

**THE ADOPTION OF THE IHRA DEFINITION OF ANTISEMITISM
BY THE GOVERNMENT OF THE UNITED KINGDOM**

OPINION

A. INTRODUCTION

1. We are instructed by the Campaign Against Antisemitism to provide an Opinion on the decision of the Government of the United Kingdom to adopt the International Holocaust Remembrance Alliance (“IHRA”) definition of antisemitism (“the Definition”). In particular, we are asked to consider the meaning of the Definition, its usefulness and potential application in public life.
2. For the avoidance of doubt, we have produced this Opinion independently. We have no direct involvement with the Campaign Against Antisemitism.

B. SUMMARY OF OPINION

3. By way of a summary, our opinion is as follows:
 - (1) The Definition is a clear, meaningful and workable definition.
 - (2) The Definition is an important development in terms of identifying and preventing antisemitism, in particular in its modern and non-traditional forms, which often reach beyond simple expressions of hatred for Jews and instead refer to Jewish people and Jewish associations in highly derogatory, veiled terms (e.g. “Zio” or “Rothschilds”).
 - (3) Public bodies in the United Kingdom are not “at risk” in using this

Definition. Indeed, this Definition should be used by public bodies on the basis that it will ensure that the identification of antisemitism is clear, fair and accurate.

- (4) Criticism of Israel, even in robust terms, cannot be regarded as antisemitic *per se* and such criticism is not captured by the Definition. However, criticisms of Israel in terms which are channels of expression for hatred towards Jewish people (such as by particular invocations of the Holocaust or Nazism) will in all likelihood be antisemitic.

C. THE DEFINITION

4. On 26 May 2016, the IHRA made a decision to adopt the Definition, described as a “non-legally binding working definition of antisemitism”,¹ in the following terms:

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

5. In late 2016, the House of Commons Home Affairs Select Committee recommended that the Government of the United Kingdom formally adopt the Definition, such that political parties and public bodies could use the Definition for determining whether an incident or discourse is antisemitic.
6. The following were stated by the IHRA to be “examples” which “may serve as illustrations” by which to apply the Definition:

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

¹ http://www.holocaustremembrance.com/sites/default/files/press_release_document_antisemitism.pdf

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

7. Numerous contemporary examples of antisemitism in public life, “taking into account the overall context” were also listed by the IHRA and stated to include (but not be limited to) the following:

- 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.
- 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; and
- Denying the Jewish people their right to self-determination, e.g., by claiming that the State of Israel is a racist endeavour.

8. As to the construction of the Definition itself:

(1) Notwithstanding the Definition is stated to be “non-legally binding”, it

may be construed in the same way that one would seek to construe a statutory definition or other piece of legal draftsmanship. Criticism that it does not take the form of a “traditional definition” is misplaced. The Definition is of a form that is increasingly used in regulatory documents, whereby a concept is first identified and then illustrated with examples. This approach poses no problem for a reasonably intelligent and objective person trying to understand the meaning of antisemitism.

- (2) The language and meaning of the Definition is clearly expressed in straightforward language and the Definition can be readily read and understood by an ordinary person with no particular knowledge of the subject of antisemitism.
- (3) There is no difficulty with the statement that antisemitism “**may** be expressed as hatred towards Jews” (emphasis supplied). This is deliberately non-limiting language by which the Definition has sought to include expressly the obvious and familiar manifestation of antisemitism (“hatred towards Jews”), but does not confine itself to that expression of antisemitism.
- (4) Had the Definition eschewed the word “may” and instead stated that “Antisemitism is a particular attitude towards Jews, which **is** expressed as a hatred towards Jews”, then the value of the Definition would have been significantly limited. This, we believe, is for two primary reasons.
 - i. First, contemporary antisemitism which the Definition is intended to address, does not manifest itself most often in the form of blunt “hatred towards Jews”. In particular, we are aware of recent events where reference to Jews has been made in “coded” but highly derogatory terms such as “Zios” or by reference to the “Rothschilds”. Had the Definition limited antisemitism to being “expressed as a hatred towards Jews”, it

would be ill-suited to addressing modern antisemitism which (for example) replaces the word “Jew” with a “code-word” which it is clear from context is intended to be a proxy for the word “Jew”.

- ii. Second, antisemitism can reach far beyond an expression of hatred for Jews, in much the same way that racism can reach far beyond an expression of hatred for people on the basis of their skin colour. Discriminatory social and institutional practices may well fall within the categories of racist or antisemitic behaviour. They are aptly captured by a Definition non-limited to expressions of hatred, but would not be captured by one which was confined solely to that.

- (5) The Definition’s explanatory second sentence which refers to “manifestations of antisemitism” being “directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities” presents no difficulty in terms of understanding.
- (6) The Definition’s breadth and comprehensive nature, even though like any definition it may require some context-specific further consideration, is its strength not its weakness. One of the distinct benefits of this approach is that it enables public bodies to “call out” obvious, deliberate antisemitism even where the antisemite has dressed-up his antisemitism in language which does not directly use the word “Jew” or its derivations. It is sufficient that what can be identified is language or behaviour manifesting hatred towards Jews and this must be right.
- (7) No definition of such an emotive matter can be phrased to capture every nuance. There will always be “difficult cases”, some of which we comment upon below. But we believe that this Definition is a clear and

workable tool for use in relation to the vast majority of cases of alleged antisemitism.

D. DIFFICULT CASES

9. The IHRA helpfully provided a number of examples of modern antisemitism (some of which are given above) which it stated should be considered “taking into account the overall context” of the matter. This is clearly right. While we consider that the vast majority of examples of antisemitism will be obvious to the fair-minded observer using the Definition (and may contain an express or at least clearly ascertainable hatred of Jews), there is always scope for borderline or difficult cases where particular difficulties may arise.

10. We are asked to provide comments on two such examples, mindful of the fact that they will always need to be construed in context:

(1) First: *“Accusing Jewish citizens of being loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations”*. This is very likely to be an expression of antisemitism. The sentiment *prima facie* picks out the particular racial quality of Jewishness in a citizen and draws from it – and from it alone – highly adverse inferences, including that the citizen would be less loyal to her own country (and its people, being her fellow citizens). We can readily see how in a work or public context this sort of remark would be highly derogatory. It is likely to be a form of discriminatory “singling out” and a proxy expression of hatred for Jews.

(2) Second: *“Denying the Jewish people their right to self-determination, e.g., by claiming that the State of Israel is a racist endeavour.”* Criticism of Israel is not antisemitic *per se*, in much the same way that criticism of an African state would not be racist *per se*. However, taking a stance against Israel which is objectively baseless and/or a vehicle for hate or offensiveness towards Jewish people will normally be antisemitic. In the example of

accusing Israel of being a “racist endeavour”, we can imagine a case of how a form of scholarship leading to this conclusion could be written without antisemitic intent. However, one would expect such an author to use reasoned language and adopt a consistent view regarding other states with religious or ethnic dimensions. A failure to adopt such consistency and even-handedness as regards other nations (combined with an exclusive focus on Israel alone as a racist state) would, in all probability, be an example of antisemitism. Alternatively, where Israel is the subject of such criticism in a way which carries with it a desire to offend Jewish people (such as by invoking the language of Nazism or the Holocaust as per the above) or in a context where other states with a religious or racial dimension are exonerated and excused, it is not difficult to see how such a remark could be antisemitic.

11. Debate concerning Israel may be a key area where some difficult issues arise. It is important that free speech and free expression is not impinged by application of the Definition, particularly at universities. Therefore, by way of guidance as to what (in view of the Definition) is most likely to constitute antisemitism, we offer the following guidance:

- (1) Using the Holocaust or comparisons to Nazism to criticise Israel is **almost always** antisemitic. It both serves to minimise and de-exceptionalise the Holocaust and its horrors, and also holds Israel to a different standard to that applied to other states, whilst describing Israel in a manner deliberately imprecise and extremely offensive to Jews.
- (2) Contending that the State of Israel “uses” the Holocaust to shut down debate or to silence critics, or describing Israel in terms of “apartheid”, is also **very likely** to be part of antisemitic discourse. It appears to us that such comments are rarely intended as rational descriptions of Israeli government policy or behaviour but rather (especially in respect of the use of the language of the Holocaust) are terms chosen to be emotive

and upsetting to Jewish people and to generate hostility towards them.

- (3) Referring to Jewish people or supporters of the State of Israel as “Zios”, “Rothschilds” or other names; invoking the traditional antisemitic meme of a Jewish world conspiracy or theories of Jews as puppet-masters or controllers of world events is **very likely** to be an expression of antisemitism.
- (4) Holding all Jews collectively responsible for perceived actions of the State of Israel is **very likely** to be antisemitic. Such a comparison is prima facie using a criticism of Israel to be a vehicle for criticism of Jews (without justification) and, without further exceptional explanation, it would fall within the Definition.
- (5) Criticising the policies of a particular Israeli government, for example in relation to settlements, protesting against the actions of the State of Israel or its treatment of Palestinians, are lawful expressions of political opinion and are **unlikely** to be antisemitic without further factors.
- (6) Reasoned critiques of Zionism are **unlikely** to be antisemitic without further factors.

E. CONCLUDING REMARKS

12. By way of conclusion, we recognise that there are some difficult judgment calls which may arise for bodies adopting the Definition. This is inevitable when addressing an issue such as antisemitism, just as it is when racism or homophobia is addressed. However, the few borderline cases (which need to be looked at in context in light of the principles and purpose behind the Definition) do not undermine the utility of the Definition overall.
13. The Definition is well-expressed and the central thrust is clear and may be

readily understood. Moreover, the Definition has a particular importance in combatting modern antisemitism which, whilst it still involves hatred of Jews, does not always manifest itself as directed expressed against Jews. Allusions to Jewish people and remarks channelled in the veil of “anti-Israel” language, which do not make express reference to Jews, can still be regarded properly and fairly as antisemitic.

14. There is no danger or disadvantage for public bodies or universities in adopting this Definition. It does not seek to stifle free expression or free speech and poses no issue as regards compliance with Article 10 of the European Convention on Human Rights.

15. On the other hand, adopting such a comprehensive and modern definition would appear to serve a very useful purpose and be an important tool in the fight against antisemitism and hatred towards Jews.

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July 2017