

How Not to Fight Antisemitism:

A Critique of the International Holocaust Remembrance Alliance Working Definition of Antisemitism (IHRA-WDA)

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Armed with a [legal] determination that effectively says campus anti-Zionism is antisemitism, these professors will correctly see themselves at risk when they ask their students to read and digest materials deemed anti-Zionist, whether the writings of leading 20th century Jewish thinkers who were skeptical of Zionism, such as Hannah Arendt and Martin Buber, or of contemporary Palestinians. [...]

My fear is, if we similarly enshrine this definition into law, outside groups will try and suppress — rather than answer — political speech they don't like. The academy, Jewish students, and faculty teaching about Jewish issues, will all suffer.

Testimony of Kenneth Stern, original author of the text adopted for the IHRA Working Definition of Antisemitism, given before the United States House of Representatives Committee on the Judiciary Hearing on Examining Anti-Semitism on College Campuses, November 7, 2017

TABLE OF CONTENTS

Executive Summary	1
Introduction	3
Background	6
Structure of the IHRA-WDA	11
Detailed Review	12
Summary	21
Appendix 1: Full Text of the IHRA Working Definition of Antisemitism	22

EXECUTIVE SUMMARY

Antisemitism is a form of racism and as such must be opposed on general anti-racist principles, in solidarity with other anti-racist struggles and in concert with the principles of human rights and equality for all. Unfortunately, both the government of Israel and Zionist groups the world over are using society's legitimate concern about antisemitism to redefine it to include criticism of Israel and the Zionist ideology behind it. Their goal is to suppress — and even criminalize — criticism of Israel and support for Palestinian rights. Indeed, according to a recent survey, almost half of Canadian Jews believe that accusations of antisemitism are “often used to silence legitimate criticism of Israeli policies.”

One of the primary vehicles that Israel and its supporters are using to equate criticism of Israel with antisemitism is the International Holocaust Remembrance Alliance Working Definition of Antisemitism (IHRA-WDA). An international campaign is currently underway to have this definition adopted by national and subnational governments and legislatures, as well as by universities and other public institutions.

The IHRA-WDA was originally developed (but never formally adopted) by the European Monitoring Centre on Racism and Xenophobia (EUMC) to provide a common set of guidelines for researchers, agencies and governments monitoring incidents of antisemitism in Europe. It was authored by American attorney Kenneth Stern as a discussion paper and ad hoc guide for researchers and statisticians.

The IHRA adopted Stern's definition quickly and with no debate. It was subsequently picked up by the government of Israel and other Zionist organizations because it was a handy cudgel — with the imprimatur of the IHRA, an organization whose mandate is Holocaust education and memorialization — with which to beat back criticism of Israel, anti-Zionist and Palestinian rights discourses, and the Boycott, Divestment and Sanctions (BDS) movement. Zionist organizations and their allies are now working to give the IHRA-WDA legal and administrative power, something it was never intended to have and for which it is totally unfit.

In Canada, the Centre for Israel and Jewish Affairs (CIJA) is lobbying to have the IHRA-WDA adopted by all levels of government and included as part of all university codes of conduct. It is also working to “educate” police as to the nature of “the new antisemitism” using the IHRA-WDA.

The IHRA-WDA is a deeply flawed document. It fails to provide an adequate objective standard that can be used to identify antisemitic incidents and/or antisemitic speech. It is insufficiently precise for legal and administrative uses, and its adoption for this purpose by Zionist lobby groups is opportunistic. Even Kenneth Stern has strongly opposed its use as a

legal or administrative definition of antisemitism. He has warned that such a use will be a threat to both academic freedom and freedom of expression in general.

The actual definition of antisemitism embedded within the IHRA-WDA is so vague and tautological as to be almost meaningless, and it provides virtually no help in deciding if a particular incident is or is not antisemitic. The numerous examples, which make up the bulk of the definition, are poorly crafted from a legal/administrative point of view, as they are completely context-reliant. In the fine print, the IHRA-WDA actually admits that its examples do not describe definitive incidents of antisemitism, just that they *might be* antisemitism. Unfortunately, the examples are being taken up by advocates for the IHRA-WDA as absolute litmus tests.

Thus, on its own terms, the IHRA-WDA is not fit as a tool to adjudicate whether an incident is or is not antisemitic. It certainly should not be used as the basis of any formal condemnation or sanction. Yet this is precisely what is being proposed and how it is already being used. If the IHRA-WDA is formally adopted, as CIJA urges, those who voice legitimate opposition to Israel's policies toward the Palestinians will be prevented from speaking or punished if they do speak.

All this should be enough reason to reject the IHRA-WDA for any legal, quasi-legal, or administrative purpose, even if it was being presented as a good faith effort to educate about and fight against antisemitism. But it is not being presented in good faith. Its pro-Israel agenda is clear. Seven of its eleven examples label criticism of Israel or Zionism as antisemitic. CIJA states in its own press releases that adoption of the IHRA-WDA is part of its campaign to fight the "new antisemitism" wherein Zionism is an essential and core Jewish tenet, and trenchant critiques of Israeli policies are motivated by antisemitism rather than a legitimate concern for Palestinians or for human rights.

Ultimately, the IHRA-WDA is a poor definition of antisemitism. The primary goal of those promoting it — and we fear its actual effect if it is adopted — is to ban or criminalize criticism of both Israel and Zionism, along with support for Palestinian rights. As such it represents a threat to the struggle for justice and human rights in Israel-Palestine, as well as to academic freedom, freedom of expression and the right to protest.

Antisemitism is a real problem and must be fought in all its forms. But this is not the way. The fight against antisemitism is inseparable from the struggles against racism, xenophobia and hatred of ethnic and religious groups. The fight against antisemitism must be joined to the struggle for equality and human rights for all people in Canada, in Israel-Palestine and around the world. We urge readers of this report to join us in opposing the adoption of the IHRA-WDA by Canadian governments, universities, police and other authorities.

INTRODUCTION

Independent Jewish Voices Canada (IJV) defines antisemitism as hostility, prejudice, or discrimination against Jews because they are Jews. Modern antisemitism encompasses many, often contradictory ideas, but at its root it is an ideology that views the entire Jewish people as a single demonic collective, acting in harmony in a conspiracy to subvert others, usually in order to gain profit. We are painfully aware of the evils of antisemitism, especially in Christian Europe, and its ultimate horrific expression in the Holocaust. Many of us lost family members in that genocide. Some of our members are themselves Holocaust survivors.

Moreover, recent events in Europe as well as the U.S., where 12 Jewish congregants at the Tree of Life Synagogue were murdered by a white supremacist shouting antisemitic slogans, provide unwelcome evidence that this age-old scourge is still with us, and indeed has been worsening in the past few years.

IJV is active in the struggle against antisemitism. In fighting antisemitism, we emphasize that we reject *all* forms of racism and oppression. We believe that antisemitism is a type of racism that is intimately tied to other forms of racism, and that antisemitism increases when racism, xenophobia and intolerance of all sorts are on the rise. We are committed to realizing the goal of “Never again,” ensuring that it means “Never again — for anyone.” For these reasons, we believe that **the battle against antisemitism is actually undermined when opposition to Israel's oppression of the Palestinians is branded antisemitic.**

We insist that it is not antisemitic to oppose oppressive Israeli policies or to support resistance to that oppression in solidarity with the Palestinians, such as heeding Palestinian civil society's call to support the Boycott, Divestment, and Sanctions (BDS) movement, whose purpose is to pressure Israel to abide by international law and respect Palestinians' human rights. Like many other Jews, we see it as our moral responsibility to challenge the legitimacy of a situation in which a modern state discriminates against Palestinians and non-Jews using overwhelming political, economic, and military power to oppress them.

Recently, the Israeli government and Israel advocacy organizations such as the Centre for Israel Canada Affairs (CIJA) and B'nai Brith Canada have been attempting to exploit concern about antisemitism by redefining antisemitism to include criticism of Israel and of the Zionist ideology that impels it. **Their purpose is to deflect and ultimately delegitimize criticism of Israel's treatment of the Palestinians.** To see how misguided this strategy is, note that, according to a recent survey,¹ **approximately 60 percent of**

¹ [Two Jews, Three Opinions: Jewish Canadians' Diverse Views on Israel-Palestine](#), February 2019.

Canadian Jews do not see criticism of Israel as necessarily antisemitic, and almost half (48 percent) believe that accusations of antisemitism are “often used to silence legitimate criticism of Israeli policies”.

One of the recent and most dangerous manifestations of this manipulative strategy of equating criticism of Israel and anti-Zionism with antisemitism is the recommendation that governments and institutions adopt the International Holocaust Remembrance Alliance Working Definition of Antisemitism (IHRA-WDA). This is ultimately an attempt to render criticism of Israel or participation in BDS-related activity illegal and/or generate support for censorship.

Labelling critics of Israel’s laws, policies or actions as antisemites is designed to divert attention from the fact that Israel is an oppressive military superpower that is occupying Palestinian lands and subjecting Palestinian citizens of Israel to a range of discriminatory laws. Fabricated charges of antisemitism serve to shut down all debate regarding Israel by perpetuating the myth that Israel, and by extension Jews in general, are in existential danger. Similarly, labelling Palestinian rights supporters as antisemitic² a priori disqualifies and invalidates their claims. Both these false charges of antisemitism imperil any possibilities for peace and justice in Israel-Palestine.

In the September 7, 2018 CIJA electronic newsletter, CIJA Chair David J. Cape announced that

*We are launching a national campaign to have government and police adopt the International Holocaust Remembrance Alliance (IHRA) definition of antisemitism [...] **because it explicitly confirms that anti-Zionism is antisemitism.** [Emphasis added.]*

Included in the organization's 2018 Federal Issues Guide is the recommendation that

[t]he Government of Canada and relevant departments and agencies should adopt the International Holocaust Remembrance Alliance (IHRA) definition of antisemitism for domestic Canadian purposes.³

CIJA’s goal is to have the definition written into Canadian federal, provincial and municipal law, as well as university and other administrative policies, to serve as a criteria by which to censor or punish Canadian advocates and organizations supportive of Palestinian rights. However, the IHRA definition was not developed for this purpose. It was not originally designed as a legal or administrative guideline and, as a result, it is open to highly subjective interpretations. Furthermore, the examples it provides — which make up the bulk of this “definition” — frequently condemn “anti-Israel advocacy” while largely

² Israel’s advocates have used the charge of antisemitism to attack a variety of groups supportive of Palestinian human rights, including (among others) the World Conference Against Racism, Black Lives Matter, the Women’s March, the Green Party of Canada, the Canadian Federation of Students, the British Labour Party, and the 2016 World Social Forum.

³ <https://cija.ca/wp-content/uploads/2018/11/CIJA180821-Federal-issues-guide-2018-7.pdf>

ignoring more traditional and truly dangerous forms of antisemitism. **In short, the IHRA definition is not fit to be used as any sort of legal or quasi-legal document.**

Kenneth Stern, the American attorney who originally drafted the IHRA-WDA, has condemned the way it is now being used to curb freedom of speech: He has asserted that his definition is being used for an entirely different purpose from that for which it was designed.⁴ Originally created as a draft “working definition” to help standardize data collection on antisemitic hate crimes in different countries of Europe (and never even officially adopted as such), it is now being used by Israel and its supporters to curb the exercise of free speech by those who extend solidarity to Palestinians. Even worse, the use of this definition threatens academic freedom, freedom of expression, and freedom of protest.⁵

In South Carolina, where the State Legislature recently passed a bill that that would require colleges to apply the IHRA-WDA when deciding whether an incident or speech violates anti-discrimination policies and necessitates penalties, Jewish Studies professors have come out against the bill saying it would curb academic freedom, require them to update existing courses, and put a chill on academic and political discussion.⁶

It is important to fight antisemitism in all its forms and wherever it appears. But adoption of the IHRA-WDA is not the way. Rather it is more important than ever that we extend our hand in solidarity and forge alliances of mutual support with targets of oppression everywhere, including Palestinians. We must also reject attempts to delegitimize or criminalize those engaged in this necessary solidarity work. **We must oppose all attempts to have the IHRA-WDA adopted by legislative, legal and administrative bodies in Canada and worldwide.**

BACKGROUND

The IHRA-WDA has received considerable attention since it was first released in 2016. In particular it has been adopted by many Jewish and Zionist groups that have lobbied for it to become the accepted definition worldwide, and be used as a legal or quasi-legal standard in determining what is and what is not antisemitic speech and behaviour. Largely due to such

⁴ https://www.postandcourier.com/s-c-anti-semitism-bill-isn-t-needed/article_f17d607e-29e5-11e7-b4a7-a35035f3dc38.html?fbclid=IwAR1b_XH90VDSGif1wII_yRIKSK9DVMHk0PIZKe3HYg-9oUpvMAR7b7sCUvI

⁵ <https://docs.house.gov/meetings/IU/IU00/20171107/106610/HHRG-115-IU00-Wstate-SternK-20171107.pdf> and <https://www.jewishvoiceforlabour.org.uk/blog/why-the-man-who-drafted-the-ihra-definition-condemns-its-use/>

⁶ https://www.postandcourier.com/opinion/commentary/anti-semitsm-bill-would-suppress-open-discussion-on-israel/article_7c313266-2f97-11e7-8fee-c7aec6cb3efe.html?fbclid=IwAR20nFWN7LYAUZbIo74dclrGs24fyzvrWtHyvI6Q4LG2uXItMn1pzsdBv2w

lobbying, as well as calls by the IHRA itself, the IHRA-WDA has been adopted by Israel and several European nations.

The IHRA-WDA has its roots in a working definition of antisemitism first published by the European Monitoring Centre on Racism and Xenophobia (EUMC) based on work done in 2003-2005. The purpose of the definition was to provide a common set of guidelines for researchers, agencies and governments monitoring incidents of antisemitism in Europe. **It was meant as a discussion paper and ad hoc guide to researchers and statisticians**, and its goal was that all parties involved in monitoring antisemitism would reach consensus regarding how to define antisemitic incidents.

The primary author of the definition, Kenneth Stern — at the time a lawyer working on behalf of the American Jewish Committee, and currently director of the Bard Center for the Study of Hate — has stated that the definition was created

as a tool for data collectors in European countries to identify what to include and exclude from their reports about antisemitism, and to have a common frame of reference so that data might be compared across borders.⁷

Stern continues to promote the definition for this purpose. But he strongly opposes its use as a legal definition. He has opposed efforts to enshrine it in legislation and wrote a letter in December 2016 to members of the U.S. Congress warning that giving the definition legal status would be "unconstitutional and unwise." Earlier, in 2011, he co-authored an article about how the "Working Definition" was being abused in U.S. Title VI cases (barring discrimination based on religion or national origin).⁸ In November 2017, Stern explained to the U.S. House of Representatives how the definition has been abused on various U.S. university campuses. **He warned that it has been used to "restrict academic freedom and punish political speech" and questioned whether definitions created by minority groups should be legislatively enshrined:**

Imagine a definition designed for Palestinians. If "Denying the Jewish people their right to self-determination, and denying Israel the right to exist" is antisemitism, then shouldn't "Denying the Palestinian people their right to self-determination, and denying Palestine the right to exist" be anti-Palestinianism? Would they then ask administrators to police and possibly punish campus events by pro-Israel groups who oppose the two-state solution, or claim the Palestinian people are a myth?⁹

Despite Stern's continued support of the WDA as a research and monitoring tool, not all members of the EUMC agreed. **The WDA was widely criticized and controversial at the**

⁷ <https://jewishjournal.com/opinion/175207/>

⁸ <https://www.aaup.org/news/cary-nelson-and-kenneth-stern-pen-open-letter-campus-antisemitism#XOaumMhKiM8>

⁹ <https://docs.house.gov/meetings/IU/IU00/20171107/106610/HHRG-115-IU00-Wstate-SternK-20171107.pdf?fbclid=IwAR1kex7O4tHa0g7vONpTikEXBtrT6A0KKiGYUp0iMYbZ44NozwuUoQ17lmU>

time, even as a research and monitoring tool, and the EUMC never formally adopted it. The EUMC stated that the definition was only posted on its website as a basis for discussion. The EUMC was disbanded in 2007, and its successor organization, the European Union Agency for Fundamental Rights (FRA), removed the definition from its website in "a clear-out of non-official documents"; a spokesperson stated at the time that "We are not aware of any official definition [of anti-Semitism]".¹⁰

In 2010, the international "Inter-parliamentary Coalition for Combating Antisemitism (ICCA)"¹¹ met in Ottawa and issued the Ottawa Protocol, that among other things called

*... on parliaments and governments to adopt the EUMC working definition and anchor its enforcement in existing law.*¹²

This appears to be the first time that the WDA was conceived of as a legal definition to be used by law enforcement.

In May of 2016, the IHRA met in Bucharest, Romania and adopted the then-dormant EUMC definition of antisemitism as a "non-legally binding working definition of anti-Semitism." According to Mark Weitzman of the Simon Wiesenthal Centre, it was copied from the EUMC version since "there was not enough time to invent a new one."¹³ The decision was taken by consensus amongst IHRA's 31-member country delegates meeting in Bucharest. The intended purpose of the definition was not clearly stated other than "to help the IHRA in its ongoing work."¹⁴

It should be noted that the IHRA's primary mandate is Holocaust education and research. On its website it states:

The International Holocaust Remembrance Alliance unites governments and experts to strengthen, advance and promote Holocaust education, research and remembrance and to uphold the commitments to the 2000 Stockholm Declaration.

The IHRA (formerly the Task Force for International Cooperation on Holocaust Education, Remembrance and Research, or ITF) was initiated in 1998 by former Swedish Prime Minister Göran Persson. Today the IHRA's membership consists of 31 member countries, each of whom recognizes that international political coordination is imperative to strengthen the moral commitment of societies and to combat growing Holocaust denial and antisemitism.

¹⁰ https://en.wikipedia.org/wiki/Fundamental_Rights_Agency

¹¹ It should be noted that the ICCA was a group of self-appointed parliamentarians working in coordination with/sponsorship of the B'nai Brith Anti-Defamation League (ADL) and with B'nai Brith International. They appear to have had only two international meetings: in London in 2009 and in Ottawa in 2010. They appear to no longer be active, and their last publication appears to be in 2013.

¹² <http://canisa.org/ottawa-protocol.html>

¹³ https://en.wikipedia.org/wiki/Working_Definition_of_Antisemitism

¹⁴ https://en.wikipedia.org/wiki/Working_Definition_of_Antisemitism#IHRA_publication

The IHRA's network of trusted experts share their knowledge on early warning signs of present-day genocide and education on the Holocaust. This knowledge supports policymakers and educational multipliers in their efforts to develop effective curricula, and it informs government officials and NGOs active in global initiatives for genocide prevention.¹⁵

Adoption of the IHRA-WDA has not been without controversy. Many critics claim that it may be used — or that its primary purpose is — to stifle legitimate criticism of Israel and/or Zionism. In 2016, an all-party committee of the British Parliament warned the government that adoption of the IHRA-WDA could stifle free speech.¹⁶ In its report, the committee wrote:

*We broadly accept the IHRA definition, but propose two additional clarifications to ensure that freedom of speech is maintained in the context of discourse about Israel and Palestine, without allowing antisemitism to permeate any debate. The definition should be amended to add the following caveats: **'It is not antisemitic to criticize the Government of Israel, without additional evidence to suggest antisemitic intent'** and **'It is not antisemitic to hold the Israeli Government to the same standards as other liberal democracies, or to take a particular interest in the Israeli Government's policies or actions, without additional evidence to suggest antisemitic intent.** [Emphasis added]*

In 2016, the IHRA called on the EU to adopt its definition, and in 2017, the European Parliament called on all European nations to adopt the definition, but **without its examples**. In December 2018, the European Commission and its Justice and Home Affairs Council adopted the IHRA-WDA, but **without its examples**¹⁷ and — despite pressure from the Israeli government to make it binding — called for the definition to be used for guidance only.¹⁸

Several European nations have in fact adopted the definition in full (UK, Austria, Scotland, Romania, Germany and Bulgaria, Lithuania and Macedonia), although its precise legal status is vague and varies from country to country. The U.S. State Department has adopted it for purposes of monitoring foreign incidents of antisemitism.

¹⁵ <https://www.holocaustremembrance.com/about-us>

¹⁶ <https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/136/136.pdf> (page 12, item 24)

¹⁷ <http://www.france-palestine.org/France-delivers-an-official-blow-to-Israel-s-manipulation-of-the-definition-of>

¹⁸ <https://www.haaretz.com/world-news/europe/.premium-eu-adopts-declaration-that-doesn-t-link-anti-semitism-to-anti-zionism-1.6722922>

In Canada, the federal government appears to support the IHRA-WDA. In August 2017, in response to an inquiry from Canadian Friends of the Simon Wiesenthal Centre (CFSW), Minister of Canadian Heritage Melanie Joly, wrote:

Canada strongly supports the working definition of anti-Semitism and the illustrative examples that were adopted by consensus in May 2016.¹⁹

Global Affairs Canada states that it currently supports the IHRA-WDA, although it is not clear for what purposes. Their website states:

As a proud member of IHRA, Canada strongly supports the working definition on antisemitism and illustrative examples which were adopted by consensus in May 2016.²⁰

In addition, there is pressure from Zionist groups such as CIJA to have the IHRA-WDA adopted by various levels of government. Their goal is to have it used as the legal definition of antisemitism when invoking Canada's anti-hate laws, as well as for protection against charges of racism and discrimination under the federal Charter of Rights and various provincial Human Rights Codes. These groups also want the IHRA-WDA to be used by administrators of public institutions, such as universities, in applying their own anti-discrimination policies. As well, they are attempting to "educate" police departments about antisemitism using the IHRA-WDA. In a CIJA position paper regarding the 2018 Ontario municipal elections, they write:

The Toronto Police Service and York Region Police should adopt the International Holocaust Remembrance Alliance (IHRA) definition of antisemitism. [...] This includes real world examples that help distinguish antisemitic rhetoric from legitimate political discourse. ... By using this practical guide, police will be better positioned to identify and combat hate motivated crimes targeting the Jewish community.²¹

These efforts are openly focused on including in officially supported and endorsed definitions of antisemitism the "new antisemitism", i.e. "anti-Israel" and "anti-Zionist" speech and activities. CIJA's Policy brief on the IHRA-WDA states:

[The IHRA-WDA] reflects a consensus among scholars²² that a new type of antisemitism has emerged post-Holocaust, in the form of hatred of Jews presented under the guise of hostility toward Israel and/or Zionism. [...]

¹⁹ <https://www.friendsofsimonwiesenthalcenter.com/news/fswc-commends-government-support-for-ihra-working-definition-of-antisemitism>

²⁰ https://international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/freedom_religion-liberte_religion.aspx?lang=eng

²¹ <https://cija.ca/fighting-antisemitism-a-gta-challenge-and-municipal-election-priority/>

²² It is important to note that, contrary to CIJA's claim, there is no such consensus among scholars regarding either the IHRA-WDA nor CIJA's thesis that anti-Zionism is the new antisemitism. See for example: <https://www.haaretz.com/israel-news/premium-israeli-professors-warn-against-equating-anti-zionism-with-anti-semitism-1.6674309>

Today, scholars widely acknowledge a new form of antisemitism in the form of hatred against Israel, the world's only Jewish-majority state. Where Jews were once vilified as individuals and a collective, today the Jewish state is vilified by some – often using terminology and conspiracy theories that mirror historic antisemitism. That anti-Zionist ideology and accusations are often presented in the language of human rights does not exempt them from scrutiny; as noted above, antisemitism has always used the highest values of the era as cover for legitimacy.*

To put it in simpler terms, as Martin Luther King Jr. once remarked when responding to a critic of Zionism: “When people criticize Zionists, they mean Jews, you are talking antisemitism.”

Of course, many critics of Israel, as well as non- or anti-Zionists both within and outside of the Jewish community, disagree with this theory of the “new antisemitism” that equates all Jews with Zionists, Judaism with Zionism, and all harsh criticism of Israel and/or opposition to Zionism with antisemitism.²³ They also oppose governments and public institutions endorsing the IHRA-WDA, and certainly of having it adopted as a legal or quasi-legal definition of antisemitism.

The remainder of this document analyzes the IHRA-WDA in order to assess whether it is indeed suited to become the legal or quasi-legal standard by which speech and acts in Canada will be judged to be antisemitic. We believe our analysis will bear out our opinion that it is not.

²³ <https://www.haaretz.com/israel-news/.premium-israeli-professors-warn-against-equating-anti-zionism-with-anti-semitism-1.6674309>
<https://www.theguardian.com/commentisfree/2016/dec/28/britain-definition-antisemitism-british-jews-jewish-people>
<https://www.opendemocracy.net/uk/brian-klug/code-of-conduct-for-antisemitism-tale-of-two-texts>
<https://www.lrb.co.uk/v39/n09/stephen-sedley/defining-anti-semitism>
<https://forward.com/opinion/414449/no-bds-is-not-anti-semitic-and-neither-is-ilhan-omar/>
<https://www.nytimes.com/2018/12/07/opinion/rashida-tlaib-israel-antisemitism.html>
<https://www.theatlantic.com/international/archive/2011/09/tony-judts-final-word-on-israel/245051/>

STRUCTURE OF THE IHRA-WDA

The IHRA-WDA is reproduced in full in Appendix 1 below. It has four parts:

- A preamble (including the first sentence within the box)
- The definition itself (in bold within the box).
- Examples of antisemitism. This part has its own preamble plus eleven bullet-pointed examples.
- Notes regarding antisemitism and legal/criminal issues. This comprises three sentences regarding when antisemitism might be illegal and/or criminal.

It is unclear whether the examples and notes are meant to be an integral part of the definition, or simply additional materials. At times, different IHRA spokespersons have taken different positions on this issue. Various countries and parties have adopted the definition with and without the examples.

DETAILED REVIEW

This review will examine the usefulness and appropriateness of the IHRA-WDA as a legal or quasi-legal document that can be used to fairly and accurately identify whether or not incidents or statements are antisemitic.

The first point that needs to be made is that this definition of antisemitism is poorly worded and awkwardly formatted. As noted above, it is unclear if the examples are integral to the definition, and what the relationship of the notes on criminality is to the definition and/or the examples. It certainly does not meet the standard of any legal or quasi-legal document that could be used to make determinations re individual cases.

Second, **the IHRA-WDA does not base itself on nor draw from nor engage with any of the substantial academic and theoretical work on racism in general, and antisemitism in particular, in the past 70 years.** It fails to account for the differences between systemic racism/antisemitism and individual racism/antisemitism, or between beliefs, tropes, speech acts, micro-aggressions, discrimination, property damage and outright personal violence, and the interplay between these.

The rest of this section will analyze the IHRA-WDA section by section, based on the outline above.

THE PREAMBLE

The preamble states quite clearly that this is a “non-legally binding definition of anti-Semitism.” **This excuses its vagueness (see below), but also acknowledges that it is unfit for the purpose now being proposed for it, i.e. serving as the basis for determining, in legal or quasi-legal settings, whether a particular incident is or is not antisemitic.**

Furthermore, the preamble calls the rest of the document a “working definition” implying that it is not completely accurate and/or completely finished. Rather, it is just to be used temporarily and for certain purposes (not clearly defined) until a final definition can be arrived at.

THE DEFINITION

The actual definition reads:

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

toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.”

This is so vague and incomplete that it is hard to disagree with it. **But it is equally useless in helping identify particular incidents of antisemitism.** What does “a certain perception of Jews” actually mean? Does it include such things as believing that Jews are rich? Or smart? Or hard-working? Or that they support Israel? Or that they are secretly plotting to take over the world? Which of these “perceptions” is antisemitic and which isn’t? The definition does not tell us.

This is followed by the phrase “which **may** [emphasis added] be expressed as hatred towards Jews.” And what if hatred is not expressed? Is hatred a necessary component? And must it be expressed? What if it is kept secret and never openly expressed?

And what of discrimination or physical harm that is independent of perceptions and hatred? What if someone refused to rent an apartment to a Jew, not because they hate Jews, but because of a (perhaps well founded or perhaps not) fear their other tenants will complain? The IHRA-WDA gives us no answers.

This inclusion of “may”, while appropriate for research guidelines and educational material, renders useless a definition that is to be used in legal or quasi-legal settings in order to make determinations about specific incidents.

The second sentence of the definition states that manifestations of antisemitism “are directed toward Jewish or non-Jewish individuals and/or their property ...” It is hard to imagine a person or thing that is not included here. And what is meant by “directed towards”? Is a virulent antisemitic email between two neo-Nazis “directed towards” Jews? **Thus, the definition, by itself, is too broad and too vague. It is certainly not useful in identifying whether any particular incident is, in fact, antisemitic.**

THE EXAMPLES

The examples are equally, if not more problematic.

The preamble to the examples states:

To guide IHRA in its work, the following examples may serve as illustrations:

Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that levelled against any other country cannot be regarded as antisemitic. Antisemitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for “why things go

wrong.” It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits.

Contemporary examples of antisemitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include, but are not limited to ...

The first line clearly states that the purpose of the examples is to guide the IHRA in its work, which is presumably educational rather than legal enforcement or even the identification of individual cases. It emphasizes the provisional and tentative nature of these examples by use of the phrase “may serve as illustrations.” Presumably they may also not. And presumably this is not an exhaustive list.

This statement then continues:

“Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity.”

Certainly no one can argue that this may be the case. But, by itself this statement is not useful in identifying individual cases of antisemitism. It simply opens up the possibility that antisemitism *might* take this form, and that some cases of “targeting” the state of Israel *might* be antisemitism. **This sentence does, however, point to the overall agenda of the IHRA-WDA and those promoting it, which is to include criticism of Israel in the definition of antisemitism, thus outlawing such speech.**

Indeed, seven of the eleven examples listed following this paragraph relate to Israel, as if anti-Israel criticism was (a) nothing more than antisemitism in disguise and (b) the biggest threat faced by Jews around the world. (It is worth repeating here that the recent shootings in Pittsburgh and San Diego show that it is not.)

Despite these criticisms, this section does proceed to make several valid points. First:

Antisemitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for “why things go wrong.” It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits.

Unfortunately, few of the examples that follow relate to these aspects of antisemitism, and the single example that does is so poorly worded that it leaves out many current real-life incidents.²⁴

²⁴ The recent charges leveled by Donald Trump and his supporters that Jewish financier George Soros is responsible for financing the “invaders caravan” from Mexico is one such real-life example. Another example is the recent charge made by a Washington DC councilman that the Rothschilds are controlling the weather. Neither case clearly falls under any of the examples listed, since in neither of these cases was there an explicit generalization to all Jews.

Second, the preamble to the examples points out that

... criticism of Israel similar to that levelled against any other country cannot be regarded as antisemitic.

This is correct as far as it goes. **The trouble arises in interpretation of cases where Israel's actions and overall situation are unlike those of any other country. In these cases, any criticism leveled against Israel is necessarily unique.** For example, there is no other situation in the world today where a territory and population have been held under military occupation for over 51 years, while the population therein continues to be denied either citizenship or full self-government. Similarly, there is no situation in the world today, other than Israel's siege of Gaza, where a territory and its people are subject to a crippling open-ended blockade wherein imports, exports and travel are all strictly controlled and limited.

Third, and perhaps most importantly regarding the examples that follow, is the phrase:

*Contemporary examples of antisemitism ... could, **taking into account the overall context** [emphasis added], include, ...*

In applying the IHRA-WDA examples of antisemitism to particular cases, context is everything. It is impossible to deny that any of these examples *could* be manifestations of antisemitism. But it is equally impossible to say that they are *necessarily* examples of antisemitism. Context is key. This frequently gets forgotten when people try to apply the IHRA-WDA examples to real-life situations. **Unfortunately, the IHRA-WDA does not provide sufficient or clear guidance either in analyzing the context or in determining when the context is a mitigating or aggravating factor.**

With the above in mind, let us look at the individual examples provided by the IHRA-WDA and try to see if they are unequivocally clear, or if context matters, and if so, how so. Unfortunately, most of the cases are not clear, and there are contexts where they would indeed be manifestations of antisemitism and other contexts where they would not. **This dependency on context is the single biggest factor that makes the IHRA-WDA, and its examples in particular, unfit for determining whether or not a particular event is or is not antisemitic.**

INDIVIDUAL EXAMPLES

Example 1

Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.

Even in this seemingly straightforward example, the language is ambiguous and can allow for differing interpretations. For instance, harming Jews as part of a general policy not aimed at Jews in particular is not antisemitic. (And it is important to note that not all things that are wrong or odious are antisemitic.) So, for instance, if a radical leftist government were to introduce a tax plan that harmed Jews disproportionately because, in that government's jurisdiction, Jews are mostly in the wealthiest percentiles, that tax policy should not be considered antisemitic.

Another flaw in the language is the addition of the words "radical ideology or an extremist view of religion." To offer but one example, if the CAQ government of Quebec, which is not generally considered radical, bans yarmulke-wearing Jews from positions of teacher, police officer, judge, etc., is that not to be considered antisemitic?

Example 2

Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.

Again, this at first seems unequivocal and valid regardless of context. But what if the stereotypical claim can also be true? The reality is that in some contexts, Jews do have control of, or a large influence over, a specific sector of the economy, the media, or politics. Is Neal Gabler's award-winning book "An Empire of Their Own: How the Jews Invented Hollywood" — a book describing how Jews helped create and mostly controlled the movie industry through to the 1950s — antisemitic? Is it antisemitic to point out that recently the biggest contributor to the Republican Party has been Sheldon Adelson — a Jew and a fervent supporter of Israel and of Prime Minister Netanyahu — and that he makes his donations only to candidates he considers "good for Israel"? Such a claim may be antisemitic, or it may not be. It depends on the context.

Example 3

Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.

This example is well-drafted and clear and can be applied virtually context-free. Any sentence that begins with "The Jews are ..." or "The Jews did ..." is almost always false or misleading, and, if it refers to a negative trait or act, is antisemitic.

Example 4

Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust.)

This example is clear and can be applied virtually context-free.

Example 5

Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.

This example is clear and can be applied virtually context-free. However, it is important that this example be taken up narrowly and literally. For instance, it should not be considered antisemitic to point out that Israel and its supporters continue to use the Holocaust to justify many of their actions and policies and to advocate for Israel in general.

Example 6

Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.

This example is completely reliant on context and intent. Would it be antisemitic to accuse convicted Israeli spy Jonathan Pollard of being more loyal to Israel than his home and native country, the U.S.? Of course not. And Pollard is not unique. There have been other documented cases around the world of Jews working for Israel against the laws and declared interests of their home countries.

But a Jew need not be an Israeli secret agent to feel more loyal to Israel than their own nation. Many Canadian Jews move to Israel and serve in its army. Some remain and become citizens, while also retaining their Canadian citizenship. **It is reasonable to assume that many of these people are indeed more loyal to Israel than to Canada.** Many others are considering such a move, and it is not unreasonable that they too feel more loyal to Israel than to Canada. There are Canadian Jews who, without taking out Israeli citizenship, have volunteered in the Israeli army but have not volunteered in the Canadian army. There are some Canadian Jews who believe that Israel is needed to protect them from a holocaust in Canada, and that the Canadian government and people cannot be trusted to protect them in this regard. Pointing any of this out is not in itself antisemitic. It depends on intent and context.

Example 7

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.

This example is completely reliant on context and intent. First, regarding “Denying the Jewish people their right to self determination”, this can only be considered antisemitic if the person holding this view simultaneously supports the right of all other people, in all other circumstances, to self-determination. Furthermore, the right of national self-determination is never absolute. It must always be weighed against other rights.

Self-determination does not automatically require, or allow for, an independent nation state. Spain recently denied the right of Catalans to form their own state. The European Union supported that decision, as did Canada. Regardless of whether we think that is the right or wrong decision, it is not ipso-facto anti-Catalan racism. Closer to home, Canada has made clear that it would limit the absolute right of Quebecers to self-determination²⁵.

Regarding the second clause of the example above, if we allow people to say that Canada is a racist endeavour (as many Indigenous activists and allies do), how can we disallow Palestinians and their allies from making the same claim about Israel? (One can disagree with these propositions, without prohibiting people from either making such statements or accusing them of racism/antisemitism.) Again, as with the other examples, determining whether the claims that “[t]he Jewish people do not have the right to a Jewish State” or that “Israel is a racist endeavor” are antisemitic must be based on who makes them, in what context and with what intent.

Example 8

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

This example is completely reliant on context and intent. First, as noted previously, many aspects of Israel and the Israel-Palestine conflict are unique, and therefore it is impossible to require similar behaviour or make similar demands from other democratic nations.²⁶

Second, people have a right to focus on issues that move them, while giving less attention to — or completely ignoring — issues that move them less. No one would accuse the Dalai Lama or his allies of being anti-Chinese racists for demanding that China respect the rights of Tibetans simply because they did not also demand (and with equal fervor) that Israel respect the rights of Palestinians. Yet precisely the opposite example is often used to “prove” that Palestinian rights activists are “anti-Semitic.” **In fact, many Jews, as well as many Palestinians and Arabs, do focus mostly on the Israel-Palestine conflict, but for obvious and justified reasons: they feel personally connected to it.** Again, it may well be that people who focus their political activity on criticizing Israel are antisemitic, but it could also be that they simply care more about the Israel-Palestine conflict for one of a myriad of valid reasons. Intent and context are the key to making this determination.

Example 9

Using the symbols and images associated with classic antisemitism (e.g., claims of Jews

²⁵ It has done so both by requiring a super majority of Quebecers to support independence, and by stating that it would demand arrangements that limit Quebec’s sovereignty in order to respect aboriginal rights within Quebec.

²⁶ For example, no other democratic nation has an ongoing 51-year military occupation where the occupied population is denied citizenship and effective self-government.

killing Jesus or blood libel) to characterize Israel or Israelis.

This example is mostly clear and context-free but applying it to specific cases often involves the murky world of interpreting symbols and of guessing at an artist's intent. **And it is significant to note that this example only applies the use of such symbols and images which exhibit negative attitudes towards Israel or Israelis. Surely using them to characterize Diaspora Jews is equally antisemitic.**

Example 10

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

This example is very much reliant on context and intent. If it is allowable to compare the situation in the U.S. to the situation in Nazi Germany — and there have been numerous such comparisons published recently, some by notable Holocaust scholars — then it must also be legitimate to make such comparisons regarding Israel. Indeed, many Israelis have made such comparisons themselves. **While comparisons with Nazis are often wrong or exaggerated (and rarely wise,) they cannot, in and of themselves, be deemed antisemitic.**

Example 11

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

This example is clear and can be applied virtually context-free. But even here, it is important to note two things. First, and not without irony, **while Diaspora Jews rightly reject being blamed for Israel's actions, it is the Israeli government and Zionist organizations that often make the claim that virtually all Jews are Zionists and support Israel.** Second, the language must be put in context. If a Palestinian villager in the West Bank says "the Jews came last night and burned down our olive trees," he certainly does not mean all Jews. He means particular Jews (likely settlers from a nearby illegal Israeli settlement) who do, in fact, regularly claim to be acting in the name of all Jews or of "real" Jewish interests.

* * *

Finally, it must be noted that **7 out of the 11 examples above relate to criticism of Israel, while, sadly, all too common antisemitic acts — such as painting a swastika on a synagogue or shouting antisemitic insults at a Jew — are not clearly covered by these examples.** (The preamble to the examples does warn that this is not a complete list, but, ironically, this fact makes the examples useless as a mainstream definition of antisemitism that can effectively be used to identify what is and what is not an antisemitic act.)

Moreover, there is an over-emphasis on including criticism of Israel and Zionism as antisemitic acts, while more common and more threatening manifestation of “classic” antisemitism faced by Diaspora Jews today is neglected. This reveals that the primary agenda of those pushing for wider adoption of the IHRA-WDA is to equate harsh criticism of Israel and/or Zionism with antisemitism, and thus to provide the basis for its effective outlawing.

NOTES REGARDING ANTISEMITISM AND LEGAL/CRIMINAL ISSUES

Of the three sentences in this section of the IHRA-WDA, the first and third are descriptive of existing legal realities, and not prescriptive or helpful in identifying antisemitic incidents.

The second note reads:

***Criminal acts are antisemitic** when the targets of attacks, whether they are people or property – such as buildings, schools, places of worship and cemeteries – are selected because they are, or are perceived to be, Jewish or linked to Jews.*

Unfortunately, **this does not help us differentiate between targets that are or are perceived to be Jewish, and those that are or are perceived to be Israeli or Zionist.** All should agree that painting swastika on a synagogue is antisemitic. But what about painting “Free Palestine” on the offices of a Zionist organization (e.g. the Jewish National Fund)? Is that antisemitic or merely vandalism? It is criminal to be sure, but is it antisemitism? And what of painting the same slogan on a JNF sign mounted on a synagogue’s lawn? The intent of the vandal and the overall context are, once again, essential.

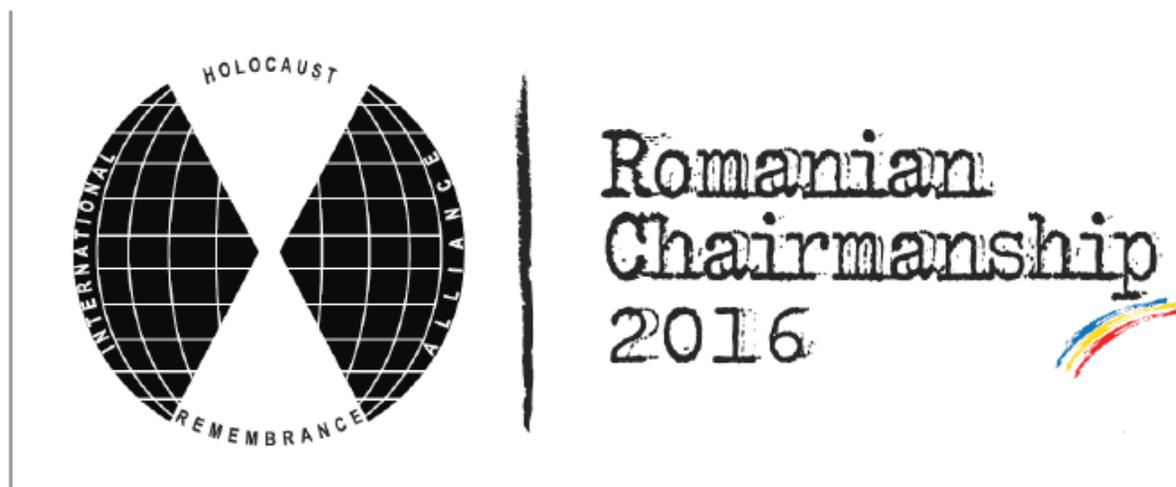
SUMMARY

The IHRA-WDA is a poor definition of antisemitism. The hurried and careless approach taken in its adoption by the IHRA is reflected in its sloppy language. Its definition is virtually meaningless and almost all of its examples are context-dependent. Together, these factors make it a particularly poor tool for legal or administrative purposes and/or in adjudicating which statements, acts or incidents may or may not be antisemitic. The primary goal of those promoting it — and, we fear, its actual effect if it is adopted — is to ban or criminalize criticism of Israel and Zionism as well as support of Palestinian rights. **As such it represents a threat to the struggle for justice and human rights in Israel-Palestine, as well as to academic freedom, freedom of expression and the right to protest.**

To be clear, antisemitism is a real problem. It must be fought in all its forms. But adoption of the IHRA-WDA is not the way. The real fight against antisemitism is inseparable from the struggles against racism, xenophobia and hatred of ethnic and religious groups. The fight against antisemitism must be joined to the struggle for equality and human rights for all people in Canada, in Israel-Palestine and around the world.

We urge readers of this report to join us in opposing the adoption of the IHRA-WDA by Canadian governments, universities, police and other authorities.

APPENDIX 1: FULL TEXT OF THE IHRA WORKING DEFINITION OF ANTISEMITISM²⁷



Bucharest, 26 May 2016

In the spirit of the Stockholm Declaration that states: “With humanity still scarred by ...antisemitism and xenophobia the international community shares a solemn responsibility to fight those evils” the committee on Antisemitism and Holocaust Denial called the IHRA Plenary in Budapest 2015 to adopt the following working definition of antisemitism.

On 26 May 2016, the Plenary in Bucharest decided to:

Adopt the following non-legally binding working definition of antisemitism:

“Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.”

²⁷https://www.holocaustremembrance.com/sites/default/files/press_release_document_antisemitism.pdf

To guide IHRA in its work, the following examples may serve as illustrations:

Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic. Antisemitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for “why things go wrong.” It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits.

Contemporary examples of antisemitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include, but are not limited to:

- Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.
- Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.
- Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust.)
- Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.
- Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor.
- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
- Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.

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

Antisemitic acts are criminal when they are so defined by law (for example, denial of the Holocaust or distribution of antisemitic materials in some countries).

Criminal acts are antisemitic when the targets of attacks, whether they are people or property – such as buildings, schools, places of worship and cemeteries – are selected because they are, or are perceived to be, Jewish or linked to Jews.

Antisemitic discrimination is the denial to Jews of opportunities or services available to others and is illegal in many countries.

