

## Jurists For Palestine Forum (Season 2)

### Summary of Webinar 1\*

### The Anti-Semitism Label: Fighting Discrimination V. Silencing Critical Voices

#### Main Information:

- **Date of the Webinar:** 31-3-2022
- **Duration:** between 19.00-20.30 Jerusalem Time
- **Place:** Via Zoom
- **Speakers:**

**Richard Falk:** Professor Emeritus and Former UN Special Rapporteur on Palestine

**Neve Gordon:** Professor of International Law at Queen Mary University of London

**Giovanni Fassin:** Programme Director, European Legal Support Center

#### • Commentators:

**Andrew Gordon:** Professor of Comparative Cultural Studies, USA

**Anis F. Kassim:** International Lawyer and BoT member at Law for Palestine

**Illise Cohen:** Anthropologist, Specialized in Jewish Studies, USA

- **Moderator:** Abdelghany Sayed: PhD Candidate, Assistant Lecturer, Kent Law School
- **Attendees:** 39 members of the Jurists Forum
- **Listeners (members of the Jurists Forum):** 1000 members
- **Record link:** [Here](#)

\*Disclaimer: This paper summarizes the most important opinions, positions and analyzes mentioned during the discussion. These opinions do not necessarily reflect the position of Law for Palestine or its partner ARDD. The two organizations aim, through their open discussion panels, to provoke discussion and deepen awareness of the different legal opinions on the issues at hand. However, it doesn't adopt or support any specific position.

## **First: Introduction**

The International Holocaust Remembrance Alliance (“IHRA”) has in 2016 adopted a non-binding working definition of anti-Semitism, setting an example of responsible conduct for other organizations and providing a tool to combat anti-Semitism. While some argue that ‘antisemitism’ is being weaponized to silence critical voices and that the definition has expanded to include any criticism of the policies of the State of Israel, others argue that such a clear legal definition is required to combat prevalent discrimination against Jewish people all over the globe.

On the ground, although the definition lacks criteria for appropriate legislation, it has ever since been incorporated into local law by some Western states and incorporated into internal regulations by many Western academic institutions. UN Special Rapporteur on freedom of religion encouraged the use of the definition in the areas of education and awareness-raising.

Against this backdrop, many lawyers, academics, and human rights defenders around the globe claim that they are exposed today to constant menace, their freedom of expression is jeopardized, and are effectively silenced with respect to matters that might entail criticism of policies carried out by the government of Israel. Some complain that they have been chased, labeled, and harassed on allegations of anti-Semitism.

**In view of the need to protect a group but without suppress another, and the dangers on freedom of expression in this regard, this webinar sought to answer these questions:**

1. How to balance between the need to combat anti-Semitism but protect the freedom of expression? What is the UN and other international actors’ role in this regard?
2. Does the IHRA definition of antisemitism threaten the work of lawyers, academics, human rights defenders, and journalists, among others? How?
3. Does the current trend of adopting the definition to laws and policies affect the rule of law and democracy? And is the drawback only in the IHRA definition or is it further than that?
4. What are the mechanisms to combat such repercussion? Can judicial systems be recruited to challenge these legislations on grounds of unconstitutionality? Can popular means of resistance be employed in this regard?

## **Second: Speakers' Interventions**

### **Richard Falk:**

- Anti-Semitism is a violation of fundamental human rights in a form of hatred against a particular ethnicity, the Jewish people.
- There is a confusion surrounding antisemitism in the form of misuse of this symbol of unacceptable behavior and attitude, with politics or a powerful tool that is designed to shield the state of Israel responsible for and deserved of critical assessment
- It is not opportunistic but embodied in the whole undertaking of a Jewish state in a non-Jewish society.
- This could be done only by creating a lot of obscurity which aims at the perception that attacks at Israel are really attacks at the Jewish people.
- This is what Richard calls the politics of deflection, leading the discussion to whether criticism of Israel or the proposed definitions of antisemitism that encounters criticisms of Israel are to be accepted.
- These definitions are a shift from the justifiable and increasing level of consensus that Israel is an Apartheid state. This is a way at avoiding that conversation and having this conversation (on antisemitism) instead.
- When he was a Special Rapporteur ten years ago, Richard noticed that Israel decided that it would no longer go to substantially refuse the UN criticism of its policies and practices but rather would concentrate attacking the credibility of the person or group that are mounting those critics. In other words, this is where Richard realized that this is an effort to fundamentally shift the conversation and attention of the international community away from Israeli doings and try to pin that label of antisemitism and open a way of wrongfully acting on those criticizing Israel. It is a kind of linguistic acrobatics that is designed to achieve a very unacceptable result which is to continue to be insulated in their practices that have been repressive toward the Palestinian people at the hands of political arrangements that have been increasingly characterized as a form of Apartheid.
- This silencing of critics has become official. Israeli policy has been promoted by spread the acceptance of this broaden definition of antisemitism as embracing Israel.
- The underline impulse not the re-definition so much as diversion of attention from the crimes and wrongdoings of the Israeli state.

- It leads to a misunderstanding to what constitutes antisemitism and these necessities the clarifying efforts that this meeting is dedicated to achieving. In other words, it is trying to disentangle misapplication of antisemitism from a focus on achieving some sort of justice, even delayed, for the Palestinian people. This should be the central international effort and therefore what he hopes, and he thinks many others who were dedicated to the protection of the human rights and the basic aspirations of the Palestinian people, that one can refocus on that struggle and not the diverted by that propaganda technique confusing the issue and confusing the critiques with wrongdoing and leading to lots of public misperception concentrated, in the United States, on the efforts to criminalize non-violent forms of opposition to Israel's practices and policies.
- The BDS campaign is a causality of this antisemitism simit efforts to portray such initiatives as antisemitic.
- So, this kind of exercise (today's webinar) as clarifying the language of antisemitism is essential to refocusing the struggle to justice in Palestine.

#### **Neve Gordon:**

- In October 2020, the education minister in the United Kingdom sent a letter to all the universities across the UK and told them they must adopt the IHRA definition of antisemitism. He sent it in October and wanted it to be adopted by Christmas. The universities who fail to adopt it will face financial punitive consequences.
- Less than two years later more than 200 high educational institutions across the UK have adopted this definition.
- This definition changes the traditional meaning of anti-semitism so the focus instead of being the hatred of Jewish, the idea of Jewish natural evil or the belief that Jewish has a world-wide conspiracy and all these kinds of hate and puts the focus on harsh criticism of Israel and the government of Israel for its right-abusive policies.
- In 2018, Israel passed a bill recognizing Israel as a Jewish state legalizing discriminative policies against Palestinian citizens of Israel. Calling the state, which is promoting racist acts as racist, according to IHRA definition, is considered anti-semitism. But this is what it is. So, he has a real problem with that.

- He moved to London in 2016 and his two children are attending high school in London and both of his children has experienced anti-semitism.
- So, what this definition is doing is that it does a kind of cry-wolf while the real anti-semitism is erased and deflected.
- In the UK, there have been scores of cases of academics and students that have in the past two years been subjected to investigations, disciplinary hearings, and there have been cases where people got fired from their job. So, you have a whole situation where people are harassed basically using this definition. What we know from looking at these cases is that practically none of them was a case substantiated. What we have is actually students setting and looking at people's, let's say, twitter accounts going back 4,5 years and looking at every tweet you tweeted, every tweet you liked, every tweet you retweeted. Seeing if any of them fall under the IHRA definition and then file the complaint.
- The people who got complaints filed against then have to go through seven gates of hell. In terms that they are ashamed in terms of being antisemitic, they have to defend themselves that criticism of Israel is not antisemitic, they have to go to meetings of disciplinary hearings, sometimes they have to hire lawyers, and so forth and so forth. This creates a kind of shelly affect not only at them but at all the people around who were aware of these disciplinary hearings. And what you have is a kind of silencing effect that this definition has done.
- How we have to understand this definition then? Richard said that we have to understand it as a deflection mechanism. I would like to take that a step further and would like to suggest that it does much more work.
- Richard and Virginia Telly wrote the first Apartheid report in 2017 under the aspires of the United Nations that basically claims that Israel from the river to the sea has been committing crimes of Apartheid. Two years later, 8 Palestinian organizations wrote a similar report and submit it to the UN as a Shadow Report. One year later, B'tselem then Human Rights Watch then Amnesty International followed the lead. This is a consensus among civil society community that Israel is committing the crime of Apartheid. I would like to suggest that this definition is an Apartheid enabler because anyone that lays the claim that Israel is committing the crime of Apartheid is automatically according to this definition is branded as an antisemitic. The definition is used to enable the apartheid machine to shield it from any kind of criticism submitted continue going on and on and on.

- We need to think very carefully on how we undermine this definition while still being vigilant against the real manifestations against antisemitism that is on the rise across Europe and North America and other parts of the world.

### **Giovanni Fassina**

- IHRA is not a form of primary legislation. It is a form of soft law. Because it is not a legally binding. However, many European countries are using the IHRA as a source for designing their domestic policies which are clearly targeted against Palestinian rights and even if not entered into the national legislation, IHRA has been treated as a legally binding de facto by public and legal actors. For examples countries such as Austria, Germany and the United Kingdom has adopted de facto the IHRA as a source of anti-discrimination policy that is fighting antisemitism. This resulted in policies that are violating fundamental rights.
- During the last two years, we, at the European Legal Support Center (ELSC), has dealt with over 100 cases in different European Countries which we can talk about for hours, but I will give you a few examples.
- Basically, in Germany and Austria, national parliament has adopted anti-BDS motions adopted by federal parliament or municipalities. Some of these motions recall the IHRA in their preamble and then mainly equalizing the BDS movement with the new forms of antisemitism and then calling on public and private bodies to not provide the BDS movement with financial support or providing any public premises to BDS related events.
- Even though these motions are not binding, we received many cases where facilities refused to allow BDS movement or individuals accused of supporting BDS from hiring spaces within their facilities for their events.
- The good part in these cases is that the courts revoke them every time we raise these cases to them. And all our claims are basically approved. Moreover, there has been a rising jurisprudence in Germany that is identifying BDS as legitimate peaceful activity.
- Another case, which is still pending, is of three activities in Germany who are legally challenging these motions adopted by the German parliament. From a legal point of view, it is very tricky. It is a political motion thus it is a little bit difficult to fight or protest against it. This case would be crucial for shutting down such motions at a national level.

- A different case in the United Kingdom happened to a newly hired person into a company which totally incorporates the IHRA definition. In this case, the company withdrew the offer upon tweets of support from that person upon the attacks on the Gaza Strip and for matching racism against blacks with a sort of Zionism. These tweets were viewed as antisemitic according to IHRA. However, when legally challenged, the company rehired the person again.
- There have been dozens of cases from academics and students in the UK where we legally challenged the disciplinary hearings they are exposed to and succeeded in the institutions withdrew the complaints against them.
- IHRA has been adopted by political pressure and earned its de facto legally binding status however, from what we can see in our cases, it cannot stand in face of the actual law where freedom of political believe and freedom of expression is protected.

### Commentators:

#### Dr. Ilise Cohen:

- Some of the arguments against IHRA definition is that it is an act of antisemitism. The IHRA policy in its definition singles out Israel from every other country in the world. It also singles out Jews from any other group in the world. It singles out Jews people to only be a particular kind of Jew that is forces us to be connected to self-determination that centers Israel which is also no ok. It is antisemitic in a way that it allows Israeli exceptionalism.
- In terms of IHRA, she thinks it missed its mark. In its preamble it states that “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”. It missed the mark, the mark is that there is neo nationalism, there is neo nazi movements, there is Christian anti-semtisim, there is Christian hegomny, which alotegether created in both Europe and North America, these are part of the things that we need to actually name. When we don’t name those things and instead frame it into anti-semitism framework and we also bring in xenophobia we start to separate all the groups which hence creates nationalism which attacks all these groups not only Jewish people.
- There is always going to be a nationalism propaganda no matter what we do or whether it is connected to Israel or not. Call Israel the state that it is, that it has nationalist propaganda, like any of the states we belong to, but take it out of the context of antisemitism.

- This is the exhaust of anti-semitism, this is the exhaust when you constantly peddling to the extent when people became unaware of what they can say or search in their academic space.

**Dr. Andrew Gordon:**

- He expressed that he has been struck to the understandings of antisemitism and the anti-Arab feelings and empathy with Apartheid he had seen among Israelis.
- The central feature here is that there is an assessment of individuals as of being biologically incapable of change and biologically incapable of different forms of thinking.
- He agreed with Professor Falk in his assessment that this is somehow a distraction from the real issues of critical thinking.
- But he thinks that at the root, at the very basic levels of thinking, we find that antisemitism or anti-Arab feelings are basically misapprehensions of the cultural differences that become in our minds as biological differences.
- He doesn't see any hope at all for the dissolution of Apartheid, for the changing of our discourse as long as we are seen as biologically committed to certain points of view.
- The Jews and the Israelis that tend to subscribe themselves with certain Apartheid policies tend to think of those who oppose them as biologically inferior and biologically incapable. This extends to Arabs and would extend to all those who sympathize with Palestinian rights.
- The challenge ahead of us is to think differently about differences, that it is not biological, that it is not existential. That we need to consider that it is possible to move beyond the fact that people are committed to certain points of view.
- Once we begin to think of our ideological expressions and political expressions as inherently embodied biologically in us, we have no chance to change at all.
- Many Israelis he knew are extremely opposing Arabs just because they existentially believe that they have to do so, that it is part of them biologically.
- Only when we stop to think of political and cultural beliefs as of being biologically inherent in us, we can change and accept the difference.



**Dr. Anis Kassim:**

- Anti Semitism is a term that brings a lot of emotions in the mind of Europeans.
- IHRA is designed to shield Israel of any criticism. About half of the 11 illustrations of the definition has been dedicated toward silencing criticism against Israel.
- In the WWII the International Tribunal of Nuremberg designed to try Nazi crimes against Jews argued that its jurisdictional authority is derived from the concept of crimes against the common humanity of all victims. The tribunal did not give regard to religious or national affiliations of the victims. On the contrary, in 1950s Israel passed a law called 'the Nazi and Nazi Collaborators law' where it classified the Nazi crimes as Crimes against the Jews people and Crimes against humanity. So, they viewed Jews as a different set of human beings.

**Q & A session**

**Question 1:** There seems to be a discrepancy between the EU and the US's approaches in dealing with antisemitism definition. Nevertheless, I am curious as to why the far east stands absent in this fight. What is the stance of the far east on this? The General Assembly's wins have always come from the allied force of those oppressed, who know the meaning of being oppressed, this is why we have more wins in the GA than in the Security Council. Should there be a conversation of a potential grand alliance to raise these voices to revise the grounds on which antisemitism was initially meant and purposed? So, it's a tactical question on potential instrumentalization of the UN GA?

Richard Falk (A): I think there is no doubt that the UN has an important role in verifying the nature of authentic antisemitism and arousing what Neve called vigilance, in relation to it, and repudiating the confusion that is caused by identifying antisemitism with criticism of Israel. That's a really important distinction and if it was embodied in a widely supported GA resolution, I think again it would have an important impact on international public opinion and again in its important and symbolic domain in politics. I would take the opportunity to just make another point, it is interesting to observe that Israel has been opportunistic befriending genuinely antisemitic governments and placing all this emphasis on inauthentic use of antisemitism. In other words, it is, for instance, befriended Hungary and other states that have ignored the rise of white supremacy in their countries, and this shows a perverse sacrifice of the struggle against the hatred of Jews in order to insulate Israel from its

wrongful practices. And this is part, it seems to me, of a diagnosis of what is wrong with the IHRA approach.

**Question 2:** It has not been mentioned, but the many Jewish scholars/ intellectuals, a couple of years ago, came forward, and I think Richard is a signatory of the Jerusalem Declaration on what constitutes antisemitism, that is such a tremendous piece of advocacy. Why do you think, this has not gained enough traction as an alternative to IHRA? I mean of course, I do not expect states to adopt it themselves, but advocates could use it more. I keep on meeting people who have never read it, never heard of it.

Neve Gordon (A): There are several issues with the Jerusalem Declaration that needs to be mentioned. One relates to what Ilise said, that it falls again in the same trap of the specificity of racism. And what we say in the UK for example is that while every racialized group, the acts of racism and hatred has definitely specificity towards them. So, the racism against Jews is different from the one against the black and so forth, the situation of the black in the UK is different from that of the black in the US, and therefore these definitions try to get to these specificities. But they also play into the divide and conquer idea that each racial group has to deal with the racism separately, while what we are trying to do and what we think in the UK is right is that there will be one anti-racist definition that will help unite the different racial groups as they fight against ethnicity and racism. So, this is one voice against the JDA

Another voice, and maybe a Palestinian on this panel could talk about it, is the way the JDA came into being and the lack of Palestinian voices in the JDA which raises concerns that are fundamental for the Palestinians.

But then there is a different perspective that says yes, the JDA has several problems, including the two that I just mentioned. But today, it might be the best tool against IHRA, so we need to look at it from a pragmatic perspective. For example, if I am looking at the University sector in the UK, it seems to me hardly any, if at all, of the universities that adopted the IHRA will revoke it while the Tories are in government, and even the Labour Party, because it also adopted the IHRA. So, a university that would lobby against the IHRA will see that on the one hand there are students and staff lobbying against the IHRA definition, and on the other hand there is the UK government that is telling them to adopt it. It is clear which side has more weight. One way is to tell them OKAY adopt the JDA, since

the JDA and IHRA contradict each other, it will make both of them inoperable, and therefore we won't have a definition, and they will have to go to the equality act and human rights which is the legislation we want them to go for when there is hate speech on the campus.

Richard Falk (A): the only thing I would add is that it's helpful to think about why the Jerusalem Declaration definition has been ignored while the IHRA definition has had such political traction? Law is subordinate to the primacy of geopolitics and because there is a geopolitical reinforcement and use of the IHRA definition, it's not that it is more persuasive or more judicious formulation of antisemitism, it is because it is a convenient tool for geopolitical actors and in the whole panorama of arenas where Israel/Palestine issue arises, the primacy of geopolitics is evident, above all in the Security Council of the UN. The whole use of the veto is one expression of the subordination of law to geopolitics and that informs our understanding of this kind of issue.

**Question 3:** For Giovanni. In terms of arguments that are used in courts, because the very persecution of organizational persons acting to fight against what might constitute apartheid, has this been – according to the Convention on the Suppression of the Crime of Apartheid- has this been used in the cases that you have taken part in, or is it mainly on freedom of expression that you take action?

Giovanni Fassina (A): this is an argument that has been made by a lawyer Ahmed Abed in a Belgian court, but it is the only case where I think it made that argument. I must say that, from my experience, when it comes to national courts, they put into consideration the sources of international human rights law, but what is usually more effective is the recalling of national or European law. Because in many other cases where we would invoke ECHR or European law, national judges are kind of reluctant to issue a judgement that makes a clear referral to this, this is what we saw at least in Germany and Austria.

**Question 4:** Kenneth Stern's definition, Kenneth Stern is the one who drafted the definition of antisemitism, he said that it is being weaponized to silence Israeli critics, how important is this confession in today's discussion? I imagine this could have so many dimensions, how important is this for people on the ground for example, movements like Jewish Voice for Peace. Is this a thing? Is this significant or not?

Giovanni Fassina (A): it is extremely significant, actually we constantly use that article every time we have to argue against the IHRA. So, it is very significant. But again, university managers and others, since the huge amount of political pressure on them this confession is not enough because the damage has been done. But we used it dozens of times.

Ilise Cohen (A): can I just add something, is that we are seeing a strategy here that even using that to talk about how the definition is problematic and being weaponized, that it is now said that he is off on his own and he didn't agree with others. So, their strategy is to try to also undermine his statements, and that's just for people to know.

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