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## Discussion

### *Who's Afraid of Defining Antisemitism?*

DEREK PENSLAR

In March of 2021, two groups consisting largely of Jewish academics issued definitions of antisemitism known as the Nexus Document (ND) and the Jerusalem Declaration on Antisemitism (JDA).<sup>1</sup> The two texts were similar, but they differed markedly from a definition of antisemitism published in 2005 by the European Monitoring Centre on Racism and Xenophobia (EUMC) and subsequently endorsed by governments and NGOs around the world. In 2016, the definition was formally adopted by the International Holocaust Remembrance Alliance (IHRA), adding further to its luster, so much so that the definition is now associated with the IHRA instead of its original creators.<sup>2</sup>

For a couple of months after the publication of the Nexus and Jerusalem declarations, the internet was abuzz with critiques and defenses of all three definitions. After that, the kerfuffle began to fade. In May 2021, the Israel-Gaza crisis sparked condemnations of Israel and attacks against Jews throughout the world, yet the three competing definitions of antisemitism played little role in the public debate about the legitimacy of the violence that Israel and Hamas inflicted upon one another.

What was the controversy about? What did the authors of the Nexus Document and Jerusalem Declaration on Antisemitism find

lacking or problematic about the IHRA definition? Why was the critical reaction to the ND and, especially, to the JDA so fierce? The answer to these questions lies not within the texts themselves so much as with the constituencies that have associated themselves, or are perceived to have associated themselves, with the three documents. Advocates of the IHRA definition are vigorously supportive of Israel and link anti-Zionism with antisemitism even though the definition itself does not explicitly say as much. The authors of the ND and JDA have deep connections with Israel, but they are openly critical of it, and both documents distinguish between anti-Zionism and antisemitism.

The JDA has come under heavy fire from supporters of the IHRA definition compared to the ND despite the similarities between the two statements. There are several reasons for this. First, the JDA is explicitly critical of the IHRA definition, while the ND is not. Second, the JDA had a grander public launch than the ND, and it has had a flashier publicity campaign that made it more visible to the public. Third, unlike the ND, the JDA acknowledges that antisemitism has “certain distinctive features” but links it with racism and calls for a common struggle against “all forms of racial, ethnic, cultural, religious, and gender discrimination.” This qualification of antisemitism’s uniqueness and linkage of anti-antisemitism with the Left discomfits those who see in antisemitism, to cite the late Robert Wistrich, a singular “lethal obsession”<sup>3</sup> and who accuse left-wing progressives of endorsing anti-Zionism and harboring antisemitism. Last (and not least), a handful of the JDA’s more than three hundred signatories are anti-Zionist public figures.

The controversy over defining antisemitism illustrates the current polarization and division within the Jewish community and the international community regarding the policies and actions of Israel. The May 2021 crisis deepened the chasm dividing those who see in Israeli military strikes on Gaza legitimate defense against an irreconcilable foe and those who see them as the work of a colonial oppressor inspired by racial hatred and vengeful fury. At the time of writing (November 2021), the battle over defining antisemitism is

experiencing a lull, but the factors that catalyzed the creation of the three definitions remain in place and the debate is bound to continue.

This essay explores the relationship between text and context in the three documents and the controversy surrounding them. It suggests why the IHRA definition has become hegemonic in North America and Europe and why the JDA has been attacked by supporters of both Israel and the Palestinians. The essay also offers a close reading of the three texts, highlighting ambiguities and contradictions within the IHRA definition that, regardless of one's political point of view, can deter difficult but constructive conversations about Israel and Palestine, conversations that the much clearer ND and JDA strive to foster.

The IHRA definition was developed in the early 2000s, when Jews in western Europe were coming under attack in the wake of the Palestinian Second Intifada. As Kenneth Stern, the lead author of the document, has explained, the definition was developed for the European Monitoring Centre on Racism and Xenophobia (EUMC) for data collection purposes and was not intended to be used to suppress free speech or expressions of political will, e.g., engaging in or calling for boycotts against Israel.<sup>4</sup> The document was (and is still) called a “working definition,” a phrase that connotes provisionality and malleability. Nonetheless, with avid support from organizations such as the Simon Wiesenthal Center and the United Kingdom's Community Security Trust, along with its endorsement by the International Holocaust Remembrance Alliance, the definition has assumed iconic status and an air of permanence, if not inviolability. The IHRA declared that the definition was not to be considered legally binding; however, with its adoption by federal and state governments, universities, and international agencies came the risk of the definition assuming a quasi-legal status and being invoked to suppress free speech.

There are two different ways of critiquing the IHRA definition. One is to question its utility for purposes other than creating a taxonomy for data collection. This approach contends that the IHRA definition has been misused by those who cite it in order to throttle speech that is critical of Israel. A second stratagem is

to probe weaknesses and internal contradictions within the IHRA definition itself.

Let me start with the latter. The IHRA definition of antisemitism is both too vague and too narrow: “Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews.” May? What else might it be? And is hatred the only emotion associated with antisemitism? Indeed, antisemitism is an expression of negative emotion.<sup>5</sup> But negative emotions include fear, anger, and resentment, which are less immediately destructive than hatred, but all of which can be linked with animosity towards Jews.

A second problem with the IHRA definition is its vagueness regarding what sort of language about Israel is and is not antisemitic. Early on, the document claims that “criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic.” Does this mean that it is permissible to speak about Israel as one does about Canada and Spain, where separatists have long called for these countries’ dissolution? Or the United States, where some call the country structurally racist? In the late twentieth century, there was a powerful global boycott movement against apartheid South Africa, and, more recently, Russia, Iran, and Syria have been subject to international sanctions. The former Yugoslavia’s leaders have been tried and convicted by the International Criminal Court. Are all the forms of critique that have been leveled against these countries acceptable if applied to Israel, or are they to be condemned as antisemitic? If the latter, why?

A related concern is that the IHRA definition claims that it is antisemitic to “apply double standards by requiring of [Israel] a behavior not expected or demanded of any other democratic nation.” The problem with this statement is that no other democratic nation: 1) maintains a half-century occupation of territory inhabited by millions of individuals who lack basic human rights, and 2) settled hundreds of thousands of its own citizens in this occupied territory in violation of international law. If Israel is to be held to the standards of democratic nations, it is not surprising that its behaviour is found wanting and that Israel’s critics advocate measures against Israel that they do not advocate for other democratic states.

My final criticism of the IHRA definition is that it presents “denying the Jewish people their right to self-determination” as antisemitic and links that denial with the claim that Zionism is fundamentally racist. But as I have just noted, other countries have been and currently are referred to as racist, so such criticism should be licit, given that, according to the IHRA definition, “criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic.” Also, the definition conflates “self-determination” with statehood when, as we shall see below, they are not the same thing.

Let me turn now to the misuse of the document by those who claim to speak in its name. Supporters of the IHRA definition claim that it links boycotts of Israel with antisemitism. But the IHRA definition does not mention boycotts. A Boycott, Divestment, and Sanctions (BDS) campaign against Israel has been carried out by pro-Palestinian groups since the turn of the millennium, and it has attracted support in universities, academic organizations, and trade unions in North America and western Europe. Although its tangible accomplishments thus far have been meager, the BDS movement is a source of great anxiety in Israel and pro-Israel organizations abroad. This issue is worth serious discussion, and as we shall see the JDA engages directly with the issue of boycotts. But the IHRA definition is of no particular use one way or the other on this matter.

The IHRA definition’s unsuitability to determining whether speech or actions are antisemitic, and hence subject to censorship or prosecution, has become clear to me in work I have done in Canada as an expert witness in prosecutions for “willful promotion of hatred,” which is a criminal offense. The discourse I have been asked to assess in order to assist the court in determining whether or not it is antisemitic invariably contains references to Israel.<sup>6</sup> I have found it difficult to invoke the IHRA definition in full because of its failure to clarify whether or not hostile yet accurate or plausible statements about Israel are antisemitic. A distinction between conspiratorial fantasy and demonstrable reality, between unhinged and fact-based (even if intemperate) language about Israel, makes it easier

to demonstrate the presence of the former, which in the Canadian context is actionable, and to set aside the latter, which is not.

Over the past couple of years, dissatisfaction with the IHRA definition both on its own terms and with how it has been deployed in the public sphere led two separate groups of people to develop what became the ND and JDA. The ND's composers and endorsers were all American, and most were Jewish academics and rabbis. The authors of the JDA were academics in Israel, the United Kingdom, and the United States. Both groups produced a sharp, clear, and unambiguous definition of antisemitism. According to the JDA, "antisemitism is discrimination, prejudice, hostility, or violence against Jews as Jews (or Jewish institutions as Jewish)." The ND is similarly straightforward: "antisemitism consists of anti-Jewish beliefs, attitudes, actions or systemic conditions. It includes negative beliefs and feelings about Jews, hostile behavior directed against Jews (because they are Jews), and conditions that discriminate against Jews and significantly impede their ability to participate as equals in political, religious, cultural, economic, or social life." Both statements consider conspiracy theories, identification of Jews with the forces of evil, and verbal or physical assaults against Jews qua Jews to be unambiguously antisemitic. One could criticize the documents for their limitation of antisemitism to acts against Jews, as there have been cases of crimes targeting Jews or Jewish institutions in which non-Jews have been harmed or killed, and such cases should be considered antisemitic hate crimes. But this is an oversight that could (and should) be addressed with minor rewording.

The ND and JDA take care to distinguish between forms of hostile speech about Israel that are antisemitic and those which are not antisemitic. The documents agree that imputing collective responsibility to Jews for the actions of the state of Israel, harassing or assaulting Jews out of anger with Israel, framing Israel as a continuation of long-established so-called Jewish conspiracies (e.g., "the Rothschilds"), and denying Jewish self-determination (defined by neither document in terms of statehood alone) constitute antisemitism. Regardless of how angry one may be about Israel bombing Gaza, attacking a synagogue, whether in Israel or the Diaspora, is

antisemitic, just as attacking a mosque is Islamophobic. The same would be true of threatening or bullying Jewish and Muslim university students.

The documents also agree that hostility towards Israel and opposition to Zionism need not be antisemitic, given that Israel has wrought and continues to wreak harm on, and deny civil and national rights to, the Palestinians. Antisemitism is based in fantasy, either lacking a factual basis or magnifying and distorting that basis into something unreal. Non-antisemitic hostility is grounded in unvarnished and recognizable reality. It is not antisemitic to denounce the violence Israel perpetrates upon West Bank Palestinians. It is, however, antisemitic to claim that because Israeli soldiers shoot unarmed Palestinians, they plot to harvest Palestinian organs, or that American support for Israel stems from Jewish control of the media.

The JDA goes further than the ND on key points intended to promote free speech within broad limits. Here, the JDA, unlike the IHRA definition, deals directly with the issue of boycotts. Its final section asserts that support for forms of boycott against Israel, proposals for alternative political scenarios for the future of Israel and the Palestinians, and evidence-based criticism of Israel's past or present actions are not, on the face of it, antisemitic. The JDA defends the rights of people to engage in and promote a boycott against Israel if they so wish.

The JDA's statement can be applied to two different situations. First, individuals sympathetic to Israel but who oppose the Occupation and therefore boycott products from the Occupied Territories are not antisemites. The decision in July 2021 by Ben & Jerry's Ice Cream to stop selling its products in the West Bank was a peaceful expression of protest, neither "a disgraceful capitulation to antisemitism" (in the words of Israeli Foreign Minister Yair Lapid) nor "economic terrorism" (according to Israeli President Isaac Herzog).<sup>7</sup> The comments of Lapid and Herzog represent an unfortunate continuation of the reasoning behind the 2017 amendment to the Entry Into Israel Law, which provides that holders of non-Israeli passports can be denied entry into the country if they



advocate boycotting “any area under [Israel’s] control”—including West Bank settlements.

Moreover, according to the JDA, even full-throated support for the BDS movement is not necessarily antisemitic. It becomes problematic only if it is accompanied by conspiratorial fantasies of Jewish power and malevolence or outbursts of violence, threats, harassment, abuse, intimidation, or discrimination. Otherwise, BDS should be acknowledged as a form of legitimate non-violent protest that people have a right to practice should they so wish—even if supporters of Israel take strong exception to it.

A brief dive into the BDS movement will demonstrate how speech and actions regarding Israel, even when harshly critical, hostile, and, in the opinion of Israel’s supporters, misguided, need not be antisemitic.

The BDS movement has focused heavily on boycotting what it calls institutional collaboration between Israeli and foreign universities. On the one hand, this component of the BDS movement has had little support in North American academia. Despite numerous academic statements condemning Israel for the May 2021 violence in Gaza, at no university did more than one percent of the faculty and graduate students sign a BDS petition during or after the crisis.<sup>8</sup> The academic boycott movement has had little impact on faculty in STEM subjects, the quantitative social sciences, and the professional faculties. The academic boycott, however, has gained support among North American scholars in the humanities and the qualitative social sciences. It has harmed Israeli professors in these fields—people who are rarely responsible for the Occupation and who, quite often, vigorously oppose it. North American scholars inspired by the BDS movement have gone beyond its explicit guidelines by refusing to participate in Israeli projects or work with Israelis, and by excluding Israeli academics from conferences, editorial boards, publications, and visiting fellowships. The penumbra of BDS has created a hostile atmosphere in some universities for faculty members and students who have sympathies for Israel. There have been isolated cases of faculty members refusing to write letters of reference for students wishing to attend academic programs in Israel.

In my opinion, the academic boycott movement is ill-conceived and deleterious. It is not, however, necessarily antisemitic. The anger that drives the academic boycott movement is ostensibly not directed against Jews as such so much as the role played by Israeli academic expertise in the construction of the security regime that maintains control over the Occupied Territories, surveils its residents, and subjects them to lethal force. The Israeli producers of that expertise are overwhelmingly Jewish, given that Israel's Arab citizens are usually excluded from positions with implications for national security. Nonetheless, Israel's Arab citizens are, technically at least, just as much subject to the boycott as Jewish Israelis. Of course, antisemitism can lurk behind or erupt through a discourse of support for the academic boycott. But the movement is directed against the actions of the Israeli state, not against Jews as individuals or as a people.

Both the JDA and ND claim that opposition to Zionism is not, unless demonstrated otherwise, antisemitic, especially if that sentiment takes the form of a general rejection of all forms of ethnic nationalism. Alternatives to sovereign Jewish statehood such as a unitary democratic state of Jews and Arabs, or a binational state in which each people exercise self-determination without impinging upon the rights of the other, may be infeasible, but sincere aspirations towards such goals are not antisemitic. Throughout the history of Zionism and Israel, actors within the Zionist movement and the international community have proposed many different forms of Jewish self-determination within Eretz Israel. Borders and political arrangements between Jews and Arabs have been under constant discussion. Israel and the Palestinian territories are a welter of ill-fitting political elements that perpetuate oppression, resistance, and hatred. It is not inherently antisemitic to propose alternatives to the status quo so long as the rights and freedoms of individuals, and the rights of the collective to live as it wishes, are respected.

Before the signing of the Oslo Accords, the idea of a two-state scenario was considered to be anathema in the mainstream Jewish world. During the 1990s, it became acceptable, and it has continued to have the support of a plurality of Israeli and American

Jews despite the considerable difficulties in its negotiation. *Mutatis mutandis*, alternative options to the two-state scenario that are rejected out of hand today may become mainstream in the future. Even if not, there is no reason to deny free expression on such matters unless it is accompanied by calls for, or the practice of, violence, intimidation, or harassment.

The JDA notes that well-grounded, evidence-based arguments regarding Israel should not be construed as antisemitic. The IHRA definition's vagueness regarding criticism of Israel and double standards leaves this crucial issue up in the air. Is it antisemitic to criticize Zionism, like other forms of nationalism, as exclusionary and violent? Or to claim that Israel bears responsibility for the Palestinian Nakba of 1948? Such claims, like classifying Israel as a settler-colonial and/or apartheid state, are controversial, but thoughtful individuals, drawing on abundant evidence and rigorous analysis, have weighed in on both sides of these questions. An unnerving academic argument is not the equivalent of hate speech.

So far, I have focused on the textual content of the IHRA definition and its two challengers, but in conclusion I would like to make three points about the broader controversies surrounding these definitions of antisemitism.

First, both pro-Israel and pro-Palestinian critics of the JDA see the debate over defining antisemitism as a zero-sum game, in which any benefit gained by one side must mean a loss for the other. The fact that some Palestinians see positive qualities in the JDA has alarmed staunch supporters of Israel, when in fact they should be pleased that the document makes possible conversations in which antisemitism is unequivocally condemned and directly associated with a variety of types of speech regarding Israel. On the other hand, Arab critics have dismissed the JDA as a vehicle for Jewish domination that silences Palestinian voices, as the document, whose composition they attribute to Jews alone, determines what may or may not be said regarding Israel. In fact, Jews and Palestinians worked together on the creation of the JDA, but the latter opted not to sign on, being reluctant to publicly identify with an Israeli initiative and having already supported a statement on antisemitism

by Palestinian and other Arab scholars, journalists, and public intellectuals in November 2020.<sup>9</sup> Moreover, the JDA is not going to silence anyone—its very purpose is to encourage the difficult but necessary conversations about Israel and Palestine that the IHRA definition’s zealous defenders threaten to stifle.

Second, despite what champions of the IHRA definition have written, supporters of the ND and JDA are no less concerned about antisemitism or the safety and well-being of Israelis than supporters of the IHRA definition. Advocates for the IHRA definition do not have a monopoly on worry, fear, or anxiety for Israel or the Jewish people. Similarly, it is inaccurate and even indecent to present the ND and JDA, as some pro-IHRA definition critics have done, as striving to free antisemites of responsibility for their actions. Quite the opposite—the ND and JDA seek to understand what kinds of Israel-related speech are antisemitic and which are not precisely because of antisemitism’s noxiousness and the need to combat it. The advantage of these documents over the IHRA definition is that they offer greater clarity, are more rigorous, and do not suffer from internal contradictions.

Third, pro-IHRA definition critics of the JDA have indulged in ad hominem attacks, claiming that supporters of the JDA are either naïve academics who know nothing about the pervasiveness of antisemitism outside the ivory tower or craven opportunists seeking to win approval from left-wing, Israel-hating colleagues. The JDA’s authors and signatories have been accused of “aggressive naïveté” and bearing “the stink of righteousness.” They are thought to be “smug Jewish academics and intellectuals who desperately long to be regarded as ‘good Jews’.” And they are supposedly gripped by an “anti-Zionist longing to be free to engage in unfettered demonization, delegitimization, and morally outraged opposition not to the policies of the Jewish state but to the presence of the Jewish state. The so-called academic freedom that is championed by such opponents to the Working Definition is the freedom not to express a viewpoint but to incite Jew hatred.”<sup>10</sup>

In fact, academics are heavily represented among the advocates for all three definitions. Moreover, many of the issues raised

by the ND, JDA, and IHRA definition affect universities, so the expertise of academics is more valuable in such matters than the judgment of outsiders. Besides, ND and JDA supporters are at least as likely as IHRA definition supporters to have expertise in relevant issues such as antisemitism, hate crime, and the Israeli-Palestinian conflict. They are also at least as likely to have an intimate, personal knowledge of, and experience in, Israel and Palestine, and, for those who are not Israeli, to have confronted antisemitism in their home countries.

Moving forward, I hope that the debate over defining antisemitism can deal with the documents on their own terms, and not impute dishonor, malevolence, or naïveté to those who composed or support them. Also, we must appreciate that Israel attracts attention disproportionate to its size for many reasons in addition to antisemitism. Given Israel's location on territory sacred to more than half of humanity, the extraordinary circumstances behind its creation, the unresolved Israeli-Palestinian conflict, and the remarkable levels of diplomatic and military support Israel has received from the world's most powerful state, it stands to reason that Israel's actions are highly visible, and hence particularly subject to scrutiny.

Antisemitism today is deeply alarming, and Jews, like everyone else, must be protected from violence, abuse, harassment, and discrimination. Drawing clearer distinctions between factually grounded critiques of Israel and baleful fantasy about Jews will better equip us to take part in the common struggle against baseless hatred.

## NOTES

An early version of this essay was published in *Fathom* (April 2021), <https://fathomjournal.org/why-i-signed-the-jda-a-response-to-cary-nelson-2/>

1. <https://jerusalemdeclaration.org>; <https://israelandantisemitism.com/the-nexus-document/>
2. <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>

3. Robert S. Wistrich, *A Lethal Obsession: Anti-Semitism from Antiquity to the Global Jihad* (New York: Random House, 2010).

4. Kenneth Stern, “I Drafted the Definition of Antisemitism. Right-Wing Jews are Weaponizing It,” *The Guardian*, December 13, 2019, <https://www.theguardian.com/commentisfree/2019/dec/13/antisemitism-executive-order-trump-chilling-effect>; Kenneth Stern, “We Disagree About the Working Definition. That’s OK. Here’s What’s Not,” *The Times of Israel*, February 10, 2021, <https://blogs.timesofisrael.com/we-disagree-about-the-working-definition-thats-ok-heres-whats-not/>

5. Negative emotions result from a failure or anticipated failure to attain an object of desire. In defining emotions in terms of levels of salience of desire, I follow Roger Petersen, *Understanding Ethnic Violence: Fear, Hatred, and Resentment in Twentieth-Century Eastern Europe* (Cambridge: Cambridge University Press, 2002).

6. See, for example, my expert opinion in *R. v. Sears and St. Germaine*, 11 June 2018, <https://www.scribd.com/document/398795438/Penslar-Expert-Report-on-Your-Ward-News-anti-Jewish-hate>

7. *The Times of Israel*, July 20, 2021, [https://www.timesofisrael.com/liveblog\\_entry/lapid-ben-jerrys-move-a-disgraceful-capitulation-to-antisemitism/](https://www.timesofisrael.com/liveblog_entry/lapid-ben-jerrys-move-a-disgraceful-capitulation-to-antisemitism/) and *The Times of Israel*, July 21, 2021, <https://www.timesofisrael.com/citing-ben-jerrys-snub-herzog-says-israel-boycotts-a-new-kind-of-terrorism/>

8. The most successful statement, “Palestine and Praxis” (May 2021), gathered 14,000 signatures from faculty and graduate students at Harvard University. The numbers of signatories from other large research universities such as New York University, Columbia University, the University of California at Berkeley, UCLA, Stanford, and the University of Toronto ranges from 45 to 123. <https://palestineandpraxis.weebly.com>

9. “Palestinian Rights and the IHRA Definition of Antisemitism,” *The Guardian*, November 29, 2020, <https://www.theguardian.com/news/2020/nov/29/palestinian-rights-and-the-ihra-definition-of-antisemitism>

10. Richard Landes, “A Remarkably Aggressive Naïveté: A Response to Derek Penslar and Michael Walzer,” *Fathom*, April 2021, <https://fathomjournal.org/a-remarkably-aggressive-naivete-a-response-to-derek-penslar-and-michael-walzer/>; “ISGAP Scholars Support the IHRA Definition of Antisemitism,” August 18, 2021, <https://isgap.org/post/2021/08/isgap-scholars-support-the-ihra-definition-of-antisemitism/>

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