴ In September 2018 a BDS activist asked to hold a BDS event at a local museum. When the museum refused due to the anti-BDS law, a lawsuit was filed with the Bavarian

⁷¹ <https://www.jpost.com/bds-threat/post-expos%C3%A9-leads-to-closure-of-bds-groups-bank-account-in-germany-593176>.

⁷² <https://www.dw.com/en/why-achille-mbembe-was-accused-of-anti-semitism/a-53293797>.

⁷³ <https://www.zeit.de/kultur/2020-05/felix-klein-holocaust-achille-mbembe-protests-english>.

⁷⁴ <https://www.jpost.com/BDS-THREAT/Munich-first-in-Germany-to-pass-anti-BDS-law-518033>.

Court. On 12 December 2018, the Bavarian Court upheld Munich’s anti-BDS law, and declared it justified since the law had used modern definitions of antisemitism, including the IHRA Working Definition, to determine that the campaign was, in fact, antisemitic.⁷⁵

Canada:

The Canadian Federal Government adopted the IHRA Working Definition in June 2019. However, attempts to have provinces and cities adopt the definition were mostly rejected, due to concerns about limiting criticism of Israel and having a “chilling effect” on Palestinian rights’ activists.⁷⁶ Some local authorities have adopted the Definition, including the government of Ontario in October 2020, the Côte St. Luc council (a Quebec municipality) in March 2020, Westmount city council in February 2020, and the borough of Côte-des-Neiges in January 2021. There has not been a successful push to have universities adopt the definition, and the few universities that have adopted it include Ryerson University (Toronto) in March 2017 and the University of Manitoba Student Union in December 2020.

Following are some recent examples of the IHRA Working Definition’s usage in Canada.

- B’nai Brith Calls to Ban a Professor from Teaching Human Rights Following Remarks on Zionism as White Supremacy, 2020

In June 2020 Ryerson University hosted an online debate on the IHRA Working Definition entitled “Fighting Anti-Semitism or Silencing Critics of Israel: What’s Behind the Push for Governments to Adopt the IHRA Working Definition of Antisemitism?”.

During the debate, Prof. Faisal Bhabha, a human rights lawyer, made two comments which were later criticized by B’nai Brith: First, saying that “Zionism is about Jewish supremacy”, he equated it several times with the white supremacy phenomena in the

⁷⁵ <https://www.jpost.com/diaspora/german-court-upholds-munichs-ban-of-antisemitic-bds-campaign-575235>.

⁷⁶ <https://static1.squarespace.com/static/5f52a48dcce98340e25350e2/t/602445c3f0a21322c2e327f9/1612989891845/ARC+-+IHRA+Handbook+%28English%29.pdf>;
<https://www.thestar.com/news/canada/2020/01/28/montreal-city-councillor-withdraws-motion-defining-anti-semitism-amid-criticism.html>.

US;⁷⁷ and second, he stated that “accusing Israel of exaggerating the Holocaust could be, for some, a plausible argument”.

While B’nai Brith published an online petition calling for Prof. Bhabha’s removal from human rights teaching based on these comments,⁷⁸ the organization was criticized in turn for taking the comments out of context, since they had been made while discussing the IHRA Working Definition’s various examples, and as a back-and-forth with panelists.⁷⁹

- **#zionistsnotwelcome: Complaints Filed Against a Restaurant for Anti-Zionist Statements, 2020**

The Province of Ontario adopted the IHRA Working Definition on 26 October 2020.

A few days later, the Ontario Human Rights Tribunal received several discrimination complaints against Foodbenders, a restaurant in Toronto, for making several anti-Zionist statements on social media, including: using the hashtag #zionistsnotwelcome, statements such as “Zionist are Nazis”, that Zionists were “greedy and entitled”, that they “control the media”,⁸⁰ and that “police brutality is an Israeli export”.⁸¹ The International Legal Forum also filed a complaint with the Tribunal, in what it called a “groundbreaking case utilizing the IHRA Working Definition”, and “a human rights case for discrimination against any minority.”⁸² All in all, the company faced four lawsuits, other legal actions, as well as an investigation opened by the city of Toronto.⁸³ In December 2020, the restaurant owner announced it was closing its doors: “Given the gravity of what’s at stake, I have made the decision to close Foodbenders and focus on giving my very best defense... in court.”⁸⁴

⁷⁷ <https://www.jpost.com/diaspora/antisemitism/bnai-brith-calls-out-professor-for-comparing-zionism-to-white-supremacy-632708>.

⁷⁸ https://www.bnaibrith.ca/petition_bar_faisal_bhabha/.

⁷⁹ [https://cfe.ryerson.ca/blog/2020/08/professor-petition-and-president-professor-bhabha-b%E2%80%99nai-brith-and-president-lenton?](https://cfe.ryerson.ca/blog/2020/08/professor-petition-and-president-professor-bhabha%E2%80%99nai-brith-and-president-lenton?)

⁸⁰ <https://torontosun.com/news/local-news/levy-foodbenders-shuts-its-doors-in-fight-against-zionists>.

⁸¹ <https://www.algemeiner.com/2020/11/03/toronto-officials-pursuing-charges-against-local-business-accused-of-antisemitism/>; <https://www.timesofisrael.com/toronto-restaurant-loses-business-deals-after-saying-zionists-not-welcome/>.

⁸² <https://www.ilfngo.org/foodbenders>.

⁸³ <https://torontosun.com/news/local-news/levy-foodbenders-shuts-its-doors-in-fight-against-zionists>.

⁸⁴ *Ibid.*

University of Winnipeg, 2018:

In 2018 the University of Winnipeg hosted an event entitled “My Jerusalem: Responding to the US Embassy Announcement”. The event was a discussion on the US’s recognition of Jerusalem as Israel’s capital in December 2017, supposed to include perspectives from Judaism, Christianity, and Islam. However, in point of fact, the “Jewish perspective” was to be given by Rabbi David Mivasair, who had expressed extreme anti-Israeli views. Moreover, the event was scheduled to take place on Purim, and according to Michael Mostyn, CEO of B’nai Brith Canada: “The University of Winnipeg should not be spending public money on absurd anti-Israel propaganda”, and “(i)t is absolutely shameful to host an event concerning Judaism’s holiest city on a Jewish holiday, while refusing to include any mainstream Jewish voices.”⁸⁵

After receiving complaints following the event, the University investigated and found that some comments made during the event were indeed antisemitic per the IHRA Working Definition.⁸⁶ The university then published its recommendations to rectify the situation, including having university community members attend training on university policies and human rights-related topics, as well as “tracking any reported or known incidents of antisemitism on campus, and developing appropriate response protocols and strategies.”⁸⁷

To conclude, in this chapter we presented noteworthy examples of how the IHRA Working Definition has been utilized by various states, governmental and non-governmental entities and cited in various university and city council decisions. These examples show that it has been used to cancel events, in court rulings on libel, in calls to fire government position holders and professors, and in complaints filed alleging antisemitic harassment on university campuses. In the next chapter we will address such uses of the IHRA Working Definition and offer some recommendations for its intended and effective employment.

⁸⁵ https://www.bnaibrith.ca/university_of_winnipeg_sponsors_anti_israel_event_on_purim/.

⁸⁶ <https://news.uwinnipeg.ca/wp-content/uploads/2018/03/Final-review-summary-October-3-18.pdf>

⁸⁷ <https://news.uwinnipeg.ca/statement-on-comments-at-my-jerusalem-panel-discussion/>;
<https://www.algemeiner.com/2018/10/25/university-of-winnipeg-apologizes-for-antisemitic-statements-made-at-campus-event-on-jerusalem/>.

IHRA POLICY RECOMMENDATIONS

The debate on the IHRA's definition of antisemitism has intensified over the last few years, especially with regard to its content and employment. In light of this growing debate, some recommendations are necessary in order to ensure the definition's effective application and avoid political polarization around it.

Following the analysis of the WDA's implementation and the debate around it in the previous sections (II and III), the following recommendations address the document's employment and adoption, as well as its use for identifying Israel-related antisemitism.

These recommendations have been formulated to ensure the effective use of the IHRA definition and to prevent backlash in the fight against antisemitism, ensuing from inaccurate implementation of its content.

On the employment of the IHRA Working Definition:

In its first sentence the IHRA document states that it is a “**non-legally binding working definition of antisemitism.**” This basic principle should not be altered, because herein lies the document's strength.

The WDA, a short and unassuming paper, is general enough to be flexible, and this flexibility is the source of its strength, making it a useful tool. It should be clarified that the IHRA definition does not include new prohibitions, nor does it set new standards of conduct. Rather, it is a document which helps one understand a specific form of hatred, namely antisemitism. Hence, the IHRA document is not a law in itself, but a tool that can be of service to lawmakers and policymakers, judiciaries and law enforcement agencies.

Recommendations:

1. The IHRA WDA should be used as an interpretive tool for understanding a phenomenon of hatred and for implementing already existing laws related to hate crimes and hate speech.
2. The IHRA definition should be integrated into codes of ethics and statutes and used only to interpret already existing laws, by-laws, and regulations of states,

institutions, and organizations. For instance, a member of an organization advancing antisemitic tropes should be disciplined because **s/he has violated that** organization's statutes and codes of conduct, while the IHRA definition should be employed merely to interpret such codes.

3. When adopted by institutions the IHRA definition should not be employed as a by-law. *E.g.*, it should not be employed to seek disciplinary or punitive measures against individuals.
4. The IHRA definition should be employed in courts only as an interpretive tool characterizing certain conduct as tainted by an antisemitic motive. For instance, if a court case deals with an attack on Jewish property, the IHRA definition may be used to clarify whether the attack had an underlying antisemitic motive.
5. Monitoring agencies and organizations should refrain from using the expressions “violation”, “contravention” or “infringement” with regard to the IHRA definition: the IHRA definition cannot be violated or breached, as it is not a law. Instead, the IHRA definition should be used to label conduct or speech as “antisemitic according to the IHRA definition”.

On the adoption of the IHRA Working Definition:

Recently the WDA has enjoyed an increase in the number of adoptions worldwide, as well as a constantly growing public and academic consensus: it has been adopted by close to 500 entities, with 350 academics signing a supporting letter in early April 2021. Lobbying and civic activities further accelerate the adoption and broaden the consensus, but political pressure and financial threats used to coerce adoption may generate a negative backlash. The WDA should be adopted for what it is, not because of pressure or punishment.

As the WDA spreads, more voices arise against its contents and use, with some alternative definitions formulated, mainly by academics and scholars. Most critics focus mainly on Israel-related antisemitism, and the Israel-related examples in the text, while the WDA was created first and foremost in order to identify and explain the overall phenomenon of antisemitism as a form of hatred against Jews, as both individuals and communities, and against the citizens of the Jewish state. It was formulated and worded with an emphasis on Jewish-related antisemitism and adopted out of the need to alleviate the Jews' situation, once antisemitism proved

rampant. This is indeed where its strength lies, and the reason for its adoption even by countries who do criticize, sometimes even severely, Israeli policies - because these countries care about, and feel responsible for, the safety and wellbeing of their Jewish citizens.

Recommendations:

- 6.** Law enforcement agencies, judicial authorities, and legal practitioners should organize training courses for including the IHRA document in the tools for combating hate crimes.
- 7.** Human rights activists, community leaders, and religious leaders, Jewish and non-Jewish alike, should organize seminars for including the IHRA document in their work and ensuring in this way its dissemination and implementation at different levels. Indeed, the IHRA document should be a further instrument for combating bigotry and promoting dialogue among communities.
- 8.** Given the growing importance of the IHRA document, toolkits for its effective employment should be produced, containing best practices and the major arguments of the debate revolving around it. Beneficiaries would comprise human rights defenders and policymakers at all levels, including governmental agencies, local authorities, and universities.
- 9.** Coercing institutions to adopt the IHRA definition is counterproductive. The effectiveness of the definition lies in the broad and ever-growing consensus around it. While lobbying and social activism advancing the IHRA definition contribute to broadening this growing consensus, political pressure or financial threats aiming to expand adoption may lead to a negative backlash.
- 10.** In light of alternative definitions of antisemitism that are recently being drafted, it should be noted that the IHRA document enjoys the broadest international consensus, including adoption by hundreds of institutions and endorsement by many academics and activists. Moreover, its flexibility and general formulation enables a comprehensive view of the phenomenon of antisemitism, contrary to other documents that overtly focus on Israel-related antisemitism.

On the use of the IHRA working Definition for identifying Israel-related antisemitism:

The IHRA definition addresses several aspects of Israel-related antisemitism, many of which are undoubtedly politically tainted, mostly because views greatly diverge as to the extent of antisemitic speech and tropes regarding Israel. This was the novelty of the definition and a lacuna it needed to address.

If Jews across Europe are attacked as a result of developments in the Middle East, today such an attack would clearly be deemed as Israel-related antisemitism. However, this was not the case between 2000-2015, years of major changes on the scene: The Durban Conference took place in 2001, and its virulent anti-Jewish and anti-Israel atmosphere opened the door to a rise in violent antisemitic acts, and to anti-Israel demonstrations and manifestations; and in addition, the BDS movement was established in 2005. These and other occurrences served as incubators of "the new antisemitism": a new phase in the long history of antisemitism, one characterized by increased violence, more radical Muslim activity, and intensification of anti-Israel manifestations. This phenomenon, at first difficult to name and understand, was the object of heated political debates. The IHRA definition came to finally address the issue of anti-Israel manifestations and their relation to antisemitism in this highly problematic and politicized context.

Simultaneously, the BDS movement gained dominance, cloaked in political and human rights jargon. BDS activists presented themselves as human rights defenders, all the while using classic antisemitic motifs and tropes. This too was difficult to decipher: are they human rights activists or anti-Semites? And the polarization on the Israel-Palestinian conflict only enhanced the confusion because every anti-Israel sentence was increasingly categorized as antisemitic by some, while others, no matter how extreme the statement, automatically considered it a human rights argument. It was in this context that the Working Definition of Antisemitism was formulated in 2004, and first adopted in 2005 by the OSCE.

The May 2016 IHRA adoption of the WDA came to consolidate the understanding of what antisemitism is and what its new evolving forms are. It is therefore not surprising, given the context of those years, that some of the explanatory examples

in the WDA refer extensively to Israel. It could be argued that the definition and its effects have become so significant that the whole discourse around Israel has slowly begun to change, with more understanding of, and sensitivity towards Israel-related antisemitism becoming part of the public discourse. The goal of the IHRA definition is to regulate political speech applied to Israel.

A few more clarifications: All in all, the anti-Israel discourse has two aspects: one is the antisemitic tropes themselves, directed against Israel as a Jewish collective, and the second is the effect of virulent anti-Israel discourse on Jewish communities worldwide. Also, some aspects of the WDA refer to the “double standard” theory developed in the 2010s, after a decade during which Israel was accused of the worst crimes and Israeli officials were threatened with prosecution in the International Criminal Court. The anti-Israel arguments were often disavowed by international military experts and it was clear that Israel was being targeted for ideological reasons as no other state involved in an armed conflict. When international organizations and states apply harsher standards solely to Israel or disproportionately against Israel, this can be argued to be discriminatory at the very least.

Recommendations:

- 11.** The IHRA definition should be employed with caution when assessing a manifestation of antisemitism. Those who employ the IHRA should not attack or blame an individual or an organization following a single first expression or statement; rather, they should assess the individual's or organization's overall stance and behaviour.
- 12.** Particularly when assessing cases of Israel-related antisemitism, the IHRA definition should be employed to characterize the general activity of a certain organization, in order to understand the overall nature of its discourse and to what extent its anti-Israel stances reflect antisemitic tropes as explained in the IHRA.
- 13.** Employing the Definition to identify anti-Israel antisemitism is important, but its use for pro-Israel activities and advocacy should be limited to cases in which antisemitic speech is clearly identified.
- 14.** Anti-Israel and anti-Zionist ideologies lead to anti-Israel discrimination manifested at times in boycotts affecting not only Israelis or Jews but any entities

doing business with Israel. Indeed, this can be plainly described as discrimination, but does not necessarily amount to antisemitism. Such cases, in which a double standard is used to single out Israel, should be called out as discrimination rather than antisemitism. This of course does not rule out the possibility that this kind of discourse might include antisemitic tropes.

- 15.** While the IHRA document contains a number of explanatory examples referring to the state of the art in antisemitic manifestations, more examples may be added in the future, to keep abreast of the ever-evolving manifestations of antisemitism and Jew-hatred. But they should only be added, if at all, after careful consideration of the OSCE (Organization for Security and Cooperation in Europe) and IHRA committees that originally drafted and subsequently adopted the working definition.

The mapping of the IHRA Working Definition Adoption was conducted in cooperation with the students of the Program for the Struggle against Antisemitism in the Haifa University School of tourism, supported by the Nina and Walter Wiener Scholarship Program against Antisemitism 2020/21.