

FAQ: What to Know About Efforts to Re-define Anti-Semitism to Silence Criticism of Israel

Anti-Semitism – hatred, violence, intimidation or discrimination targeting Jews because of their ethnic and religious identity – is a serious phenomenon that must be addressed. Like other forms of racism and oppression, it is deeply harmful to its victims, and remains a scourge on our society as a whole. Fighting anti-Semitism must go hand in hand with fighting racism in all forms.

In the context of activism for Palestinian rights, we are seeing a surge of accusations of anti-Semitism against individuals that criticize the Israeli state. Some groups are pushing to redefine anti-Semitism, and codify an overbroad definition that would include advocacy to hold Israel accountable for violations of Palestinian human rights.

Classifying criticism of Israel as “anti-Semitic” works to circumscribe important political speech activities, often in violation of the First Amendment. It is also disingenuous and misleading; it does a great disservice to Jewish victims of genuine anti-Semitism by diluting and confusing the term.

What is the “State Department Definition of Anti-Semitism”?

The “State Department definition” of anti-Semitism is the most recent manifestation of a long-term political project attempting to re-define the traditional definition to include criticism of Israel. The definition is sometimes referred to as the “European Union Monitoring Centre definition” (see below), or the “3 D’s.”

The “State Department definition” has three parts. First, the definition begins with a general, and uncontroversial, description of hatred of Jews. Second, it lists several contemporary examples, which are also uncontroversial because they align with a traditional understanding of anti-Semitism. These examples include calling for violence against Jews, making allegations about Jews as a collective, and holding Jews as a group responsible for wrongdoing committed by a single person, or the State of Israel. In its third section, the “State Department definition” radically departs from the traditional understanding of anti-Semitism by listing the “3 D’s” of “Anti-Semitism Related to Israel.” The so-called 3 D’s of anti-Semitism are “**d**emonizing Israel,” “**a**pplying a **d**ouble-standard to Israel” and “**d**elegitimizing Israel.”

What is wrong with the “State Department Definition of Anti-Semitism” and the “3 D’s”?

The re-definition brands critics of Israel and advocates for Palestinian human rights as anti-Semitic by blurring the important distinction between criticism of Israel as a nation-state and anti-Semitism.

What is the distinction between Jewish people and Israel? Jews are an ethno-religious group living throughout the globe. Israel is a nation-state based on the belief that Jews, as a people, have a right to a national homeland in Israel/Palestine – a belief not shared by all Jews. Moreover, the term “Israeli” should not be conflated with “Jewish.” The majority of the global Jewish population does not live in Israel and 25% of Israelis are not Jewish.¹ Criticism of the Israeli state is not based on the Jewish identity of most Israeli citizens

¹ Jewish Virtual Library, “Vital Statistics: Jewish Population of the World,” <https://www.jewishvirtuallibrary.org/jsource/Judaism/jewpop.html>.

PALESTINE SOLIDARITY LEGAL SUPPORT

LEGAL ADVOCACY FOR HUMAN RIGHTS ACTIVISTS

or leaders; it is based on the nation state's historical and present day actions. Despite these important distinctions, some go to great lengths to lump Jewish people and the Israeli state together, arguing that Jews and Israel are inherently connected, and that any attack on one is an attack on the other. The proposed "State Department definition" also makes this false equation.

But many Jews and many anti-racist activists understand that Jewish people and the Israeli state are not one and the same. Many believe that the unquestioned assumption that the Israeli government is the voice of Jewish people worldwide is itself anti-Semitic because it necessarily attributes Israel's ideology, policies and practices to all Jews.

The British journalist Owen Jones wrote recently that "**to defeat all forms of antisemitism—including those that masquerade as solidarity with oppressed Palestinians—we need to be able to identify them. That becomes impossible when the very meaning of the word is abused and lost.**"² This abuse is precisely what underlies claims that criticism of Israel is by definition anti-Semitic, even when it is not based on a hatred of Jews.

What is wrong with conflating anti-Semitism with criticism of Israel?

The effect of blurring anti-Semitism with criticism of Israel is to censor speech. It aims to silence those who wish to criticize Israel's well-documented human rights violations by making it unacceptable and taboo to do so. It silences the everyday observer of Israel's actions who may wish to comment and draw parallels with other experiences, or do anything at all to oppose it.

Within this new theory of anti-Semitism, there is a qualification that the label of anti-Semitism cannot apply to all "anti-Israel" speech (or speech critical of Israel)—its drafters were clearly aware of First Amendment protections, and the high value of freedom of speech in democracies.

But, the definition is so broadly drawn—and its examples so vague—that any speech critical of Israel could conceivably fall within it. For example, a human rights supporter who speaks out, citing reports by such bodies as the United Nations or Amnesty International regarding alleged human rights abuses by the State of Israel, would be labeled as anti-Semitic because she has "appl[ie]d double standards by requiring of [Israel] a behavior not expected or demanded of others."

Likewise, any criticism of Zionism—which questions Israel's definition as a state that premises citizenship on race, ethnicity, and religion—is considered anti-Semitic under this re-definition, because such speech can be seen as "denying Israel the right to exist" as a "Jewish state" that privileges its Jewish citizens over others.

Why is the re-definition legally problematic?

Applying the re-definition would violate the First Amendment. The US Constitution protects speech activities from government interference in order to ensure that even those who protest government policies can speak their mind without fear of retribution.³ The Supreme Court has declared that, "[S]peech on public

² Owen Jones, "Anti-Jewish Hatred Is Rising—We Must See It for What It Is," *Guardian*, August 11, 2014, <http://www.theguardian.com/commentisfree/2014/aug/11/anti-jewish-hatred-rising-antisemitism-meaning>.

³ *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 96 (1972).

PALESTINE SOLIDARITY LEGAL SUPPORT

LEGAL ADVOCACY FOR HUMAN RIGHTS ACTIVISTS

issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.”⁴ When the government targets particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.⁵ Speech that criticizes Israeli policies, or questions its right to exist as a Jewish state, cannot constitute the basis for government – or public university - regulation.

One good example of how applying the “State Department definition” of anti-Semitism to restrict speech would violate the U.S. Constitution is the California state legislative House Resolution 35 (see below, under “Where else has the definition appeared in the US?”).

The United States Department of Education’s (DOE) Office for Civil Rights has emphatically affirmed that criticism of Israel is protected speech on campus. In August 2013, the DOE dismissed three complaints against the University of California Berkeley, Irvine, and Santa Cruz, which had alleged that criticism of Israel created an anti-Semitic environment.⁶ The complaints were made under Title VI of the Civil Rights Act.

DOE **rejected** these complaints because such events “constitute[] expression on matters of public concern directed to the University community. **In the university environment, exposure to such robust and discordant expressions, even when personally offensive and hurtful, is a circumstance that a reasonable student in higher education may experience.** In this context, the events that the complainants described do not constitute actionable harassment.”⁷

Where does the “State Department Definition of Anti-Semitism” come from?

The effort to redefine anti-Semitism to include common criticism of Israel originated over a decade ago when the idea for a re-definition by a Tel Aviv University professor, Dina Porat, was championed by the American Jewish Committee and other US-based Israel advocacy groups.⁸ The “3 Ds” test was popularized around the same time by a Jewish leader and current chairman of the Jewish Agency for Israel, Natan Sharansky.

Lobbying efforts of pro-Israel groups culminated in the European Union Monitoring Centre (“EUMC”) posting a very similar version of the re-definition to its website. Thus, the definition has often been referred to as the “EUMC Working Definition.” But the definition was meant only as a “guide for data collection” and was subsequently discarded because it was not well received by organizations on the ground.⁹ Indeed, in 2013, the European civil-rights agency removed the definition from its website because, according to an agency spokeswoman, the agency had never viewed the document as a valid definition. The document was

⁴ *Connick v. Myers*, 461 U.S. 138, 145 (1983).

⁵ *R.A.V. v. St. Paul*, 505 U.S. 377, 391 (1992).

⁶ DOE’s determination letters in these three cases, explaining its legal findings, can be downloaded at the following URLs: UC Berkeley (<http://bit.ly/doeucb>); UC Santa Cruz (<http://bit.ly/doeucsc>); UC Irvine (<http://bit.ly/doeucirvine>).

⁷ See UC Santa Cruz and UC Berkeley determination letters. (Emphasis added.)

⁸ Dina Porat, “The International Working Definition of Antisemitism and Its Detractors,” *Israel Journal of Foreign Affairs*, 93, 94, VOL. 3 (2011), http://www.kantorcenter.tau.ac.il/sites/default/files/DinaPorat5%209_0.pdf (last accessed 10/28/13).

⁹ See Seth Berkman, “Anti-Semitism Fight Hinges On Definition,” *Jewish Forward*, September 25, 2012, <http://forward.com/articles/163105/anti-semitism-fight-hinges-on-definition/?p=all>

PALESTINE SOLIDARITY LEGAL SUPPORT

LEGAL ADVOCACY FOR HUMAN RIGHTS ACTIVISTS

pulled offline “together with other non-official documents,”¹⁰ to the consternation of Israeli officials and US-based Israel advocacy groups including the AJC and the Simon Wiesenthal Center, which called on the agency to restore the working definition to its website.¹¹

Does the re-definition have legal authority?

At most, the re-definition has limited authority for the purpose of identifying anti-Semitism abroad.

The re-definition is in use by the U.S. State Department for the purposes of producing country reports on global anti-Semitism. In the State Department’s 2008 report “Contemporary Global Anti-Semitism” the following text appears: “The [2004] EUMC’s working definition provides a useful framework for identifying and understanding the problem [of anti-Semitism, and its persistence] and is adopted for the purposes of this report.” It is unclear whether the re-definition is in use for any other purpose in the State Department, or domestically.

The 2008 State Department country report that employs the re-definition contains this caveat: “While the report describes many measures that foreign governments have adopted to combat anti-Semitism, it does not endorse any such measures that prohibit conduct that would be protected under the US Constitution.”¹²

This caveat is necessary because if the proposed re-definition were officially adopted by a government body and applied to restrict speech in the US, it would violate the First Amendment. Thus, the re-definition lacks legal authority for use in the US. But this has not stopped Israel advocacy organizations from claiming its official credibility, and trying to further legitimize it.

Where else has the definition appeared in the US?

A comparable definition was endorsed by the California legislature in House Resolution No. 35, which encouraged suppression of political speech critical of Israel on California college campuses, and defined anti-Semitism to include “language or behavior [that] demonizes and delegitimizes Israel” and “student- and faculty-sponsored boycott, divestment, and sanction campaigns against Israel.”¹³ The non-binding resolution

¹⁰ JTA, “EU drops its 'working definition' of anti-Semitism,” *The Times of Israel*, <http://www.timesofisrael.com/eu-drops-its-working-definition-of-anti-semitism/#ixzz37qJRBuJL>

¹¹ See Simon Wiesenthal Center, “SWC to EU Baroness Ashton: Return Anti-Semitism Definition Document to EU Fundamental Rights Agency Website,” Wiesenthal.com,

<http://www.wiesenthal.com/site/apps/nlnet/content.aspx?c=lsKWLbPJLnF&b=8776547&ct=13381863>; see also

American Jewish Committee, AJC Urges EU to Act on Findings of Anti-Semitism Report,

<http://www.prnewswire.com/news-releases/ajc-urges-eu-to-act-on-findings-of-anti-semitism-report-231178991.html>.

¹² See US State Department, *2008 Contemporary Global Anti-Semitism Report*, 2 (Washington, D.C.: US State Department, 2008), <http://www.state.gov/documents/organization/102301.pdf>. Also, in 2010, the State Department issued its 2010 Compendium of Global Anti-Semitism which reprints in one of its appendices the dated 2004 EUMC anti-Semitism definition and repeats the “purposes of this report” and constitutional caveats.

¹³ California State Assembly, House Resolution No. 35, adopted August 28, 2012. The bill, available at http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201120120HR35, purports to provide evidence of anti-Semitism on campus, but the examples provided were replete with false information, exaggerations, and assumptions that criticism of Israeli policy is anti-Semitic. Particularly outrageous were the citations to real instances of

PALESTINE SOLIDARITY LEGAL SUPPORT

LEGAL ADVOCACY FOR HUMAN RIGHTS ACTIVISTS

suggested that the University of California deny use of “public resources ... for anti-Semitic or any intolerant agitation.” If implemented, this recommendation would result in a blatant violation of the US Constitution; a public university cannot discriminate in funding or other resources because it dislikes a particular viewpoint.¹⁴

The re-definition is also appearing in student government resolutions condemning anti-Semitism and is being proposed in other contexts where Israel advocacy groups are attempting to dictate what is acceptable speech when it comes to Israel.

How should we define anti-Semitism?

Anti-Semitism is ethno-religious bias, hate, discrimination and violence against Jews, because of their Jewish identification. Since the term’s inception in 1870, “anti-Semitism” has been used to refer to various forms of animus, hatred, discrimination, and violence directed at Jewish individuals and groups. The use of threats, violence, and discrimination against individuals or groups, or negative characteristics imputed to Jews as a group are widely accepted examples of anti-Semitism. As part of addressing anti-Semitism, we must recognize the interconnectedness of systemic forms of oppression, including genocide, slavery, racism, sexism, homophobia, class-based oppression, Islamophobia, ableism, ageism and more.

anti-Semitism (such as swastika graffiti), which had no documented relationship to Palestine advocacy but were presented as if perpetrated by critics of Israeli policy or the result of such criticism.

¹⁴ *Rosenberger v. Rector*, 515 U.S. 819 (1995).