The 'New Antisemitism':

A Historically Informed Case Study Analysis

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Thesis submitted in partial fulfilment of the requirements for the degree of DPhil in Area Studies (Middle East) in the School of Global and Area Studies at the University of Oxford.

Hilary Term 2024

Word Count: 99,900

To Cele

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Acknowledgements

I am grateful to my supervisor, Yaacov Yadgar, for his unfailing patience and support; to my transfer and confirmation examiners, whose careful feedback was invaluable; and to the ESRC and Wolfson College, which together made this project possible. For their assistance and advice, companionship and camaraderie, I wish to thank RB, Michaela Collord, Norman Finkelstein, Tommy Hilton, James Hoctor, Colter Louwerse, Jenny Manson, Tom Mills, Giulio Napolitano, Renana Neeman, Alex Nunns, Poyâ Pâkzâd, Mouin Rabbani, Avi Shlaim, Narvir Singh, Sorcha Thomson, my parents, my siblings, the fabulous Fünfgelds, and Cele.

Abstract

An influential body of writing has identified much or most international criticism of Israel as amounting to a 'New Antisemitism'. This thesis argues that New Antisemitism discourse should be understood as an intervention in the long-running international legitimacy war over Zionism/Israel—one peculiar to the distinct, post-1967 phase of that contest. This contention is advanced primarily by demonstrating that New Antisemitism-inspired accounts of critical episodes in the Israel-Palestine conflict possess neither empirical support nor conceptual coherence. By showing that New Antisemitism discourse does not compel as an argument, the thesis suggests that the New Antisemitism's salience and influence are better explained by virtue of its role as a legitimating ideology. The dissertation's overarching contribution to Israel-Palestine historiography is, accordingly, the identification and analysis of an influential strand in Israel's legitimation discourse that has hitherto been overlooked. In developing this argument, the thesis makes several additional, discrete contributions to the diplomatic, legal, and political histories of the Israel-Palestine conflict: the first diplomatic history of United Nations General Assembly (UNGA) Resolution 3379, based on hitherto unused archival records; a novel comparative analysis of Zionist and Afrikaner self-determination claims as these were contested on the terrain of international law, drawing on hitherto overlooked materials from the International Court of Justice (ICJ); and an original political history of the International Holocaust Remembrance Alliance (IHRA) Working Definition of Antisemitism, based on new documentation secured inter alia through Freedom of Information requests. At the same time, the thesis contributes to scholarship on the New Antisemitism the first scholarly appraisal of the latter's historical claims.

Introduction

This thesis argues that New Antisemitism discourse should be understood as an intervention in the long-running international legitimacy war over Zionism/Israel—one peculiar to the distinct, post-1967 phase of that contest. This contention is advanced primarily by demonstrating that New Antisemitism-inspired accounts of critical episodes in the Israel-Palestine conflict possess neither empirical support nor conceptual coherence. By showing that New Antisemitism discourse does not compel as an argument, the thesis contends that the New Antisemitism's salience and influence are better explained by virtue of its role as a legitimating ideology. The dissertation's overarching contribution to Israel-Palestine historiography is, accordingly, the identification and analysis of an influential strand in Israel's legitimation discourse that has hitherto been overlooked. In developing this argument, the thesis makes several additional, discrete contributions to the diplomatic, legal, and political histories of the Israel-Palestine conflict: the first diplomatic history of United Nations General Assembly (UNGA) Resolution 3379, based on hitherto unused archival records; a novel comparative analysis of Zionist and Afrikaner self-determination claims as these were contested on the terrain of international law, drawing on hitherto overlooked materials from the International Court of Justice (ICJ); and an original political history of the International Holocaust Remembrance Alliance (IHRA) Working Definition of Antisemitism, based on new documentation secured inter alia through Freedom of Information requests. At the same

time, the thesis contributes to burgeoning scholarship on the New Antisemitism the first scholarly appraisal of the latter's historical claims.

This introduction expands on each element in the above précis. It first situates the research project within existing historiography on the Israel-Palestine legitimacy war. It then establishes what the thesis understands by 'New Antisemitism' discourse and clarifies the original contribution made to existing scholarship on it. It proceeds to explain the analytical approach adopted to develop and defend the argument. Finally, it outlines the structure of the thesis and summarises the distinct arguments, methods, and scholarly contributions of each chapter, as well as their relation to the dissertation's overarching claim.

The New Antisemitism and the Israel-Palestine legitimacy war

Israel-Palestine historiography

Ever since the World Zionist Organization set as its objective the founding of 'a national home for the Jewish people secured by public law', supporters as well as opponents of the Zionist project have contested its legitimacy before and within international institutions. The enduring salience of this international legitimacy war reflected the internationalised character of 'the Zionist-Arab conflict'.[1] The Zionist movement always solicited external sponsorship: from the Ottoman Empire, then the British Mandatory administration, and, after its

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1 Benny Morris, *Righteous Victims: A History of the Zionist-Arab Conflict, 1881-1998*, updated ed. (Vintage, 2001 [1999]).

founding, first France and then, beginning in the 1970s, the United States.[2] Opponents of Zionism/Israel sought to dissuade these sponsors while marshalling allies of their own. In the course of this political struggle, the Zionist movement secured international 'certificates of legitimacy' that helped validate its objectives and facilitate support from third parties.[3] In November 1917, the British government endorsed 'the establishment in Palestine of a national home for the Jewish people' through what became known as the Balfour Declaration.[4] The incorporation of this commitment in the 1922 League of Nations Mandate for Palestine provided crucial politico-legal validation for Britain's pro-Zionist policy.[5] In

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2 Yosef Gorny, *Zionism and the Arabs 1882-1948: A Study of Ideology* (Clarendon Press, 1987), pp. 15-16. Avi Shlaim, *The Iron Wall: Israel and the Arab World* (W.W. Norton, 2000), pp. 17-18. Morris, *Righteous*, pp. 23, 41. Norman G. Finkelstein, *Image and Reality of the Israel-Palestine Conflict*, 2nd ed. (Verso, 2003), pp. 17-20.

3 Norman G. Finkelstein, 'Zionism and International Law' in Mouin Rabbani and Norman G. Finkelstein, *How to Solve the Israel-Palestine Conflict* (unpublished, n.d.), p. 31. Cf. Edward W. Said, 'Zionism from the Standpoint of Its Victims' in *The Question of Palestine* (Vintage, 1980 [1979]), p. 71. Victor Kattan, *From Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict, 1891-1949* (Pluto Press, 2009), p. 3.

4 A vast literature has debated the genesis of the Balfour Declaration—factors cited include Zionist lobbying, British imperial interests, Christian Zionism, and British antisemitism—as well as its consistency with Britain's other wartime commitments. A classic treatment is Leonard Stein, *The Balfour Declaration* (Vallentine-Mitchell, 1961). A copiously documented defence of 'perfidious Albion' may be found in Isaiah Friedman, *The Question of Palestine: British-Jewish-Arab Relations: 1914-1918*, 2nd ed. (Transaction, 1992). For more recent histories, see Tom Segev, *One Palestine, Complete: Jews and Arabs under the British Mandate* (Abacus, 2001) and Jonathan Schneer, *The Balfour Declaration: The Origins of the Arab-Israeli Conflict* (Bloomsbury, 2011). On the historiography, see Avi Shlaim, 'The Balfour Declaration and Its Consequences' in Wm. Roger Louis ed., *Yet More Adventures with Britannia: Personalities, Politics, and Culture in Britain* (I.B. Tauris, 2005).

5 Morris, *Righteous*, p. 73 ('the crucial international warrant for Zionism'). For the conflictual process by which the Balfour Declaration became incorporated in the Mandate, see Segev, *Complete*, pp. 116-18, 142-43. Susan Pedersen, 'Writing the Balfour Declaration in the Mandate', *The International History Review* 45.2 (2023), pp. 279-91. The authoritative history of the role of the League of Nations in the Palestine Mandate remains Susan Pedersen, *The Guardian: The League of Nations and the Crisis of Empire* (Oxford University Press, 2015).

1937, Britain's Palestine Royal (Peel) Commission recommended that Palestine be partitioned into separate Jewish and Arab States.[6] The Commission grounded this prescription on two key premises: that Jews and Arabs each possessed national rights of equivalent weight in Palestine, and that these national communities could not peacefully share one polity. In 1947, the UN General Assembly (UNGA) followed the Peel Commission's reasoning to the same conclusion.[7] The UN Partition Plan for Palestine was subsequently hailed by Abba Eban, the eminent Israeli diplomat, as Israel's 'birth certificate'.[8] Opponents of Zionism/Israel contested its legitimacy at each of these junctures as they argued, instead, for the self-determination right of the territory's resident majority.[9]

Historians of the Israel-Palestine conflict have studied this legitimacy contest from many angles. (Not a few have also participated in it.)[10] Sizeable historiographies have been devoted

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6 Presentations by Zionist and Arab spokespeople before the Peel Commission articulated the most sophisticated arguments for and against the Zionist project, respectively, in terms of practical considerations as well as international norms. These are examined in Chapter 2 below. Recent historiography has appraised the Peel and subsequent UN partition plans in comparative context, exposing their continuities with the ideological premises and administrative techniques of empire. Laura Robson, *States of Separation: Transfer, Partition, and the Making of the Modern Middle East* (University of California Press, 2017). Arie M. Dubnov and Laura Robson eds., *Partitions: A Transnational History of Twentieth-Century Territorial Separatism* (Stanford University Press, 2019). Penny Sinanoglu, *Partitioning Palestine: British Policymaking at the End of Empire* (Unviersity of Chicago Press, 2019). Laila Parsons, 'The Secret Testimony of the Peel Commission (Part I): Underbelly of Empire', *Journal of Palestine Studies* 49.1 (2019), pp. 7-24; 'The Secret Testimony of the Peel Commission (Part II): Partition', *Journal of Palestine Studies* 49.2 (2020), pp. 8-25.

7 UNGA, A/RES/181 (II) (29 November 1947). The UN records are reviewed in Chapter 2 below.

8 Quoted in Norman G. Finkelstein, *Gaza: An Inquest into Its Martyrdom* (University of California Press, 2018), p. 404. Cf. Shlaim, *Iron*, p. 27. Morris, *Righteous*, p. 161.

9 These arguments are examined in Chapters 1 and 2 below.

10 On the legitimation politics of Israeli orthodox as well as revisionist historiography on the 1948 War, see Avi Shlaim, 'The Debate About 1948', *International Journal of Middle Eastern Studies* 27 (1995), pp. 290, 292;

to each of the critical junctures summarised above, approached from myriad vantage points, be it elite diplomacy, civil society campaigning, or the mobilisation of international law.[11] One strand of this literature has examined the development and deployment of (de)legitimising discourses by supporters as well as opponents of Zionism/Israel. Historians have, for instance, studied how Zionist representations resonated with cultural and intellectual tropes salient in the Global North; how the Nazi holocaust figured in exceptionalising arguments for Zionist legitimacy; and how Israel has attempted to reshape the international legal environment.[12] On the other side, historians have shown how

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'The War of the Israeli Historians', *Annales* 59.1 (2004), pp. 161-67. On the post-1967 period, see Norman G. Finkelstein, *Knowing Too Much: Why the American Jewish Romance with Israel Is Coming to an End* (OR Books, 2012), part III. For critiques of Zionism by historians, see George Antonius, *The Arab Awakening: The Story of the Arab National Movement* (J.B. Lippincott, 1939), pp. 391-412. Albert H. Hourani, *Is Zionism the Solution of the Jewish Problem?* (Arab Office, 1946). Walid Khalidi, 'Introduction', in Walid Khalidi ed., *From Haven to Conquest: Readings in Zionism and the Palestine Problem until 1948* (Institute for Palestine Studies, 1971), pp. xxi-lxxxiii. Maxime Rodinson, *Israel: A Colonial Settler State?* (Pathfinder Press, 1973). Rashid Khalidi, *The Hundred Years' War on Palestine: A History of Settler Colonial Conquest and Resistance* (Metropolitan, 2020).

11 Wm. Roger Louis, *The British Empire in the Middle East, 1945-1951: Arab Nationalism, the United States, and Postwar Imperialism* (Clarendon Press, 1984), pp. 485-86. Elad Ben-Dror, *UNSCOP and the Arab-Israeli Conflict: The Road to Partition* (Routledge, 2023). (diplomacy) Stein, *Balfour*. Natasha Wheatley, 'Mandatory Interpretation: Legal Hermeneutics and the New International Order in Arab and Jewish Petitions to the League of Nations', *Past & Present* 227.1 (2015), pp. 205-48. Walter L. Hixson, *Israel's Armor: The Israel Lobby and the First Generation of the Palestine Conflict* (Cambridge University Press, 2019), pp. 31-55. (civil society) John Strawson, *Partitioning Palestine: Legal Fundamentalism in the Palestinian-Israeli Conflict* (Pluto Press, 2010). John Quigley, *The Legality of a Jewish State: A Century of Debate over Rights in Palestine* (Cambridge University Press, 2022). Ardi Imseis, *The United Nations and the Question of Palestine: Rule by Law and the Structure of International Legal Subalternity* (Cambridge University Press, 2023). (law)

12 Douglas Little, *American Orientalism: The United States and the Middle East since 1945*, 3rd ed. (University of North Carolina Press, 2008). Thomas Borstelmann, *The 1970s: A New Global History from Civil Rights to Economic Inequality* (Princeton University Press, 2012), p. 213. Jonathan Rynhold, *The Arab-Israeli Conflict in American Political Culture* (Cambridge University Press, 2015). Amy Kaplan, *Our American Israel: The Story of an Entangled Alliance* (Harvard University Press, 2018). (Global North) Boas Evron, *Jewish State or Israeli Nation?* (Indiana University Press, 1995 [1988]). Peter Novick, *The Holocaust in American Life* (Houghton Mifflin, 1999). Norman G. Finkelstein, *The Holocaust Industry: Reflections on the Exploitation of Jewish Suffering*,

Palestinian and Arab representatives engaged with international legal and political mechanisms to publicise their case[13]—even as this required reframing their positions within idioms developed by and through institutions from which they were structurally marginalised—and how the Palestinian national struggle resonated with, and was translated into, broader discourses—be they socialist or anticolonial; Islamic, pan-Arab or liberal.[14] This historiography parallels inquiries undertaken in respect of other internationalised legitimacy conflicts—how mid-twentieth century South African publicists, for instance, reframed apartheid in a doomed attempt to render it consistent with the emerging norms of decolonization; or how Cold War ideologues in the United States (US) constructed an all-pervading Soviet menace that could be deployed to delegitimize independent nationalist or internationalist opposition.[15]

2nd ed. (Verso, 2003). Idith Zertal, *Israel's Holocaust and the Politics of Nationhood* (Cambridge University Press, 2005). (Nazi holocaust) George E. Bisharat, 'Violence's Law: Israel's Campaign to Transform International Legal Norms', *Journal of Palestine Studies* 42.3 (2018), pp. 68-84. Craig Jones, *The War Lawyers: The United States, Israel, and Juridical Warfare* (Oxford University Press, 2021), pp. 3, 5-6, 11, 13, and passim. (legal environment)

13 Lori Allen, *The Rise and Fall of Human Rights: Cynicism and Politics in Occupied Palestine* (Stanford University Press, 2013); *A History of False Hope: Investigative Commissions in Palestine* (Stanford University Press, 2020). Wheatley, 'Mandatory'. Lynn Welchman, *Al-Haq: A Global History of the First Palestinian Human Rights Organization* (University of California Press, 2021).

14 Weldon C. Matthews, 'Pan-Islam or Arab Nationalism? The Meaning of the 1931 Jerusalem Islamic Congress Reconsidered', *International Journal of Middle East Studies* 35.1 (2003), pp. 1-22. Paul Thomas Chamberlin, *The Global Offensive: The United States, the Palestine Liberation Organization, and the Making of the Post-Cold War Order* (Oxford University Press, 2012). Paul Thomas Chamberlin, 'The PLO and the Limits of Secular Revolution, 1975-1982' in R. Joseph Parrott and Mark Atwood Lawrence eds., *The Tricontinental Revolution: Third World Radicalism and the Cold War* (Cambridge University Press, 2022), pp. 93-109. Sorcha Thomson and Pelle Valentin eds., *Palestine in the World: International Solidarity with the Palestinian Liberation Movement* (I.B. Tauris, 2023). Note 13 above.

15 Chapter 1 note 255 and Chapter 2 note 48 below.

The present thesis contributes to this body of Israel-Palestine historiography by identifying and addressing a significant gap within it. Even as historians of the Israel-Palestine conflict have investigated how supporters of Zionism/Israel endeavoured to legitimise their cause while delegitimising its critics in international fora, they have almost entirely overlooked one of the most influential of these legitimizing discourses: the 'New Antisemitism'.[16] The New Antisemitism is typically presented as a set of arguments about Jews and antisemitism, rather than an intervention in disputes about the legitimacy of the Zionist project. It is perhaps for this reason that historians of the Israel-Palestine conflict have neglected to investigate it. But to take New Antisemitism discourse at face value in this way would be a mistake. *The overarching argument of this thesis, and its principal contribution to Israel-Palestine historiography, is that New Antisemitism discourse should be understood as part-and-parcel of the long-running international legitimacy contest over Zionism/Israel.* Properly understood, New Antisemitism claims amount to a strong variant of arguments made on behalf of Zionism/Israel going back to the Mandate period—'strong' because the New Antisemitism embellishes those conventional arguments with the gloss that said arguments are so manifestly compelling, so logically as well as ethically irrefutable, that only irrational prejudice or animus could account for their rejection.

The thesis also locates New Antisemitism discourse in a political context that partially distinguished it from its ideological precursors. The first phase of the Israel-Palestine legitimacy war focused on the essential validity of a Jewish State in Palestine, whose establishment was rejected by Palestinian and Arab leaders. It began with the Balfour Declaration in 1917 and ended with Israel's military victory in the June 1967 Arab-Israel War. In aftermath of that war, the UN Security Council (UNSC) adopted Resolution 242 as its

16 See below.

framework for resolving the Arab-Israel conflict.[17] This called for establishing peaceful relations between Israel and other regional States in exchange for Israel's withdrawal from the territory it occupied in 1967. The terms of UNSC Resolution 242 legitimised in retrospect Israeli sovereignty within the expanded boundaries that resulted from the 1948 War—effectively drawing a line under previous controversies—and at the same time delegitimised Israeli sovereignty over what came to be designated the Occupied Palestinian Territory (OPT).[18] UNSC Resolution 242 thus simultaneously closed the legitimacy war's first phase that was focused on Israel's existence, and inaugurated its second phase focused on Israel's occupation.

In the decades after 1967, a broad international consensus crystallised around a 'two-State settlement' of the Arab-Israel and Israel-Palestine conflicts. This combined the *land for peace* principle embodied in UNSC Resolution 242 with the right of *Palestinian self-determination* asserted by a revived Palestinian national movement.[19] The front-line Arab States and mainstream Palestinian leadership embraced this framework in the mid-1970s and, by the end of the 1980s, had joined with virtually the entire UN General Assembly in formally endorsing it.[20] But if the international community overwhelmingly answered the reopened

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17 S/RES/242 (22 November 1967). Cf. Finkelstein, *Image*, chap. 5.

18 Shlomo Ben-Ami, *Scars of War, Wounds of Peace: The Israeli-Arab Tragedy* (Oxford University Press, 2006), pp. 116-17.

19 Noam Chomsky, *Fateful Triangle: The United States, Israel & the Palestinians*, updated ed. (Pluto Press, 1999), chap. 3—especially pp. 98-101, 134-59. Finkelstein, *Knowing*, chap. 9. Colter Louwerse, *The Struggle for Palestinian Rights: The Palestinian Campaign for Self-Determination and Statehood at the United Nations, 1967-1989*, PhD thesis (University of Exeter, 2022), parts I-II.

20 Chapter 1 note 153 below.

Palestine Question by reviving partition, this framework stood alongside, and at times in tension with, other responses.

Already in the 1940s, anticolonial leaders had denounced the Zionist project as infringing the right of an indigenous population to self-determination,[21] while even as the UN Partition Plan endorsed a 'Jewish State' in Palestine, it did not precisely specify what 'Jewish' designated beyond an initial demographic majority.[22] If the UN still voted for partition, this perhaps reflected the fact that, in 1947, European colonial powers and their offshoots still dominated the international body. In stark contrast, the early 1970s marked the high point of Non-Aligned Movement and 'Third Worldist' influence at the UN, where an assertive postcolonial bloc predominated in the General Assembly. Even as leading representatives of those currents accepted UNSC Resolution 242, they also embraced the Palestinian struggle as a kindred anticolonial movement.[23] This common cause was at times articulated in language that delegitimised not just Israel's occupation but in addition its constitution as a Jewish State. The complexity of this position was evident in UNGA Resolution 3379, adopted in November 1975, which determined 'Zionism' a 'form of racism and racial discrimination'.[24] The socialist and non-aligned blocs voted at the UN to delegitimise

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21 Gandhi opined that Jewish settlers in Palestine were 'despoiling a people who have done no wrong to them' and, during the 1936-1939 Arab Revolt in Palestine, he upheld the right of 'Arab resistance' against 'an unwarrantable encroachment upon their country'. Quoted in Norman G. Finkelstein, *What Gandhi Says About Nonviolence, Resistance and Courage* (OR Books, 2012), p. 33.

22 See Chapter 2 below.

23 C.H. Stelly and Gerald Horne, 'Third World Internationalism and the Global Color Line' in David C. Engerman et al. eds., *The Cambridge History of America and the World*, vol. IV (Cambridge University Press, 2021), pp. 377-78, 382. Cf. Chapter 1 note 107 below.

24 A/RES/3379 (XXX) (10 November 1975).

'Zionism', even as their members overwhelmingly recognised the legitimacy of Israel—Zionism's principal achievement and concrete instantiation.[25] In this ambiguous context, the New Antisemitism emerged in the post-1967 period *primarily* as a response to the legitimacy challenges posed by Israel's refusal to accept the international consensus two-State settlement, but *also* as a gradually accreting response to an anticolonial discourse that did delegitimise Israel's essence as a Jewish State.

The New Antisemitism

Beginning in the 1970s, there developed a body of literature that interpreted much or most of the proliferating international criticism of Israel as an anti-Jewish phenomenon—a 'new antisemitism'.[26] There is a sense in which 'antisemitism' was always 'new'. The term was coined in the late nineteenth century to designate a strand of anti-Jewish politics said to have departed from traditional Christian anti-Judaism as it staked its intellectual foundations in the secular 'science' of 'race'.[27] This accounts for the reference, in the 1937 Peel Commission

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25 See Chapter 1 below.

26 In this thesis, 'New Antisemitism' in upper-case denotes the argument or literature under scrutiny; 'new antisemitism' in lower-case the real or alleged phenomenon itself. The most thorough survey of the New Antisemitism is Antony Lerman, *Whatever Happened to Antisemitism? Redefinition and the Myth of the 'Collective Jew'* (Pluto Press, 2022). Cf. Jonathan Judaken, 'So What's New? Rethinking the "New Antisemitism"', *Patterns of Prejudice* 42.4-5 (2008).

27 The neologism 'Antisemitismus' is conventionally attributed to the German anti-Jewish publicist Wilhelm Marr, who co-founded the Anti-Semitic League on 26 September 1879. Marr fundamentally opposed Jews as a cultural-'racial' not religious group. But the League was Christian and in its output the distinction between 'Christian Jew-hatred and secular anti-Semitism' was from the outset blurred. Moshe Zimmermann, *Wilhelm Marr: The Patriarch of Antisemitism* (Oxford University Press, 1986), p. 76. Cf. ibid., pp. 91-95, 112-13. Albert S. Lindemann, *Esau's Tears: Modern Anti-Semitism and the Rise of the Jews* (Cambridge University Press, 1997), pp. 127-31. From the 1920s 'antisemitism' came increasingly to

report, to 'Anti-Semitism' as a 'new enemy' that 'appeared' in the nineteenth-century: 'new because now … the attack was not on grounds of creed but on grounds of race'.[28] But after the June 1967 Arab-Israel War, New Antisemitism writers diagnosed a further development. Schematically, whereas Jews had been targeted in the Middle Ages on account of their religion, and from the late-nineteenth century on account of their 'race', the new antisemitism was said to manifest distinctively as criticism of and discrimination against the Jewish State.

Since the 1970s, the New Antisemitism has developed into a voluminous (albeit repetitive) literature that encompasses multiple, at times conflicting strands.[29] The present thesis focuses on a 'central tenet' that has remained largely invariant since it was first articulated in the early 1970s.[30] This holds that certain forms of speech or conduct vis-à-vis the State of Israel are

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designate anti-Jewishness in general. David Feldman, 'Toward a History of the Term "Anti-Semitism"', *The American Historical Review* 123.4 (2018), pp. 1142-48.

28 Palestine Royal Commission, *Report*, Cmd. 5479 (July 1937), p. 10. Two commentators erroneously report that, in 1921, the Board of Deputies of British Jews used the term 'new antisemitism' to 'describe the twin threat of Nazism in Germany and Mosley's fascism at home' while also distinguishing its 'pseudo-scientific racial' rationale. In fact, the Board's pamphlet was directed against the republication by *The Morning Post* in Britain and *The Dearborn Independent* in the US of the tsarist forgery 'The Protocols of the Elders of Zion'. The phrase 'new … anti-Semitism' was employed not by the Board of Deputies but American Jewish organisations. This term did not diagnose a novel form of antisemitism—on the contrary, American Jews reportedly considered the 'Protocols' a 'recrudescence of mediaeval bigotry'—but merely referred to a 'new onslaught' of it. American Jewish Committee et al., 'The American Jewish Protest' in *The New Anti-Semitism: The Official Protests of the British and American Communities* (Press Committee of the Jewish Board of Deputes, 1921), pp. 4 ('recrudescence'), 11 ('onslaught'). Keith Kahn-Harris and Ben Gidley, *Turbulent Times: The British Jewish Community Today* (Continuum, 2010), p. 138 (commentators).

29 On its repetitive character, cf. Amy Kaplan, 'The Old "New Anti-Semitism" and Resurgent White Supremacy', *Middle East Report* 283 (2017). Judaken, 'Rethinking', p. 549n56. This introductory chapter refers to New Antisemitism publications in Israel, the US, and Britain. There are also considerable literatures in French and German.

30 Lerman, *Whatever*, p. 11. Cf. ibid., pp. 12, 14.

prima facie or even inherently antisemitic and, further, that the dividing line between legitimate as against antisemitic criticism of Israel may be more-or-less clearly delineated. Where should this boundary be drawn? The New Antisemitism literature has been remarkably consistent over decades in its response, the essence of which was pithily distilled in February 2004 by Israel's then-Minister for Jerusalem and Diaspora Affairs Natan Sharansky. Sharansky defined the 'new anti-Semitism' as comprising the '*demonisation*' of Israel, its '*delegitimisation*', and the application of '*double standards*' to it. 'Demonisation' denoted criticism 'blown out of all sensible proportion', 'delegitimisation' the denial of 'Israel's fundamental right to exist', and 'double standards' the 'singl[ing] … out' of Israel for 'selective' or hypocritical criticism.[31] Antony Lerman argues that it took until the 2000s for this '3D' formula to become 'the main plank of the dominant discourse about antisemitism'.[32] Still, as Lerman's own thorough history of the New Antisemitism shows, each of Sharansky's three elements were long-standing features in the literature.[33] The claim that international

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31 Natan Sharansky, 'Seeing Anti-Semitism in 3D', *Jerusalem Post* (24 February 2004), p. 13; '3D Test of Anti-Semitism: Demonization, Double Standards, Delegitimization', *Jewish Political Studies Review* 16.3-4 (2004).

32 Lerman, *Whatever*, pp. 11-12. Cf. ibid., pp. 48, 63, 69, 78-79, 107-8, 111, 123.

33 Lerman persuasively documents that the post-2001 period saw Jewish organisations converge behind the New Antisemitism. But he somewhat overstates the conceptual novelty of New Antisemitism formulations in and leading up to this period. Thus, he presents a reference in 1994 by the Hebrew University historian Shmuel Almog to Israel's role as 'the metaphorical collective Jew' as 'presag[ing] … the far more specific formulation of Israel as the "collective Jew", which would be developed' subsequently. But as early as 1976, prominent Israeli historian Jacob Talmon alleged that 'the state of Israel has become the old Jewish outlaw: the outcast, the collective Jew of the nations' while a young Robert Wistrich contended that 'Arab accusations repeat on a collective level, within the field of international relations, the discriminatory principles which have characterised classical anti-Semitism'. Lerman himself quotes eminent Holocaust historian Yehuda Bauer referring to Israel as 'the "Collective Jew"' already in 1988 and 1990, while Almog introduced the 'collective Jew' notion as 'now customary', i.e., a commonplace. Jacob L. Talmon, 'The New Anti-Semitism', *The New Republic* (19 September 1976). Robert S. Wistrich, *The Myth of Zionist Racism* (World Union of Jewish Students, 1976), pp. 12-13. Lerman, *Whatever*, pp. 62 (Bauer—1988), 69-70 (Almog), 190-91 (Bauer—1990).

media coverage 'demonis[ed]' Israel was prominent already during the 1982 Lebanon War,[34] for instance, while New Antisemitism proponents homed in on 'delegitimization' and 'double standards' from the outset. Thus, in a 1973 article for *Congress Bi-Weekly*, a publication of the American Jewish Congress, Israel's Foreign Minister Abba Eban alleged that '[a]nti-Zionism is merely the new antisemitism':

> The old classic antisemitism declared that equal rights belong to all individuals within the society, except the Jews. The new antisemitism says that the right to establish and maintain an independent national sovereign state is the prerogative of all nations, so long as they happen not to be Jewish.[35]

In a 1975 *New York Times* op-ed, Eban reiterated that '[t]here is … no difference whatever between anti-Semitism and the denial of Israel's statehood':

> Classical anti-Semitism denies the equal rights of Jews as citizens within society. Anti-Zionism denies the equal rights of the Jewish people to its lawful sovereignty within the community of nations. The common principle in the two cases is discrimination.[36]

Three decades later, at the height of New Antisemitism alarum, one finds a near-identical formulation from Canadian MP and later Attorney General Irwin Cotler:

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34 Herbert Druks, *The Uncertain Alliance: The U.S. and Israel from Kennedy to the Peace Process* (Greenwood Press, 2001), pp. 201-5 (quote at 203—Hebrew University Professor Yirmiyahu Yovel). Cf. Norman Podhoretz, 'J'Accuse', *Commentary* (September 1982). Chomsky, *Fateful*, pp. 280-97.

35 Quoted in Lerman, *Whatever*, p. 47. Cf. Chomsky, *Fateful*, p. 15.

36 Abba Eban, 'Zionism and the U.N.', *New York Times* (3 November 1975), p. 35.

> In a word, classical or traditional antisemitism is the discrimination against, or denial of, the right of Jews to live as equal members of a free society; the new antisemitism … involves discrimination against, denial of, or assault upon, the right of the Jewish people to live as an equal member of the family of nations. What is intrinsic to each form of antisemitism—and common to both—is discrimination.[37]

This enduring diagnosis represents the conceptual core of the New Antisemitism hypothesis and forms the principal subject matter of this thesis.

A growing body of scholarship has done much to locate New Antisemitism discourse in its intellectual as well as political contexts and to scrutinise it as an ideology. Historians have associated the New Antisemitism, intellectually, with 'eternalist' and 'exceptionalist' as against 'contextual' approaches to antisemitism. This affinity was exemplified by the Israeli historian Shmuel Ettinger, an influential early proponent of the New Antisemitism for whom Jew-hatred was 'a unique phenomenon' continuous 'over … thousands of years'. For such writers, the novelty of the new antisemitism was relatively superficial; although directed at new targets and deploying new formulations, still, in its essence, contemporary 'anti-Zionism' represented a 'direct historical and psychological continuation' of the 'tensions between Jews and Gentiles' bequeathed as 'a legacy of European history' (Ettinger). Within the 'eternalist' camp, the New Antisemitism has been more precisely located as part of a post-1967

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37 Irwin Cotler, *Human Rights and the New Anti-Jewishness: Sounding the Alarm* (The Jewish People Policy Planning Institute, 2004 [2002]), pp. 3-4. Cf. Irwin Cotler, 'Jewish NGOs and Religious Human Rights: A Case Study' in John Witte, Jr. and Johan D. van der Vyver eds., *Religious Human Rights in Global Perspective: Religious Perspectives* (Martinus Nijhoff, 1996), pp. 285-86.

pessimistic departure from Zionist orthodoxy. Early Zionist thinkers had envisaged that statehood would normalise the Jewish condition such that 'anti-Semitism would stop at once and forever' (Herzl). But the New Antisemitism implied that the Zionist attempt to definitively solve the 'Jewish Question' had failed.[38]

This intellectual context helps explain why, politically, the New Antisemitism came to resonate when it did. In Israel after the 1967 War, a 'growing association between Jewish nationalism and traditional Judaism' came increasingly to 'substitute' for a decaying Labour Zionism as a unifying national ideology. This 'new civil religion' revived and incorporated within a Zionist framework the Orthodox notion of eternal enmity between Gentile and Jew. It presented Israel's predicament as an isolated and besieged Jewish camp fighting for survival amidst a sea of hostility not as an aberration but as a permanent condition. The

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38 Asaf Turgeman and Gal Hadari, "'Arab Anti-Semitism Debate": The Birth of New Anti-Semitism in Public and Academic Discourse in Israel', *Journal of Modern Jewish Studies* 14.3 (2015), pp. 503 ('forever'—Herzl), 512 ('legacy'—Ettinger). Jonathan Judaken, 'Rethinking Anti-Semitism: Introduction', *The American Historical Review* 123.4 (2018), p. 1123 ('exceptionalist'). Scott Ury, 'Strange Bedfellows? Anti-Semitism, Zionism, and the Fate of "the Jews"', *The American Historical Review* 123.4 (2018), pp. 1161 ('unique', 'thousands'—Ettinger), 1162-65 (Ettinger). Jonathan Judaken, 'Anti-Semitism (Historiography)' in Sol Goldberg et al. eds., *Key Concepts in the Study of Antisemitism* (Palgrave, 2021), pp. 25 ('contextual'), 30-33 ('eternalist'). Cf. Charles S. Liebman and Eliezer Don-Yehiya, *Civil Religion in Israel: Traditional and Political Culture in the Jewish State* (University of California Press, 1983), pp. 139-40. Michael R. Marrus, 'Is There a New Antisemitism?' in Michael Curtis ed., *Antisemitism in the Contemporary World* (Westview Press, 1986), pp. 172-73. Evron, *Jewish State*, pp. 250-52. Brian Klug, 'The Collective Jew: Israel and the New Antisemitism', *Patterns of Prejudice* 37.2 (2003), p. 136. Dina Porat, 'Defining Antisemitism—Historical Perspective', *Antisemitism Worldwide, 2003/4* (Stephen Roth Institute, 2005). Steven Beller, 'In Zion's Hall of Mirrors: A Comment on *Neuer Antisemitismus?*' *Patterns of Prejudice* 41.2 (2007), pp. 225, 231. Paul Kelemen, 'The "New Antisemitism", the Left and Palestine: The "Anti-Imperialism of Fools" Or an Invention of Imperial Reason?' *Journal of Holy Land and Palestine Studies* 17.2 (2018), pp. 242-43. Lerman, *Whatever*, pp. 2-3, 57, 162-63. For a New Antisemitism-inspired analysis that rejects the 'eternalist' approach to antisemitism, see David Hirsh, *Contemporary Left Antisemitism* (Routledge, 2018), pp. 268-69.

'World'—an abstraction that encompassed more-or-less the entire non-Jewish population of the planet—was and would always be antagonistic toward the Jews, not because of what Jews did but because of who they were. In Biblical terms, 'Esau hates Jacob'—this was a transcendental truth and an unalterable fact of life. Just like the 'eternalist' school of antisemitism historiography, this particularist narrative was conflationary across geopolitical space and folded linear time, so that resonant episodes in Jewish history—Masada, Bar Kochba, the Shoah—came to represent not merely events from the past but an ever-present threat and perpetually recurring reality. 'In every generation', as the Passover Haggadah intones, 'they rise up to destroy us'. This ideological framework drew upon themes long embedded in socialist as well as Revisionist Zionist ideology but gained renewed traction as Israeli politics shifted right and in the wake of the 1973 Arab-Israel War, when many Israelis felt abandoned by erstwhile allies.[39] Both the increased emphasis on 'Arab antisemitism' reflected in the publications of Yehoshafat Harkabi and the rise to prominence of the New Antisemitism were consonant with these broader developments.[40]

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39 Liebman and Don-Yehiya, *Civil*, pp. 131 ('religion'), 132 (isolated), 134 ('association'), 138 ('Esau'), 141 (Haggadah), 142 (abandoned). Evron, *Nation*, pp. 250-51 ('substitute'—Evron, like others, traces this process back before the 1967 War to the 1961 Eichmann trial). Nurith Gertz, *Myths in Israeli Culture: Captives of a Dream* (Vallentine Mitchell, 2000), pp. 9 (resonated), 60 (enmity), 139 and 172 (permanent). Yaacov Yadgar, 'From the Particularistic to the Universalistic: National Narratives in Israel's Mainstream Press, 1967-97', *Nations and Nationalism* 8.1 (2002), p. 62 ('World'). Zertal, *Nationhood*, pp. 182-84 (conflationary). On Israelis' increased sense of isolation—but also national identification—after the 1973 War, see Eva Etzioni-Halevy and Rina Shapira, *Political Culture in Israel: Cleavage and Integration Among Israeli Jews* (Praeger, 1977), p. 213. Tom Segev, *The Seventh Million: The Israelis and the Holocaust* (Hill and Wang, 1993 [1991]), pp. 393-95. On the Jewish Orthodox notion of inevitable Gentile antagonism, traced back to the period 'between the seventh and tenth centuries', see Martin Lockshin, '*Sinat Yisrael* (Hatred of Jews)' in Goldberg et al., *Concepts*, chap. 21 (quote at 283). This paragraph draws from Jamie Stern-Weiner, *The Politics of Israel's "Existential Threats": BDS in Israeli Discourse*, MPhil thesis (University of Oxford, 2018).

40 Anita Shapira, 'Israeli Perceptions of Anti-Semitism and Anti-Zionism', *Journal of Israeli History* 25.1 (2006), pp. 253-54. Turgeman and Hadari, 'Birth', pp. 501-2. Harkabi was a leading Israeli 'Arabist' who had served as the chief of Israel's Military Intelligence (1955-1959). Cf. Amnon Kapeliouk, *Not by Omission:*

In the US, the New Antisemitism has 'arguably been the dominant … paradigm espoused by American Jewish communal agencies' since the 1970s. Its emergence has been traced back to a cluster of interrelated socio-political developments. First, 'classical' antisemitism precipitously declined after World War II while the major battles against discrimination had by the mid-1960s been won. Second, many American Jews shifted rightwards politically as they climbed the socioeconomic ladder. This also brought American Jewish groups into conflict with elements of the Civil Rights coalition, notably over affirmative action. Third, whereas Israel had been 'largely peripheral to American Judaism in the 1950s', it was embraced by American Jews after the 1967 War and 'became the dominant focus of American Jewish life'. Fourth, American Jews participated in the broader rise of 'identity' as well as 'victimhood' politics in the 1970s. These factors together caused or crystallised a shift in communal priorities toward a more 'particularis[t]', 'inward', or 'survival[ist]' agenda that emphasised Jewish identity and asserted distinctively Jewish interests. In this context, American Jewish organisations undertook a 'redefining of traditional notions of anti-Semitism and serious reorientation of long-held convictions about the nature of its sources'—away from discrimination and the far-right, toward criticism of Israel by a coalition of Muslims, African Americans, and the far-left.[41]

The Case of the 1973 Arab-Israeli War (Verso, 2022 [1975]), pp. 34-35. Segev, *Seventh*, pp. 390-91. Daniel J. Schroeter, '"Islamic Anti-Semitism" in Historical Discourse', *The American Historical Review* 123.4 (2018), pp. 1175-76.

41 Arnold Forster and Benjamin R. Epstein, *The New Anti-Semitism* (McGraw-Hill, 1974), p. 5 ('redefining'). Nathan Perlmutter in Abraham Blumberg et al., *A Heritage Roundtable: Anti-Semitism in the Modern World* (Heritage Foundation, 1984), pp. 5-6 (won). Jonathan S. Woocher, *Sacred Survival: The Civil Religion of American Jews* (Indiana University Press, 1986), pp. 76 (1967 War), 77-78 (Civil Rights, embraced), 84-85 ('survival[ist]'), 88 and 111 (Israel). Leonard Dinnerstein, *Antisemitism in America* (Oxford University Press, 1994), pp. 150-62, 169-70 (decline). Peter Novick, *The Holocaust in American Life* (Houghton Mifflin, 1999),

Several scholars have noted the seeming paradox that concern over the New Antisemitism emerged just as threats confronting American Jews and the State of Israel receded. The post-1970s period was a 'golden' age for American Jews while, after the 1973 War, Israel was incorporated as a US military client and virtually every Arab State as well as the Palestine Liberation Organization (PLO) agreed to resolve the conflict through partition.[42] This apparent gap between expressed anxiety and measurable security has created space for scholarship analysing the New Antisemitism as an 'ideology' or strategic 'discourse'. In the US context, some point to intra-communal competition among Jewish organisations for influence and resources as having incentivised alarmism. Others argue that the overcoming of social barriers raised the prospect that Jewish identity would be eroded through assimilation; fostering insecurity around antisemitism as well as identification with Israel served to counter this. At the same time, the decline of prejudice gave Jewish organisations

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pp. 170-71 (particularist), 172 (decline), 174 (Civil Rights), 175 (decline), 178 and 182-84 ('inward', 'rightward'), 184-85 ('survival[ist]'), 190 ('identity', 'victimhood'). Finkelstein, *Industry*, pp. 18-19 (peripheral), 35-36 (rightward, 'inward', Civil Rights). Jonathan D. Sarna, *American Judaism: A History* (Yale University Press, 2004), pp. 276-77 (decline), 315-17 (1967 War), 318 ('particularis[t]', 'inward', identity), 336 ('peripheral'). David Sorkin, *Jewish Emancipation: A History Across Five Centuries* (Princeton University Press, 2019), pp. 350 (decline, won), 351 (affirmative action, 'inward'), 352 (1967 War). Matthew Berkman, 'Antisemitism, Anti-Zionism, and the American Racial Order: Revisiting the American Council for Judaism in the Twenty-First Century', *American Jewish History* 105.1-2 (2021), pp. 129n6 ('dominant'), 130 (Israel), 151 (affirmative action), 152 ('victimhood'). American Jewish organisations had been publicising antisemitism by Arab groups since 1946, but only from the mid-1970s did they present (Arab) anti-Zionism as itself antisemitic. The 1970s also saw a shift in emphasis from alleged 'Arab' to alleged 'Muslim' or 'Islamic' antisemitism. Geoffrey P. Levin, 'Before the New Antisemitism: Arab Critics of Zionism and American Jewish Politics, 1917-1974', *American Jewish History* 105.1-2 (2021), pp. 106, 124-26. Schroeter, 'Islamic', pp. 1175-82.

42 Novick, *Holocaust*, pp. 172, 175 ('golden'), 177 (American Jews). Finkelstein, *Industry*, pp. 24-32 (Israel), 33 and 37 (American Jews). Kaplan, *Our*, pp. 182-83 (Israel).

the confidence to voice particularist concerns without fear of backlash. More stringent critics have characterised the New Antisemitism as an 'ideological weapon' to 'facilitate ethnic aggrandizement' while 'immuniz[ing] … Israel from criticism'. Thus, a 1982 study by the head of the Anti-Defamation League redefined antisemitism to denote opposition or 'indifference to Jewish interests' and construed such threats broadly to encompass, inter alia, electoral college reform, affirmative action, and criticism of Israel at the UN.[43] Such critics note that the level of New Antisemitism alarmism has tended to fluctuate in rhythm with the degree of external pressure exerted on Israel,[44] while several studies have traced the role of

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43 Nathan Perlmutter and Ruth Ann Perlmutter, *The Real Anti-Semitism in America* (Arbor House, 1982), pp. 108-9 (electoral college) 124-25 ('interests'), chap. 11 (UN), chap. 12 (affirmative action). Novick, *Holocaust*, pp. 184-85 (assimilation), 174 and 176 (intra-communal). Antony Lerman, 'Sense on Antisemitism', *Prospect* (20 August 2002) (Israel, intra-communal). Finkelstein, *Industry*, pp. 5 ('ideology'), 32 (mantle), 34 (intra-communal). Norman G. Finkelstein, *Beyond Chutzpah: On the Misuse of Anti-Semitism and the Abuse of History*, updated ed. (University of California Press, 2008 [2005]), pp. 22 ('immuniz[ing]'), 27 ('weapon'). Kahn-Harris and Gidley, *Turbulent*, pp. 137 ('discourse'—analysing the New Antisemitism in 2000s Britain), 148-49 and 159 (intra-communal). Kaplan, 'Resurgent'. Kelemen, 'Invention', p. 255. Kaplan, *Our*, p. 183 (Israel). On the Perlmutters, cf. Blumberg et al., *Heritage*, pp. 5-8. Chomsky, *Fateful*, pp. 14-17.

44 See, from different perspectives, Shapira, 'Israeli', p. 255. Esther Romeyn, 'Anti "New Antisemitism" as a Transnational Field of Racial Governance', *Patterns of Prejudice* 54.1-2 (2020), p. 206. Lerman, *Whatever*, pp. 54-56, 89. The first wave of publicity around the New Antisemitism occurred in the mid-1970s, when Israel came under pressure to make territorial concessions—e.g., Forster and Epstein, *New*. The second wave followed the 1982 Lebanon War—e.g., Perlmutter and Perlmutter, *Real*. Blumberg et al., *Heritage*. Shapira, 'Israeli', pp. 255-56. Note 34 above. The third swelled during the Second Intifada in the early 2000s—e.g., Chesler, *New*. Abraham H. Foxman, *Never Again? The Threat of the New Anti-Semitism* (HarperCollins, 2003). Iganski and Kosmin, *Debating*. Ron Rosenbaum ed., *Those Who Forget the Past: The Question of Anti-Semitism* (Random House, 2004). Gabriel Schoenfeld, *The Return of Anti-Semitism* (Politico's, 2005 [2004]). Alvin H. Rosenfeld, *'Progressive' Jewish Thought and the New Anti-Semitism* (AJC, 2006). Bernard Harrison, *The Resurgence of Anti-Semitism: Jews, Israel, and Liberal Opinion* (Rowman & Littlefield, 2006).

Israeli state agencies as well as pro-Israel advocacy groups in developing the New Antisemitism, publicising it, and mobilising it politically.[45]

The scholarship surveyed above has helped clear the ground for historians to examine the terrain covered by New Antisemitism publications from broader as well as comparative perspectives, an effort that has begun to yield fruit.[46] However, much of this work declines to directly engage with or assess New Antisemitism claims on their own terms.[47] Meanwhile, whereas critics of the New Antisemitism have subjected aspects of it to searching and fruitful critique, this has often been undertaken without detailed reference to the case studies through which New Antisemitism proponents typically elaborate and defend their position.[48] The

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45 The best account of how this 'institutional architecture' developed, benefiting from an insider perspective, is Lerman, *Whatever* (quote at p. 11; cf. p. 110). For a detailed analysis of how Israeli, British, and British Jewish officials thwarted one cultural boycott initiative in 2014—under the rubric of combating antisemitism—see Hilary Aked, *Israeli State Power and the Zionist Movement in the UK: The Case of the Counter-Campaign against the Boycott, Divestment and Sanctions (BDS) Movement for Palestinian Rights*, PhD thesis (University of Bath, 2017), chap. 6. See also Michael Whine, 'International Organizations: Combating Anti-Semitism in Europe', *Jewish Political Studies Review* 16.3-4 (2004), pp. 73-88.

46 James Renton and Ben Gidley eds., *Antisemitism and Islamophobia in Europe: A Shared Story?* (Palgrave Macmillan, 2017). Jonathan Judaken et al., 'AHR Roundtable: Rethinking Anti-Semitism', *The American Historical Review* 123.4 (2018), pp. 1122-245. Feldman, *Boycotts*. Goldberg et al., *Concepts*. Berkman, 'Antisemitism'.

47 At times expressly, e.g., Kahn-Harris and Gidley, *Turbulent*, p. 136. Romeyn, 'Governance', p. 200. Lerman, *Whatever*, pp. 62, 79, 116. Lerman does, however, critically analyse the notion of Israel as the 'collective Jew' directly. Ibid., chap. 9.

48 In a series of articles, for instance, Brian Klug has insightfully criticised the conceptual framework underpinning the New Antisemitism and made the case for a more coherent understanding of 'antisemitism'. But he largely eschews a historical approach in favour of a strictly 'logical or conceptual' one. Brian Klug, 'What Do We Mean When We Say "Antisemitism"? Echoes of Shattering Glass' in *International Conference Proceedings: 'Antisemitism in Europe Today: The Phenomena, the Conflicts', 8-9 November 2013* (2014), p. 3. For an exception, cf. Klug, 'Collective', pp. 130-33.

resulting lacuna is significant as, in the end, if the New Antisemitism emerged from a particular intellectual as well as political conjuncture, and if it has been deployed in the service of partisan agendas, still, 'the proof of the pudding is in the eating': New Antisemitism claims must stand or fall on their explanatory usefulness vis-à-vis historical events and processes.[49]

The present thesis, as noted, argues that historians of the Israel-Palestine conflict should consider New Antisemitism discourse not as it self-presents but rather as an intervention in the long-running international legitimacy war over Zionism/Israel. In order to sustain this argument, the thesis must show that New Antisemitism claims failed to compel in their own terms; otherwise, there would be no justification for interpreting New Antisemitism discourse in light of some distinct, or ulterior, ideological project. Indeed, to read New Antisemitism writers against the grain, without first engaging them on their own terms, would be to commit the same error in respect of the New Antisemitism that certain New Antisemitism proponents commit in respect of opposition to Israel or Zionism—i.e., evading the actual arguments as transparently false and in the service of an ulterior (antisemitic) political agenda.[50] In conjunction with its overarching contribution to Israel-Palestine historiography, therefore, the thesis also contributes to scholarship on the New Antisemitism a judicious and empirically rich weighing of New Antisemitism claims in their own terms. By first demonstrating the spuriousness of the New Antisemitism as an argument, the thesis clears the ground for its historiographical interpretation as an ideology.

Approach

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49 Ury, 'Strange', p. 1166.

50 Cf. notes 59 and 60 below.

The approach taken in this thesis is inspired by the tradition of critical discourse analysis exemplified by the deconstructions of apartheid ideology drawn upon in Chapter 2. It shares with this an attentiveness to the conceptual underpinnings as well as internal logic of the ideas under scrutiny. It is also inspired, more specifically, by the 'forensic' scholarship of Noam Chomsky and Norman G. Finkelstein, whose works in this field critically scrutinise legitimating discourses in their own terms before analysing their ideological functions.[51] Most pertinently, Finkelstein's scholarship on the New Antisemitism adopted precisely the approach pursued in this project. Most of the critical scholarly treatments of New Antisemitism discourse criticise the New Antisemitism without first demonstrating that it is unreliable, or else present their own rival accounts of certain historical episodes or tendencies—accounts clearly intended to offer an alternative to those grounded in New Antisemitism precepts and premises—without showing concretely why these are to be preferred over accounts inspired by the New Antisemitism. By contrast, Finkelstein's analysis first demonstrated in granular detail that New Antisemitism claims regarding the prevalence and character of European antisemitism during the Second Intifada were inaccurate; this then paved the way for his recasting of New Antisemitism discourse in that period as an ideological intervention to insulate Israel from critical scrutiny.[52]

It might be contended that New Antisemitism discourse does not merit such extended treatment. On the one hand, New Antisemitism literature itself typically engages only

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51 See, e.g., Chomsky, *Fateful*, pp. 397-409 (dissecting the Report of the Israeli [Kahan] Commission of Inquiry into the massacres in Sabra and Shatila).

52 Finkelstein, *Beyond Chutzpah*, part I. The book's second part adopted the same approach vis-à-vis apologetics for Israel's human rights record.

superficially with its own empirical as well as conceptual foundations. Most New Antisemitism publications rely on journalistic reporting of incidents or quotes from diverse political as well as geographical contexts. These are then strung together to form an impressionistic narrative of (usually soaring or rampant) antisemitism. Significant episodes are rarely examined in depth while the underlying analytical categories often do not receive systematic reflection.[53] Indeed, the core concept—antisemitism—has proven to be definitionally elusive.[54] As a result, claims that certain categories of speech or conduct should be classified 'antisemitic' often appear in the New Antisemitism literature as arbitrary or 'circ[ular]'.[55] The antisemitic character of such phenomena is often merely asserted.[56] Alternatively, it is argued for by indirect means: either by placing a given statement or act within a sweeping historical narrative of antisemitism,[57] so that it takes on an antisemitic coloration by proximity, or via the metaphorical conflation of Israel with Jews, such that

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53 See, e.g., Forster and Epstein, *New*. Perlmutter and Perlmutter, *Real*. Jonathan Sachs, 'A New Antisemitism' in Paul Iganski and Barry A. Kosmin eds., *A New Antisemitism? Debating Judeophobia in 21st-Century Britain* (Profile, 2003), pp. 38-39. Phyllis Chesler, *The New Anti-Semitism: The Current Crisis and What We Must Do About It* (Jossey-Bass, 2003). Schoenfeld, *Return*. On this 'narrative style', cf. Paul Iganski and Barry A. Kosmin, 'The New Antisemitism: Background and Context' in Iganski and Kosmin, *Debating*, p. 1. Brian Klug, 'The Myth of the New Anti-Semitism', *The Nation* (16 January 2004). Arguments about the novel character of contemporary antisemitism are occasionally divorced from claims about a new 'wave' or 'resurgence' of antisemitism but more typically are mobilised to account for or explain the latter. Klug, 'Collective', p. 121. Lerman, *Whatever*, pp. 18-20. For an exception, cf. Anthony Julius, 'Is There Anything "New" in the New Antisemitism?' in Iganski and Kosmin, *Debating*, pp. 71, 73-74.

54 See below.

55 Klug, 'Myth'.

56 Kenneth S. Stern, *Anti-Zionism: The Sophisticated Anti-Semitism* (AJC, 1990). Cotler, *Human Rights*. Julius, 'Anything', pp. 72-73. Levy, 'Academic', pp. 256-57. Manfred Gerstenfeld, *The War of a Million Cuts: The Struggle Against the Delegitimization of Israel and the Jews, and the Growth of New Anti-Semitism* (Jerusalem Center for Public Affairs, 2016 [2015]).

57 See, e.g., note 60 below.

criticism of the former is interpreted as directed against the latter.[58] But the metaphor begs the question at issue—i.e., whether criticism of Israel truly is antisemitic—while the narrative approach is unpersuasive when the speech or incident in question is cast only and already in the shadow of antisemitism;[59] the possibility that alternative traditions, impulses, or provocations may also or alternatively have been involved is rarely given serious consideration.[60]

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58 Yehuda Bauer, 'Antisemitism and Anti-Zionism—New and Old' in Robert S. Wistrich ed., *Anti-Zionism and Antisemitism in the Contemporary World* (Macmillan, 1990), pp. 203-4, 206. Cotler, 'NGOs', pp. 287-88. Matas, *Aftershock*, chap. 2, para. 6. Robert S. Wistrich, *From Ambivalence to Betrayal: The Left, the Jews, and Israel* (University of Nebraska Press, 2012), p. 511. Lerman, *Whatever*, pp. 62, 70, 108, 111, 118. Cf. footnote 33 above.

59 One example may be mentioned at the outset to illustrate the analytical pitfalls of this approach. During the first Arab-Israel War, Egyptian Prime Minister Nuqrashi Pasha alleged that two arrested Zionist operatives had confessed to dropping typhoid and dysentery microbes down a well used by Egyptian soldiers. The representative of Syria to the UN Security Council broadcast this allegation on 27 May 1948. In response, Abba Eban on behalf of the Jewish Agency charged that Egypt and Syria had 'chosen to associate themselves with the most depraved tradition of medieval anti-Semitic incitement'. Indeed, the Egyptian allegation did echo the fourteenth-century fantasy that Jews had poisoned wells with leprosy and the bubonic plague. It accordingly could be depicted as of a piece with a longstanding discursive tradition of anti-Jewish incitement. Eban would doubtless have presented it as an example of the New Antisemitism had this rubric been available to him. But the Egyptian allegation also happened to be *true*. This does not mean the lens of antisemitism can reveal nothing about this incident; it might explain why Eban interpreted the allegation as he did and/or why he believed this rebuttal in the Security Council would be effective. But it does caution that associative reasoning untethered to assessment of a claim on its merits can easily go astray. Benny Morris and Benjamin Z. Kedar, "'*Cast Thy Bread*': Israeli Biological Warfare during the 1948 War', *Middle Eastern Studies* (2022), pp. 1-25 (quote at 12). 'It is highly unlikely that Eban knew that the IDF was conducting a well-poisoning campaign'. Ibid. Cf. Joshua Trachtenberg, *The Devil and the Jews: The Medieval Conception of the Jew and Its Relation to Modern Antisemitism*, 2nd ed. (Varda, 2001 [1943]), pp. 101-8. Tzafrir Barzilay, 'Early Accusations of Well Poisoning against Jews: Medieval Reality or Historiographical Fiction?' *Medieval Encounters* 22 (2016), pp. 517-39.

60 For instance, to cast the anti-Israel boycott movement (BDS) as 'but the latest in a millennial series of campaigns to isolate Jewish communities', Anthony Julius slots it into a timeline of anti-Jewish boycotts stretching from medieval Christianity to the Nazis. He asserts that this framing is self-evident to 'historically literate people of goodwill'. But the boycott weapon has also been employed by movements

This writer offers three responses to the objection that the New Antisemitism discourse is trivial. *First*, even where an argument is simplistic or outright false, it does not follow that it is a simple matter to rigorously appraise or refute it. '[Y]es, there was a Holocaust', noted Raul Hilberg when queried about the phenomenon of Holocaust denial—'which is, by the way, more easily said than demonstrated'.[61] *Second*, New Antisemitism discourse has been and remains enormously influential. In public debate and NGO circles, it has become the 'dominant' way of thinking about antisemitism—and one that increasingly influences national as well as international governance.[62] Meanwhile, scholars cited above and

against slavery, Nazism, segregation, colonialism, and apartheid. Why shouldn't the 'historically literate' place BDS in those lineages, especially as the anti-apartheid tradition is where BDS locates itself? Elsewhere, Julius argues that, when anti-Israel propaganda misquotes Zionists, it thereby engages in a 'trope of anti-Semitic discourse' because antisemitic propaganda has also misquoted Jews. But quoting a party against itself is a commonplace rhetorical technique ('declaration against interest') while it is hardly unusual for polemics to commit errors or even fabrications. Indeed, Julius's own chapter apparently misrepresented a meeting of the Palestine Solidarity Campaign (PSC). Did this render his book 'but the latest in a millennial series of campaigns to' defame Arabs? Anthony Julius, *Trials of the Diaspora: A History of Anti-Semitism in England* (Oxford University Press, 2010), pp. 478 (medieval), 480 (Nazi), 482 ('literate', anti-apartheid), 483 ('millennial'), 490 ('trope'), 494-95 (propaganda). Paul Kelemen, *The British Left and Zionism: History of a Divorce* (Manchester University Press, 2012), pp. 191-92 (PSC). For additional examples of this technique, see David Hirsh, 'Anti-Zionism and Antisemitism: Cosmopolitan Reflections' in Charles A. Small ed., *The Yale Papers: Antisemitism in Comparative Perspective* (ISGAP, 2015), pp. 128-30. Kenneth L. Marcus, *The Definition of Anti-Semitism* (Oxford University Press, 2015), pp. 204-6, 213-14. Kenneth L. Marcus, 'Testimony before the Ohio House of Representatives Hearing on H.B. No. 476', *brandeiscenter.com* (10 May 2016), pp. 4-5. For criticism: David Feldman, 'Anti-Zionism and Antisemitism in Britain' in *International Conference Proceedings: Antisemitism in Europe Today—The Phenomena, the Conflicts* (Berlin, 8-9 November 2014), pp. 3-4. On anticolonial boycotts: Rupert Lockwood, *Black Armada* (Australasian Book Society, 1975). Cf. David Feldman ed., *Boycotts Past and Present: From the American Revolution to the Campaign to Boycott Israel* (Palgrave Macmillan, 2019).

61 Raul Hilberg, 'Is There a New Anti-Semitism? A Conversation with Raul Hilberg', *Logos* 6.1-2 (2007).

62 Romeyn, 'Governance'. Lerman, *Whatever*, pp. 11-12 ('dominant').

throughout this thesis have partly or wholly embraced the New Antisemitism framework, while there are multiple academic journals and institutes dedicated to producing New Antisemitism-inspired research.[63] A judicious critical assessment of key claims made in this literature is therefore not just warranted but also imperative. *Third*, even where New Antisemitism proponents do not present a sophisticated or well-documented case, still, the New Antisemitism does bear on issues that possess real intellectual content and which merit scholarly scrutiny. A standard scholarly protocol makes the strongest case for an opposing argument before critically parsing it. I have adopted such an approach in this thesis.

This last point may usefully be illustrated without pre-empting the main body of the thesis which follows. Before investigating the presence of a New Antisemitism, it must first be established what is meant by 'antisemitism'. The use of this term to designate anti-Jewish discrimination, as well as the forthright advocacy thereof, has not been controversial.[64] But

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63 Academic institutes associated with the New Antisemitism have included the Vidal Sassoon International Centre for the Study of Antisemitism at the Hebrew University of Jerusalem (est. 1982), the Centre for Anti-Semitism Research at the Technical University of Berlin (est. 1982), the Project for the Study of Anti-Semitism (from 1998, the Stephen Roth Institute for the Study of Contemporary Antisemitism and Racism) at Tel Aviv University (est. 1991), the Yale Initiative for the Interdisciplinary Study of Antisemitism at Yale University (2005-2011), the Institute for the Study of Contemporary Antisemitism at Indiana University (est. 2009), the Canadian Institute for the Study of Antisemitism (est. 2010), and the Kantor Centre for the Study of Contemporary European Jewry at Tel Aviv University (est. 2010). Journals devoted to publishing New Antisemitism-inspired analyses include *Antisemitism Studies* and the *Journal of Contemporary Antisemitism*. The Yale Initiative for the Interdisciplinary Study of Antisemitism (YIISA) was closed in 2011 after it 'failed to meet high standards for research and instruction' (Donald Green, Director of Yale's Institution for Social and Policy Studies). The move was condemned by American Jewish organisations but received validation from unlikely quarters when historian Deborah Lipstadt—herself a proponent of the 'new antisemitism' thesis—observed that 'some of its [YIISA's] efforts had migrated to the world of advocacy from that of scholarship'. David Burt, 'Anti-Semitism Initiative to End', *Yale Daily News* (7 June 2011) ('failed').

64 Cf. Perlmutter and Perlmutter, *Real*, p. 105.

beyond this area of broad agreement, many thorny questions arise. If a statement is designated 'antisemitic', does this mean it betrays anti-Jewish *animus*? Or that it is animated by anti-Jewish *motives*? Or that its utterance is liable to harm Jewish *interests*? Or that it harbours *stereotypes* familiar from the history of anti-Jewish thought and agitation? Or that it arises from a certain *perception* or *conception* of Jews? Or that it forms part of an anti-Jewish *ideology*?[65] Furthermore, is it a criterion of 'antisemitism' that a perception, animus, motive, etc., be *irrational*,[66] *implausible*, or *false*?[67] *If so*, what is the analytical (as against political) value

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65 Turgeman and Hadari, 'Birth', p. 512 (Ettinger). Robert S. Wistrich, 'Anti-Zionism and Anti-Semitism', *Jewish Political Studies Review* 16.3-4 (2004), p. 28. (*animus*) John D.A. Levy, 'The Academic Boycott and Antisemitism' in Iganski and Kosmin, *Debating*, p. 253. Gould, 'Impugning', p. 182. Lerman, *Whatever*, p. 61 (Bauer). (*motives*) Forster and Epstein, *New*, pp. 152, 163, 324. Perlmutter and Perlmutter, *Real*, pp. 9, 106, 108-9, 124-25. Bauer, 'New and Old', p. 199. (*interests*) European Union Monitoring Centre on Racism and Xenophobia, 'Working Definition of Antisemitism', *eumc.eu.int* (28 January 2005). International Holocaust Remembrance Alliance, 'Working Definition of Antisemitism', *holocaustremembrance.com* (26 May 2016). (*perception*) Brian Klug, 'Interrogating "New Anti-Semitism"', *Ethnic and Racial Studies* 36.3 (2013), pp. 474-75. (*conception*) Kenneth L. Marcus, 'The Ideology of the New Antisemitism' in Alvin H. Rosenfeld ed., *Deciphering the New Antisemitism* (Indiana University Press, 2015), p. 21. (*ideology*) Cf. Marcus, *Definition*, pp. 35-55.

66 Some writers take the view that antisemitism is inherently irrational, that is, a priori independent of anything Jews do. This author finds more persuasive those historians who have distinguished between the 'objective' or 'real' as against 'subjective' or 'sham' motors of anti-Jewish hostility in particular cases. Of course, the notion 'rationality' must be handled with care; Chomsky refers, for instance, to 'a kind of stupidity that's entirely rational' in 'the framework within which it operates'—only 'the framework itself' is delusional. Eva G. Reichmann, *Hostages of Civilisation: The Social Sources of National Socialist Anti-Semitism* (Victor Gollancz, 1950), p. 6 ('objective'). Noam Chomsky, 'Noam Chomsky on Institutional Stupidity', *Philosophy Now* (January 2014) ('framework'). Cf. Lindemann, *Tears*, pp. xiii, xv, xvii-xix, 6, and passim. Steven Beller, *Antisemitism: A Very Short Introduction*, 2nd ed. (Oxford University Press, 2015), pp. 2-6. Some critics of the New Antisemitism have distinguished Arab hostility to Jews from European antisemitism on the basis that the former is derivative of a real conflict of interests. Klug, 'Myth'.

67 In the New Antisemitism schema, Israel's 'demonisation' is usually taken to denote criticism that is at minimum false: to '*defame* Israel is to *defame* the Jews'. The requirement of falsity is also present in the definition of antisemitism proposed by Brian Klug in alternative to the New Antisemitism: 'antisemitism is a form of hostility to Jews as Jews, *where Jews are perceived as something other than what they are*'. Contrariwise, Kenneth Marcus considers that 'the truth of a proposition … does not determine whether it is anti-

of the category 'antisemitism'—if a statement is untrue, does this not suffice to reject it?[68] But *if not*, wouldn't this risk stripping the concept of its negative moral valence? In fact, historians have not converged on a definition of antisemitism; some argue that the term should be abandoned altogether as an obstacle to properly contextual research.[69] This thesis does not intervene directly in these debates; they are noted by way of illustration that the New Antisemitism intersects with substantive, live scholarly questions even where it fails to engage them rigorously.

The choice to structure one's argument against a foil—here the New Antisemitism—has advantages as well as costs. One practical virtue is that it provides a focus that renders inquiry manageable. The New Antisemitism literature supplied this project with its case studies and its hypotheses; these then determined the choice of methods and delimited the research scope. An additional advantage is that any conclusions reached will simultaneously shed light on both the extant scholarship and its underlying subject—representation as well as reality, new antisemitism and the New Antisemitism. The trade-off is that fruitful lines of inquiry

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Semitic, since a factually correct statement may be uttered for hateful reasons'. Hillel Halkin, 'The Return of Anti-Semitism', *Commentary* (February 2002) ('*defame*'). Klug, 'What', p. 5. Marcus, *Definition*, p. 128. All emphases added.

68 See, in this vein, Tamar Meisles, 'Is It Good for the Jews? A Response to Brian Klug's "A Plea for Distinctions: Disentangling Anti-Americanism from Anti-Semitism"', *Think* (2008), pp. 85-90.

69 A 2018 roundtable on antisemitism opened with the observation that '[f]undamental questions remain unresolved', among them, 'How does one define anti-Semitism?' Judaken, 'Introduction', p. 1122. Cf. Shaye J.D. Cohen, '"Anti-Semitism" in Antiquity: The Problem of Definition' in David Berger ed., *History and Hate: The Dimensions of Anti-Semitism* (Jewish Publication Society, 1997), pp. 43-49. Iganski and Kosmin, 'Background', p. 8. Raul Hilberg, 'New Anti-Semitism?' David Engel, 'Away from a Definition of Antisemitism: An Essay in the Semantic of Historical Description' in Jeremy Cohen and Moshe Rosman eds., *Rethinking European Jewish History* (Liverpool University Press, 2009), pp. 30-53. Kalman Weiser, 'Introduction' in Goldberg et al., p. 3.

not suggested by the literature under scrutiny may be overlooked. Permitting New Antisemitism proponents to select the case studies is an intellectually generous approach that has two consequences. Insofar as the thesis finds the New Antisemitism persuasive, the broader import of this finding will be reduced. The New Antisemitism would then be judged compelling in respect of its choicest examples but might still fail to account for others. By the same reasoning, insofar as the thesis finds the New Antisemitism to be flawed, this result will be all the more significant.

Structure

It has been shown that a core strand of the New Antisemitism literature designates as prima facie or inherently antisemitic the *delegitimisation* of Israel, its *demonisation*, and the application of *double standards* to it. The thesis is structured around this three-pronged typology. Each of its three chapters scrutinises one New Antisemitism category with reference to a historical case that figures prominently in the New Antisemitism literature as an example or illustration of the phenomenon. The thesis establishes whether, or to what extent, the New Antisemitism account of each case study is empirically and analytically persuasive. The cases selected also permit the thesis to contribute simultaneously to the diplomatic (chapter 1), legal (chapter 2), and contemporary political (chapter 3) histories of the Israel-Palestine conflict.

The first chapter examines the New Antisemitism notion of *delegitimisation* with reference to UN General Assembly (UNGA) Resolution 3379 designating 'Zionism' a 'form of racism and racial discrimination'. New Antisemitism writers have characterised this resolution as *inherently* antisemitic because it rejected Israel's legitimacy as a Jewish State. This indictment presumes that proponents of the resolution advanced no plausible, unbiased grounds on its

behalf. Chapter 1 evaluates this premise through a close parsing of the UN debate alongside contemporary commentaries on it. It finds that, whereas certain rationales for and against the resolution were unpersuasive, both sides could also adduce compelling considerations. To dismiss the 'Zionism is racism' allegation as necessarily or merely an expression of prejudice is therefore unwarranted; the resolution reflected substantive concerns that merited, and still merit, sober consideration. New Antisemitism writers have additionally contended that UNGA Resolution 3379 was animated by antisemitic *motives* so integral to and inextricable from it as to irredeemably taint the resolution as well as future initiatives purportedly inspired by it. Chapter 1 appraises this argument in light of the diplomatic record. It shows that contemporary diplomatic observers viewed UNGA Resolution 3379 as responding to the regional politics of the Arab-Israel conflict rather than to a global anti-Jewish agenda. This argument is anchored in documentation from British, US, and German state archives, as well as those of the UN.

Narrowly, the chapter contributes both an assessment of the New Antisemitism and, to the diplomatic history of the Israel-Palestine conflict, the first account of UNGA Resolution 3379 to be thoroughly grounded in multi-archival primary sources. More broadly, by demonstrating that New Antisemitism-inspired critiques of UNGA Resolution 3379 did not compellingly engage with the resolution's substance and in addition misconstrued its significance, the chapter suggests that the New Antisemitism-inspired reaction to UNGA Resolution 3379 is better understood as an ideological defence of Zionism/Israel. The chapter further suggests that the character of this ideological defence was somewhat complex. On the one hand, UNGA Resolution 3379 was not a serious effort to eliminate the State of Israel but instead primarily reflected growing international criticism of Israel's occupation. On the other hand, the resolution's language *did* delegitimise Israel's ideological

foundation. New Antisemitism-inspired reactions to the resolution therefore simultaneously served to insulate Israel from criticism driven by its rejection of the two-State settlement *and* to delegitimise the anticolonial critique holding that Jewish statehood in Palestine was inherently discriminatory.

The second chapter addresses the New Antisemitism notion of *double standards* with reference to the movement for boycotts, divestment, and sanctions (BDS) against Israel. New Antisemitism writers have accused BDS of hypocrisy as it endorses Palestinian yet rejects Jewish self-determination rights in Palestine. This argument presumes that self-determination claims are judicable based on clear general standards; otherwise, divergent judgments in respect of particular cases might just reflect good faith disagreement. Chapter 2 examines this proposition through a comparative conceptual analysis of 'White' and Zionist self-determination claims in southern Africa and Palestine, respectively, as these were contested on the terrain of international law. The chapter finds that the legal standards invoked to validate or delegitimise 'White' and Zionist self-determination claims, respectively, were limited and ambiguous, affording ample room for discretionary judgment. It therefore concludes that apparently 'selective' rejection of Israel's legitimacy as a Jewish State need not indicate hypocrisy or prejudice; that is, the notion of a Jewish right to self-determination through statehood in Palestine was arguably both tenable and untenable under international law. The argument is developed through an original reading of the critical international debates over Jewish statehood in Palestine, alongside the 12 volumes of written and oral pleadings in the *South West Africa Cases* litigated before the International Court of Justice between 1960 and 1966. Conceptually, the chapter employs a novel framework for appraising self-determination claims in comparative perspective. Empirically, it is grounded in voluminous ICJ archival records that have scarcely been consulted by scholars, and never

for the purpose of appraising the coherence of international self-determination norms. The South African presentation before the Court proved to be a rich lode to mine on the right of peoples to self-determination.

By showing that the New Antisemitism-inspired critique of BDS is unpersuasive, the chapter clears the ground for interpreting New Antisemitism discourse in the post-Second Intifada period primarily as an ideological intervention in defence of Israel—and, specifically, as resting on nationalist precepts that date back to the earliest phase of the Israel-Palestine legitimacy war. In the long-running dispute over whether to classify Zionism/Israel as a (presumptively legitimate) *nationalism* or alternatively as a (presumptively illegitimate) *colonialism*, the New Antisemitism is revealed as a strong variant of the 'legitimate nationalism' claim. At the same time, the chapter exposes an incoherence in Zionist legitimation discourse, which combined universalist appeals with a demand for special treatment, Jewish exceptionalism with a desire for normalcy. The chapter concludes that, whereas the political salience of BDS primarily reflected international opposition to Israel's occupation as well as the repressive policies this entailed, the movement's manifesto also incorporated the anticolonial critique of Israel's basic legitimacy as a State. New Antisemitism discourse in this period reflected this ambiguity. It served primarily to delegitimise civil society opposition to Israel's occupation but also engaged an emergent discourse that rejected Israel's existence as an unjust, colonial imposition.

The third chapter examines the New Antisemitism notion of *demonisation*. In the New Antisemitism literature, this concept primarily refers to allegations that Israel has committed war crimes as well as comparisons between Israel and pariah regimes. Israel's human rights record has been authoritatively documented elsewhere; chapter 3 accordingly approaches

this issue from a different and original vantage point. The Working Definition of Antisemitism is an influential attempt to formally define where legitimate criticism of Israel crosses the line into antisemitic demonisation. Part I of the chapter finds, on the contrary, that the Working Definition confounds more than it clarifies this distinction. Supporters of the Working Definition contend that its global prominence and wide official backing prove both the prevalence of anti-Israel demonisation and the definition's efficacy in combating this. Part II argues that the emergence and spread of the Working Definition is better attributed to effective campaigning by pro-Israel advocacy organisations. This argument is developed through an original diplomatic history of the Working Definition based on primary documentation obtained inter alia through Freedom of Information requests. The chapter thereby elaborates on and reinforces critiques of the Working Definition made by Antony Lerman, Brian Klug, David Feldman, and others.[70] By showing that it fails as an instrument to regulate antisemitism, and documenting its genesis in the world of pro-Israel advocacy, the chapter argues that the Working Definition of Antisemitism—the culmination and crystallisation of a half-century of New Antisemitism discourse—should be understood primarily as a device to shore up Israel's embattled legitimacy.

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70 David Feldman, 'Will Britain's New Definition of Antisemitism Help Jewish People? I'm Sceptical', *Guardian* (28 December 2016). Brian Klug, 'The Jerusalem Declaration on Antisemitism', *The Nation* (1 April 2021). Antony Lerman, 'Weapons in the Labour Antisemitism Wars? The IHRA Working Definition and the Accusation of "Institutional Antisemitism"' in Greg Philo et al. eds., *Bad News for Labour: Antisemitism, the Party & Public Belief* (Pluto, 2019).

Chapter 1.

Delegitimisation

'I think it is really perpetuated because Israel perpetuates it'

—Abba Eban, former Israeli foreign minister[1]

On 10 November 1975, the United Nations General Assembly (UNGA) voted to determine 'Zionism' a 'form of racism and racial discrimination'.[2] Although controversial at the time, UNGA Resolution 3379 has been almost entirely overlooked by historians of the Israel-Palestine conflict.[3] By contrast, the resolution figures prominently in New Antisemitism literature as the first major international manifestation of the phenomenon. As this chapter

1 Abba Eban, 'Interview', *United Nations Oral History Project* (16 April 1990), p. 33.

2 A/RES/3379 (XXX) (10 November 1975). The UN convention in 1975 was to transcribe 'Zionism' with a lowercase 'z'; this chapter consistently renders it in uppercase.

3 Standard histories omitting mention of UNGA Resolution 3379 include Avi Shlaim, *The Iron Wall: Israel and the Arab World* (W.W. Norton, 2000). Benny Morris, *Righteous Victims: A History of the Zionist-Arab Conflict, 1881-2001*, updated ed. (Vintage, 2001 [1999]). James L. Gelvin, *The Israel-Palestine Conflict: One Hundred Years of War* (Cambridge University Press, 2005). William B. Quandt, *Peace Process: American Diplomacy and the Arab-Israeli Conflict since 1967*, 3rd ed. (Brookings Institution, 2005). Shlomo Ben-Ami, *Scars of War, Wounds of Peace: The Israeli-Arab Tragedy* (Oxford University Press, 2006). Jørgen Jensehaugen, *Arab-Israeli Diplomacy Under Carter: The U.S., Israel and the Palestinians* (I.B. Tauris, 2018). Rashid Khalidi, *The Hundred Years' War on Palestine: A History of Settler Colonial Conquest and Resistance, 1917-2017* (Metropolitan, 2020).

will show, researchers inspired by the New Antisemitism have tended to contextualise the resolution not primarily within the history and politics of the Arab-Israel conflict, but rather against the backdrop of a wider anti-Jewish agenda. The neglect of UNGA Resolution 3379 in Israel-Palestine historiography perhaps reflects the conflict's diplomatic trajectory. The question of Palestine largely disappeared from the international diplomatic agenda in the two decades after 1948. When it re-emerged after 1967, it did so primarily within the politico-legal framework of a belligerent occupation—supplemented, over time, with the demand for Palestinian self-determination to be exercised within the Occupied Palestinian Territory.[4] In this context, UNGA Resolution 3379 has appeared as an isolated example of an alternative paradigm—that of decolonization—that did not gain political traction in the half-century following the 1967 War.[5] The resolution did not influence subsequent diplomatic negotiations between Israel and the Palestine Liberation Organization (PLO) or the Arab States and was not directly referenced in any subsequent UN resolution until 1991, when it became the only UNGA resolution to be formally revoked.[6]

If these considerations explain the lack of scholarly attention to UNGA Resolution 3379, they do not justify the subject's continued neglect. First, widespread despair over the viability of partition has formed the backdrop in recent years to renewed scholarly interest in settler colonial paradigms for interpreting the conflict—that is, in the intellectual and political

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4 See 'Introduction' above.

5 See Norman G. Finkelstein, 'Why the Tide of World Opinion Turned Against Israel', *byline.com* (21 January 2016).

6 A/RES/46/86 (16 December 1991). One additional UNGA resolution referred explicitly to Zionism as 'racism' and a second did so implicitly. Yohanan Manor, *To Right a Wrong: The Revocation of the UN General Assembly Resolution 3379 Defaming Zionism*, 2nd ed. (Shengold, 1997), p. 63.

framework which underpinned UNGA Resolution 3379.[7] If the consolidation of the two-State framework discouraged scholarly interest in the kinds of questions that were central to debates about the legitimacy of Zionism up to 1948, the perceived bankruptcy of that paradigm has moved scholars to re-open and revisit those questions. UNGA Resolution 3379 and the notion, more broadly, of 'Zionism' as 'racism' have received renewed interest as part of this broader trend[8]—but not yet any in-depth, multi-archival study.[9] A second reason to revisit UNGA Resolution 3379 is that the deliberations it provoked raised questions of interest to Israel-Palestine history that scholars have yet to systematically address. In particular, whereas historians have identified the mid-1970s as the moment when

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7 See Chapter 2 notes 14-16 below.

8 Noura Erekat, 'Unfinished Business: Zionism as a Form of Racism and Racial Discrimination', *academia.edu* (2023). Noura Erekat et al., 'Race, Palestine, and International Law', *AJIL Unbound* 117.2 (2023), pp. 77-81. See, too, the uptick of scholarly interest in Fayez Sayegh—intellectual architect of UNGA Resolution 3379—and recent republications of Sayegh's 1965 pamphlet *Zionist Colonialism in Palestine*. Fayez Sayegh, 'Zionist Colonialism in Palestine (1965)', *Settler Colonial Studies* 2.1 (2012), pp. 206-25. Keith P. Feldman, *A Shadow over Palestine: The Imperial Life of Race in America* (University of Minnesota Press, 2015), pp. 35-43. Louis Allday, 'The Cause of Anti-Colonialism and Liberation Is One: Fayez Sayegh's *Zionist Colonialism in Palestine*', *liberatedtexts.com* (23 March 2021). Progressive International, 'Sayegh: Zionist Colonialism in Palestine', *progressive.international* (16 October 2023). Jonathan M. Gribetz, *Reading Herzl in Beirut: The PLO Effort to Know the Enemy* (Princeton University Press, forthcoming). On Western reverberations of UNGA Resolution 3379, cf. Alex Lubin, *Geographies of Liberation: The Making of an Afro-Arab Political Imaginary* (University of North Carolina Press, 2014), pp. 123-26. Pamela E. Pennock, *The Rise of the Arab American Left: Activists, Allies, and Their Fight against Imperialism and Racism, 1960s-1980s* (University of North Carolina Press, 2017), pp. 214-15. Michael R. Fischbach, *The Movement and the Middle East: How the Arab-Israeli Conflict Divided the American Left* (Stanford University Press, 2020), pp. 147, 166-67, 187-99.

9 Gil Troy, who is sympathetic to the New Antisemitism, used US and Israeli archival sources on Resolution 3379, but in separate accounts. This chapter both draws on and challenges Troy's work based on wider documentation from the US, Britain, East Germany, and the UN. Gil Troy, *Moynihan's Moment: America's Fight Against Zionism as Racism* (Oxford University Press, 2013); 'When "Oom" Became "Shmoom": How the Most Enduring Hatred, Anti-Semitism, Became Infused with the Most Hated Hatred, Racism, to Israel's Dismay and to the UN's Detriment', *Israel Studies* 25.1 (2020), pp. 47-72.

the mainstream PLO leadership began moving toward an accommodation with Israel,[10] the 'Zionism is racism' initiative—at the time, a high-profile one—appears incongruous with this trajectory. Who initiated the resolution? To what end(s)? Why did it provoke the reaction(s) it did? These elementary questions have gone almost wholly unaddressed in Israel-Palestine historiography.[11] The consequence of this lacuna—together with New Antisemitism-inspired accounts that abstract the resolution from contemporary developments in the Middle East—is that the resolution appears unmoored from the issues (Zionism, Israel, Palestine) it purported to address. Yet as this chapter shows, any such construal would be misleading. The resolution *was* firmly anchored in—and sheds revealing light on—the dynamics of Arab-Israel confrontation as these unfolded in international institutions.

This chapter makes two contributions to Israel-Palestine historiography. First, it shows that the New Antisemitism discourse first crystallised in the US as an ideological response to UNGA Resolution 3379, i.e., that the New Antisemitism should be understood as part-and-parcel of the long-running international legitimacy contest over the Zionist project. This argument is developed in Part I of the chapter, which examines the UNGA debate over Resolution 3379 alongside the New Antisemitism-inspired critique of it. By showing that the resolution's proponents raised compelling issues of substantive intellectual interest, and that these were not persuasively addressed by New Antisemitism-inspired critics, the chapter clears the way for viewing the New Antisemitism critique as an ideological intervention in

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10 See note 153 below.

11 A notable exception is Salim Yaqub, *Imperfect Strangers: Americans, Arabs, and US-Middle East Relations in the 1970s* (Cornell University Press, 2016), pp. 175-78, 389n83. This chapter reaches the same conclusions as Yaqub but more thoroughly substantiates them. See also Feldman, *Shadow*, chap. 1. Laura Kalman, *Right Star Rising: A New Politics, 1974-1980* (W.W. Norton & Company, 2010), chap. 5.

the long-running Israel-Palestine legitimacy war. Second, the chapter presents the only diplomatic history of UNGA Resolution 3379 to be anchored firmly in the archival record. By drawing extensively on hitherto unused US, UK, East German, and UN documents, the chapter argues that the resolution ought to be understood primarily as an intervention in the Arab-Israel conflict. Neither one front in a global anti-Jewish offensive, nor a serious attempt to challenge Israel's existence as a State, the archival evidence reviewed in this chapter instead presents the resolution as an attempt by Arab parties opposed to Israel-Egypt diplomacy to frustrate that process. Meanwhile, if the resolution gained broad international support, this primarily reflected broad international opposition to Israel's occupation, not its existence.

Background: Mainstreaming the 'New Antisemitism'

It is a tenet of the New Antisemitism that to 'delegitimize' Israel by repudiating Zionism—construed as the right of Jews to self-determination through statehood in Palestine—is a form of antisemitism. Even as New Antisemitism proponents vary in their approaches and on many details, a 'virtual consensus' obtains among them that '[a]nti-Zionism is merely the new antisemitism' (Abba Eban), 'anti-Zionism and antisemitism are one and the same' (Shmuel Ettinger), 'anti-Zionism is antisemitism' (Abraham Foxman), and 'anti-Zionists are [invariably] … antisemites' (Yehuda Bauer). Israeli Minister Natan Sharansky classified Israel's 'delegitimization' as a key manifestation of the 'new anti-Semitism' while an influential Working Definition of Antisemitism listed, as an example of presumptively antisemitic speech, 'claiming that the existence of a State of Israel is a racist endeavor'.[12] The

12 Yehuda Bauer, 'Antisemitism and Anti-Zionism—New and Old' in Robert S. Wistrich ed., *Anti-Zionism and Antisemitism in the Contemporary World* (Macmillan, 1990), p. 207. Brian Klug, 'The Collective Jew: Israel and the New Antisemitism', *Patterns of Prejudice* 37.2 (2003), p. 126 ('consensus'). Natan Sharansky, '3D

present chapter examines this contention with respect to UN General Assembly Resolution 3379, adopted on 10 November 1975, which designated 'Zionism' a 'form of racism and racial discrimination'.

In the US and Britain, it was the furious public denunciation of UNGA Resolution 3379 that first brought the New Antisemitism equation of anti-Zionism with antisemitism to public notice. Virtually every significant US and British newspaper denounced the resolution.[13] All major Jewish organisations joined in the condemnation.[14] A mass rally picketed UN headquarters in New York[15] while, inside the UN plenary, opponents of Resolution 3379 condemned it as 'flagrant anti-Semitism': 'Hitler would have felt at home … listening to the proceedings in this forum'.[16] (See *Fig. 1*) This backlash gave unprecedented airing to the

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Test of Anti-Semitism: Demonization, Double Standards, Delegitimization', *Jewish Political Studies Review* 16.3-4 (2004) ('delegitimization'). International Holocaust Remembrance Alliance, 'Working Definition of Antisemitism' (26 May 2016) ('endeavor'). Antony Lerman, *Whatever Happened to Antisemitism? Redefinition and the Myth of the 'Collective Jew'* (Pluto Press, 2022), pp. 47 (Eban), 49 (Ettinger), 122 (Foxman). Cf. Kenneth S. Stern, *Why Campus Anti-Israel Activity Flunks Bigotry 101* (American Jewish Committee, 2002), p. 12. Phyllis Chesler, *The New Anti-Semitism: The Current Crisis and What We Must Do About It* (Jossey-Bass, 2003), pp. 171-72. Pierre-André Taguieff, *Rising from the Muck: The New Anti-Semitism in Europe* (Ivan R. Dee, 2004), pp. 4, 7, 17. Lerman, *Whatever*, p. 108.

13 One Anti-Defamation League survey of the 50 top-circulation US newspapers found that 34 (68 percent) construed the resolution as tantamount to antisemitism. AJC, *AYJB 1977* (1977), p. 111.

14 'European Jewish Leaders Condemn the Anti-Zionist Resolution', *jta.org* (21 October 1975), p. 1. Conference of Presidents of Major American Jewish Organizations, Advertisement, *New York Times* (26 October 1975), p. 16. Irving Spiegel, 'Jewish Groups Are Bitter Over the Vote at the UN', *New York Times* (11 November 1975). American Jewish Committee (AJC), *American Jewish Year Book 1977* (AJC, 1977).

15 John F. Burns, 'Huge Rally Here Condemns UN Anti-Zionism Move', *New York Times* (12 November 1975).

16 UNGA, A/C-3/SR.2134 (17 October 1975), p. 117 ('flagrant'—Israel); A/PV.2400 (10 November 1975), p. 773 ('Hitler'—Israel). Cf. UNGA, A/C-3/SR.2134 (17 October 1975), pp. 113-14 (US); A/PV.2400 (10 November 1975), pp. 778-79 (Costa Rica). The furore reportedly undermined the UN's reputation

contention that there was 'no difference whatever between anti-Semitism and the denial of Israel's statehood' and saw the anti-Zionist resolution prominently characterised as a 'modern form of anti-semitism', 'anti-semitic agitation in a new form', a 'brutal expression of neo-anti-semitism'. An advert placed in the *New York Times* by the Synagogue Council of America concisely articulated what would become an enduring New Antisemitism tenet: 'if traditional anti-semitism denied the individual Jew his personhood, this new anti-semitism seeks to deny the Jewish people its nationhood'.[17]

among the US public at large. 'Gallup Poll Reports a Decline in U.N.'s Prestige in the U.S.', *New York Times* (28 December 1975). AJC, *AJYB 1977*, p. 115. Cf. Louis Harris, 'Public Hits Zionism Vote: Poll', *New York Post* (15 December 1975), p. 6. Fayez Sayegh Papers (FSP), Box 139, folder 2, item 59 (hereafter in the format: 139.ii.59).

17 Tullia Zevi, 'Communists Rebuff Russia', *Jewish Chronicle* (24 October 1975) ('agitation'). Judy Siegel, 'WZO Mounts Counterattack', *Jerusalem Post* (28 October 1975), p. 2 ('brutal'). Synagogue Council of America, 'BIGOTRY in the United Nations!' (Advertisement), *New York Times* (31 October 1975), p. 11 ('new'), FSP 128.ii.86. Abba Eban, 'Zionism and the U.N.', *New York Times* 3 November 1975) ('difference'). Zvi Sofer, 'Avraham Schenker Describes How the Zionist Movement Fights Back', *Israel Digest* (7 November 1975) ('modern'). Cf. Charlotte Jacobson (World Zionist Organization), 'A Call for Battle Against the New Anti-Semitism', *Israel Digest* (7 November 1975), p. 3 ('The new anti-Semitism is running rampant'). David Landau, 'Israel Condemns UN Vote on Zionism as an "Ugly Manifestation of Neo-Anti-Semitism"', *JTA Daily News Bulletin* 42.198 (20 November 1975) ('neo-anti-Semitism').



Fig. 1. Advert placed by B'nai B'rith and Anti-Defamation League, New York Times *(10 November 1975)*

Critics of UNGA Resolution 3379 who presented it as an expression of antisemitic delegitimisation did so on two main grounds. Some alleged that to classify Zionism as racist was *inherently* antisemitic. The presumed that proponents of the resolution advanced no reasonable arguments on its behalf. Part I assesses this premise by parsing the UN debate as well as contemporary commentaries on it. Other New Antisemitism proponents alleged that the resolution was a product of antisemitic *motives*. This second argument came in two main variants. Either the resolution was part of an *Arab* campaign for 'the annihilation of the State of Israel and the genocide of its people' as well as a 'manifestation of the bitter anti-Semitic, anti-Jewish hatred which animates Arab society'.[18] Or the resolution was a *Soviet* bid to legitimise its domestic 'anti-Zionist' policy. The implication, in either case, was that an anti-

18 UNGA, A/C-3/SR.2129, p. 92 (14 October 1975) ('genocide'—Israel, referring to the PLO); A/PV.2400 (10 November 1975), p. 775 ('animates'—Israel).

Jewish agenda was so integrally bound up with the resolution as to irredeemably taint it. Part II evaluates these contentions in light of the diplomatic record. The chapter concludes by locating UNGA Resolution 3379 as an ideological intervention to shore up support for Israel as it came under pressure over its rejection of the international consensus for resolving the conflict.

I. Substance

Characterisations of UNGA Resolution 3379 as *inherently* antisemitic were premised on the claim that the resolution's core assertion was a 'lie', 'smear', or 'libel'—that is, manifestly untrue.[19] This section evaluates that claim. UNGA Resolution 3379 was, as a representative of Somalia (which tabled the draft text) noted, 'simple and to the point'.[20] Its lone operative paragraph comprised a single sentence, already quoted: '*Determines* that Zionism is a form of racism and racial discrimination'. Inevitably, therefore, much of the ensuing argument centred on the key terms 'Zionism' as well as 'racism and racial discrimination'.

Racism and racial discrimination

The most compelling advocate for UNGA Resolution 3379, who has also been credited as its 'chief architect',[21] was the delegate of Kuwait, Fayez A. Sayegh. A Palestinian scholar and

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19 UNGA, A/PV.2400 (10 November 1975), p. 796 ('lie'—US). 'World Zionist Organisation Terms Lima Confab Resolution Essentially Anti-Jewish', *jta.org* (10 September 1975) ('smear'). 'Anger Indignation Sweeps Through British Jewish Community', *jta.org* (12 November 1975) ('libel').

20 UNGA, A/C-3/SR.2132 (16 October 1975), p. 100.

21 Adel Beshara, *Fayez Sayegh: The Party Years, 1938-1947* (Black House, 2018), p. 25. Cf. Richard Pearson and Staff Writer, 'Fayez Sayegh, Leader of Arab Groups in US, UN, Dies in New York City', *Washington*

diplomat[22] reputed for his proficiency in public debate,[23] Sayegh's interventions in the UNGA Third Committee and plenary were informed by an intimate knowledge of the UN record on Palestine and racial discrimination[24] as well as decades spent researching and polemicising against Zionism.

Sayegh framed his case for UNGA Resolution 3379 in terms already accepted by his opponents:

Post (14 December 1980) ('the principal author of the … resolution'). I have been unable to corroborate Sayegh's personal authorship of the resolution and/or instigation of the initiative behind it, but it is not in doubt that, at minimum, he 'presented and helped pass' the text. Lori Allen, 'Subaltern Critique and the History of Palestine' in Didier Fassin and Bernard E. Harcourt eds., *A Time for Critique* (Columbia University Press, 2019), pp. 157-58. The *New York Times* reported that 'the Kuwait delegation was highly instrumental in steering' the resolution through to a UN vote, reporting that chief delegate Abdalla Taccoub Bishara 'was widely credited with having built the coalition [that] … rammed the anti-Zionism draft through the committee'. Paul Hofmann, 'Power Brokers Wield Extensive Influence at the UN', *New York Times* (3 November 1975).

22 Sayegh earned a PhD from Georgetown University for a thesis about existentialist philosophy and went on to teach at Stanford, Yale, the American University of Beirut, and St. Anthony's College, Oxford, where he was a Fellow. See Pearson and Staff Writer, 'Fayez Sayegh'. Yoav DiCapua, *No Exit: Arab Existentialism, Jean-Paul Sartre & Decolonization* (University of Chicago Press, 2018), pp. 69-70, 73. Sayegh's refusal to abandon or conceal his existentialist commitments had in 1947 triggered his expulsion from the Syrian Social Nationalist Party (SSNP), in which he was a leading figure. Beshara, *Party Years*, pp. 7-8, 29-33. Carl C. Yonker, *The Rise and Fall of Greater Syria: A Political History of the Syrian Social Nationalist Party* (De Gruyter, 2021), pp. 152, 169-70.

23 Andrew I. Killgore, '25 Years After His Death, Dr. Fayez Sayegh's Towering Legacy Lives On', *wrmea.org* (25 December 2005) ('masterful debater'). As'ad Abukhalil, 'Before Edward Said: A Tribute to Fayez Sayegh', *english.al-akhbar.com* (9 December 2014) ('masterful debater'). Beshara, *Party Years*, pp. 7, 11, 18. On the relationship between Berger and Sayegh, cf. Jack Ross, *Rabbi Outcast: Elmer Berger and American Jewish Anti-Zionism* (Potomac, 2011), p. 152. Jonathan M. Gribetz, 'The PLO's Rabbi: Palestinian Nationalism and Reform Judaism', *Jewish Quarterly Review* 107.1 (2017), pp. 102-3.

24 Sayegh held a series of posts at the UN including Senior Consultant to the Kuwait Ministry of Foreign Affairs (1967-1980) and Rapporteur to the UN Committee on the Elimination of Racial Discrimination (1968-1980). Feldman, *Shadow*, p. 37.

> [W]e come to this Committee with its own, long-established and universally-accepted definition of 'racial discrimination', and ask it to judge whether or not Zionism, *as defined by the Zionist movement itself*, constitutes a form of racism and racial discrimination, *as defined by the Committee itself long ago*.[25]

By 'racial discrimination', he explained, the resolution meant 'the authoritative United Nations definition' of this term.[26] In 1963, the UN Declaration on the Elimination of All Forms of Racial Discrimination had condemned 'any discrimination whatsoever … on the ground of race, colour or ethnic origin'.[27] The International Convention on the Elimination of All Forms of Racial Discrimination, ratified by the General Assembly on 21 December 1965, defined 'racial discrimination' as

> any discrimination, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.[28]

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25 Fayez A. Sayegh, 'Statement Made at the 2134th Meeting of the Third (Social, Humanitarian & Cultural) Committee of the General Assembly on 17 October 1975' in Fayez A. Sayegh, *Zionism: 'A Form of Racism and Racial Discrimination'. Four Statements Made at the UN General Assembly* (Office of the Permanent Observer of the PLO to the UN, republished by Americans for Middle East Understanding, 1976), p. 6. Cf. UNGA, A/C-3/SR.2134 (17 October 1975). Emphases in original.

26 Sayegh, '2134th Meeting', pp. 5-6.

27 UNGA Resolution 1904 (XVIII) (20 November 1963), article 2.1.

28 UNGA Resolution 2106 (XX) (21 December 1965), article 1.1.

The US delegation led by Moynihan, who along with Israel's Ambassador Chaim Herzog was the resolution's staunchest opponent, could scarcely contest these definitions. As Sayegh underscored, '*both documents were passed by the Third Committee and by the General Assembly without dissent*'.[29] Yet US representatives still alleged that the draft resolution had 'changed words with precise meanings into purveyors of confusion' and 'treated the word racism as if it were merely an epithet to be flung at whoever happened to be one's adversary'. The resolution thereby 'destroyed the moral force of the concept of racism' as it 'turned an idea with vivid and obnoxious meaning into an ideological tool'.[30]

This terminological dispute proceeded along three lines.

First, the US argued that, even as the UN had defined 'racial discrimination', it had not defined 'racism'.[31] Sayegh later conceded the point, but did not consider it significant: 'some years ago' the UN 'began to couple' the term 'racial discrimination' with the term 'racism'; the UN has used 'the terms interchangeably'; '[t]here is no record whatsoever of any attempt by any Delegation (including that of the United States) to make or elicit a distinction between the connotations of the two terms'.[32] *Second*, the US understood 'racism' to denote a doctrine

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29 Sayegh, '2134th Meeting', p. 6. Emphasis in original.

30 UNGA, A/C-3/SR.2121 (3 October 1975), p. 54 ('epithet', 'vivid'—US); A/C-3/SR.2134 (3 October 1975), p. 113 ('purveyors'—US).

31 UNGA, A/PV.2400 (10 November 1975), p. 797 (US). For background on Moynihan's formulation of this argument, see Tom Buckley, 'Brawler at the UN', *New York Times* (7 December 1975). Troy, *Moment*, pp. 147-48.

32 Sayegh, 'Statement Made at 2400th Plenary Meeting of the General Assembly on 10 November 1975' in Sayegh, *Four Statements*, p. 51n45. Sayegh did not make this rebuttal during the UN debate itself. It merits

of 'biological' superiority, which belief 'has always been altogether alien to the political and religious movement known as Zionism'.[33] Sayegh reiterated that the UN had defined racial discrimination broadly to encompass discrimination based not only on 'race' and 'colour' but also on 'descent or national or ethnic origin'.[34]

Third, Moynihan argued that 'Zionism' could not be 'racist' since Jews were not a 'race'. The Zionist movement 'defined its members not in terms of birth but of belief' since it considered as Jewish 'anyone who converted to Judaism'. Indeed, he concluded, 'the idea that Jews are a "race" was invented not by Jews but by those who hated Jews'.[35] Sayegh himself viewed Jewishness as 'primarily a religious attribute' but added that Zionist ideology expressly rejected this. According to 'Zionism itself', Jewishness was a *national* attribute—and hence a 'racial' one per the UN definition of racial discrimination.[36] Sayegh cited an Israeli Supreme Court ruling of 23 January 1970 that a person may be considered a Jew without belonging to the Jewish faith[37] as well as a bill, enacted by the Knesset on 10 March 1970, which provided that, for the purposes of Israel's 1950 Law of Return, a 'Jew' was 'a person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another

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notice that 'Zionism' had been characterised by a UN delegation as 'based on racism' as early as 1947. See note 117 below.

33 UNGA, A/PV.2400 (10 November 1975), p. 797 (US).

34 UNGA, A/PV.2400 (10 November 1975), p. 797 (US). Cf. UNGA, A/C-3/SR.2132 (16 October 1975), p. 105 ('broad and comprehensive definition of racism'—Jordan); A/C-3/SR.2133 (17 October 1975), p. 108 ('not necessarily based on colour'—Guinea).

35 UNGA, A/PV.2400 (10 November 1975), p. 797 (US).

36 Sayegh, '2134th Meeting', pp. 11-12.

37 See Nitza Shapiro-Libai, 'Judicial Decisions Supreme Court of Israel', *Israel Yearbook on Human Rights* 2 (1972), pp. 317-56.

religion'.[38] He might also have quoted Herzl's *Der Judenstaat*, which famously posited that 'the Jewish question' is 'neither a social nor a religious one … It is a national question … We are a people—*one* people'.[39]

Zionism

Whereas the UN had defined 'racial discrimination', several delegations pointed out during the UNGA Resolution 3379 debate that no comparable effort had been undertaken to arrive at a shared comprehension of 'Zionism'. Liberia observed that 'many delegations … are not too clear about what is Zionism';[40] Iran that 'the term "Zionism"' is 'vague' and 'may be interpreted in many different ways';[41] Sierra Leone that 'Zionism was … a new element' in discussions of the Decade and requested more time to 'consider its implications'.[42] Ethiopia criticised the 'introduction at the last minute of new objectives' and requested deferral,[43] as did Kenya, which abstained from voting on an 'obviously over-simplified definition':

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38 Sayegh, '2134th Meeting', p. 14. 'Law of Return (Amendment No. 2) 5730-1970', *knesset.gov.il* (10 March 1970).

39 Theodor Herzl, *The Jews' State* (1896), reproduced in Arthur Hertzberg ed., *The Zionist Idea: A Historical Analysis and Reader*, 2nd ed. (Jewish Publication Society, 1997), p. 209. Emphasis in original. Amnesty International reports that, 'while Israel recognizes conversion to Judaism … in practice the state rejects all applications by Palestinian citizens of Israel on the basis of "ethnicity" or "security"'. This issue is discussed further in Chapter 2.

40 UNGA, A/PV.2400 (10 November 1975), p. 771.

41 UNGA, A/PV.2400 (10 November 1975), p. 789.

42 UNGA, A/C-3/SR.2133 (17 October 1975), p. 107.

43 UNGA, A/C-3/SR.2134 (17 October 1975), p. 117.

> My delegation cannot recall any time when the question of Zionism has been studied in substance by the United Nations … [T]he absence of an appropriate authoritative scholarly study before this body on which to base the proposed definition of Zionism raises serious difficulties … No adequate reasons have been given for rushing this definition through before some of us have had time to benefit from studies, both private and public.[44]

New Zealand argued that, whereas apartheid had 'been universally accepted as racist', there 'may be more than one opinion as to what Zionism is, or as to what its effects are',[45] a line also formulated internally by British officials.[46]

Other delegations opposed to UNGA Resolution 3379 set forth their own understandings of Zionism. It was 'the national movement of the Jewish people', 'the modern expression of the ancient Jewish heritage', the 'liberation movement of a small people', 'nothing more—and nothing less—than the Jewish people's sense of origin and destination in the land linked eternally with its name', 'the instrument whereby the Jewish nation seeks an authentic fulfilment of itself' (Israel).[47] It was 'the expression of a religious nationalism', a 'doctrine of union and brotherhood for the survival of a people which had been martyred for its faith'

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44 UNGA, A/PV.2400 (10 November 1975), p. 783. Cf. UKUN, 'Third Committee: Item 75 and 76: International Women's Year—Explanation of Vote', FCO 61/1428 (8 December 1975), p. 1, TNA ('an utter novelty').

45 UNGA, A/PV.2400 (10 November 1975), p. 781.

46 FCO, 'Early Day Motion Number 28: Zionism', FCO 61/1382 (26 November 1975). Cf. 'Letter from UNA to Foreign Secretary James Callaghan MP', FCO 61/1381 (4 November 1975).

47 UNGA, A/C-3/SR.2121 (3 October 1975), p. 53 ('heritage'); A/C-3/SR.2132 (16 October 1975), p. 104 ('small'); A/PV.2400 (10 November 1975), p. 774 ('national movement', 'sense of origin', 'fulfilment').

(Haiti).[48] Zion, and Israel, 'had existed thousands of years ago' as shown by 'the Old Testament and the books of ancient Semitic prophets' (Barbados).[49] It was 'the authentic rebellion of a people … tired of persecution' (Costa Rica),[50] the 'nationalist movement of the Jewish People' (Fiji),[51] 'a movement whose objective was to preserve the survivors of a racial holocaust' (US).[52]

Sayegh later recalled disparagingly how some delegations had 'sought refuge in semantic acrobatics' by attributing to 'Zionism' a 'very general and wide-ranging meaning' or by defining it as 'an old, indeed ancient movement'.[53] He insisted, on the contrary, that Zionism 'is not a concept which has no precise definition', 'a word of indeterminate meaning' or 'an amorphous concept which lacks precise form or specific content'. Rather it denoted a 'political movement' launched in Basel, in August 1897, inspired by Theodor Herzl, which manifested in the World Zionist Organization, whose 28 Zionist Congresses adopted formal resolutions and established institutions, these together 'constituting the official doctrine and the official program of Zionism'. It is 'this (and nothing else other than this) that the draft resolution speaks about'.[54]

Appraisal: Would a Jewish State on Mars be racist?

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48 UNGA, A/C-3/SR.2132 (16 October 1975), p. 100.

49 UNGA, A/C-3/SR.2133 (17 October 1975), p. 108.

50 UNGA, A/PV.2400 (10 November 1975), p. 778.

51 UNGA, A/PV.2400 (10 November 1975), p. 787.

52 UNGA, A/C-3/SR.2134 (17 October 1975), p. 113.

53 Sayegh, '2134th Meeting', p. 42n1.

54 Sayegh, '2134th Meeting', p. 5.

Sayegh appears not to have anticipated that the resolution's opponents would disaggregate the charge of 'racism' from that of 'racial discrimination'. There is some basis for his dismissal of this manoeuvre. The debate over Zionism unfolded in the context of the UN Decade for Action to Combat Racism and Racial Discrimination ('the Decade'), launched on 10 December 1973.[55] Inasmuch as the US had not then objected to the absence of an agreed definition of 'racism', and insofar as Western European States opposed to UNGA Resolution 3379 still took pains to emphasise their support for the Decade as a whole, this would appear an opportunistic objection.[56] Furthermore, whereas Moynihan alleged that 'racism' was an 'incomparably … more serious charge' than 'racial discrimination' as it was a 'doctrine' and not mere 'practice',[57] it is not self-evident that pernicious thought should be judged more heinous than unjust conduct. A historian sympathetic to Moynihan has elaborated:

> What seemed like Talmudic hairsplitting actually confronted the central moral question. Racially discriminatory policies could be changed; a racist ideology had to be destroyed—along with any country founded on such an evil doctrine. This [was a] sweeping essentialist charge, with … exterminationist implications.[58]

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55 UNGA Resolution 2906 (XXVII) 15 November 1972). UNGA Resolution 3057 (XXVIII) (2 November 1973).

56 UNGA, A/PV.2400 (10 November 1975), p. 783 (UK: 'We have supported the Decade to Combat Racism and Racial Discrimination since its inception'). Cf. Michael Banton, *International Action Against Racial Discrimination* (Clarendon Press, 1996), pp. 29, 71.

57 UNGA, A/PV.2400 (10 November 1975), p. 796.

58 Troy, *Moment*, p. 148.

But one might just as cogently reason that, whereas a racist ideology could be changed, racially discriminatory policies had to be destroyed—'along with any country founded on' them. Furthermore, if a 'country' is 'founded on' a 'racist ideology', the remedy need not be to 'destroy' that country. Thus, opponents of apartheid did not seek to eliminate South Africa as a State but to restructure its institutions. Most of the States that endorsed UNGA Resolution 3379 also recognised Israel.[59]

Yet Moynihan's distinction between 'doctrine' and 'practice' did point to a substantive differentiation, and at times ambiguity, in the case made for the resolution. Was 'Zionism' alleged to be discriminatory solely on account of its consequences when realised as a state-building project in Palestine, or was it held to be discriminatory even abstracted from those consequences? If the former, was this argument convincing only in respect of those consequences that were *necessary* and *intrinsic* aspects of the Zionist project, or also to those consequences which were merely *incident to* or *motivated by* it?[60]

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59 For an explicit distinction between 'Zionism' and 'Israel', see UNGA, A/PV.2400 (10 November 1975), p. 798. Internally, the Brazilian foreign ministry further distinguished Israel's existence from its post-1967 occupation and connected 'Zionism' to the latter: 'Right now it is not the survival of Israel that is at stake, but its continued occupation of territory by force. *Zionism is a philosophy that seeks to rationalize this occupation*'. Quoted in Monique Sochaczewski, 'Palestine-Israel Controversies in the 1970s and the Birth of Brazilian Transregionalism' in Paul Amar ed., *The Middle East and Brazil: Perspective on the New Global South* (Indiana University Press, 2014), p. 86; emphasis added. Cf. 'Council of Europe Report', FCO 61/1383 (3 December 1975).

60 The latter distinction had been a point of contention in public exchanges the previous year between Noam Chomsky and Michael Walzer. Chomsky had argued that '[i]f a state ['governing a society that is in part non-Jewish'] is Jewish in certain respects, then in these respects it is not democratic'. He then cited various discriminatory institutions to demonstrate that Israel was 'Jewish' in ways that were not 'merely symbolic' but, as he would subsequently put it, 'quite fundamental'. Walzer objected that none of those practices 'have any logical necessity about them', i.e., 'there is no intrinsic connection between the kinds of discrimination he [i.e., Chomsky] lists and the Jewishness of the Jewish state'. But Walzer failed to clarify what Israel's 'Jewishness' denoted if not the unequal distribution of rights and privileges between its

It cannot be said that the arguments advanced by UNGA Resolution 3379's proponents were systematic or wholly consistent. Different representatives pursued different lines of argument not all of which were logically coherent either internally or with respect to each other. Rather than a disciplined focus on the core, or most convincing, case, their collective approach more closely resembled throwing whatever was to hand against the wall to see what stuck. Certain of the arguments made by the resolution's proponents in effect argued that Zionism was discriminatory even apart from its consequences for Palestinians. For instance, the representative of Saudi Arabia identified the Zionist 'precept' that Jews 'formed a single people', and furthermore a 'chosen people', as betraying an 'exclusiveness very much akin to racism'.[61] The representative of Syria argued on similar lines: Zionism was 'an exclusive and segregationist ideology' since it 'claimed the existence of a chosen people to whom God had promised a specific homeland'.[62]

These arguments were vulnerable to the objection, articulated by the International Commission of Jurists and endorsed by the British representative, that to categorise Zionism as racism was 'to confuse racism and racial discrimination with nationalism'.[63] One could still

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Jewish and non-Jewish citizens. Noam Chomsky, 'Foreword' in Sabri Jiryis, *The Arabs in Israel* (Monthly Review Press, 1976 [1966]), p. xi ('fundamental'); *Peace in the Middle East?* [1974] in Noam Chomsky, *Middle East Illusions* (Rowman & Littlefield, 2003), p. 101 ('not democratic'). Michael Walzer, 'Peace in the Middle East?' *New York Times* (6 October 1974) ('logical necessity'). Michael Walzer and Noam Chomsky, 'Letters to the Editor: The Middle East', *New York Times* (1 December 1974) ('intrinsic connection').

61 UNGA, A/C-3/SR.2132 (16 October 1975), p. 105.

62 UNGA, A/C-3/SR.2133 (17 October 1975), p. 108.

63 UNGA, A/PV.2400 (10 November 1975), p. 782. To be sure, the Commission also held that (paraphrasing) 'it was erroneous to denounce opposition to Zionist aspirations as antisemitism'. Sidney Liskofsky, 'UN Resolution on Zionism', in AJC, *AJYB 1977*, p. 106.

object that Zionism was a species of 'ethnic' rather than 'civic' nationalism[64] in that it sought a State that would belong to a unit defined (at least in part) by 'common descent' rather than shared citizenship. As Hans Kohn argued:

> Herzl proposed a solution based upon the premises of his time and place, namely, to constitute the Jews, whom he considered a biological group, as a nation like all other nations in their own state … According to the German theory, people of common descent or speaking a common language should form one common state. Pan-Germanism was based on the idea that all persons who were of German race, blood, or descent, wherever they lived or to whatever state they belonged, owed their primary loyalty to Germany and should become citizens of the German state, their true homeland. They, and even their fathers and forefathers, might have grown up under "foreign" skies or in "alien" environments, but their fundamental inner "reality" remained German.[65]

Zionist doctrine applied these same premises to Jews.[66] It could therefore be considered *racialist* inasmuch as it divided humanity into discrete national-racial units (the Jewish Nation

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64 An influential though contested typology drawn by Hans Kohn following Friedrich Meinecke's earlier distinction between a 'state nation' and 'culture nation'. See Peter Bugge, 'The History of the Dichotomy of Civic Western and Ethnic Eastern Nationalism', *National Identities* (2022), pp. 9-13.

65 Kohn, 'Zion', pp. 814 ('biological'), 817 ('German theory'). Cf. Shaul Magid, 'Jewish and Other Zionisms: Reflections on Race, Ethnocentrism, and Nationalism', in Julie E. Cooper and Samuel Hayim Brody eds., *The King Is in the Field: Essays in Modern Jewish Political Thought* (University of Pennsylvania Press, 2023), pp. 183-85.

66 Ze'ev Sternhell, *The Founding Myths of Israel: Nationalism, Socialism, and the Making of the Jewish State* (Princeton University Press, 1998 [1996]), pp. 10-27. Norman G. Finkelstein, *Image and Reality of the Israel-Palestine Conflict*, 2nd ed. (Verso, 2003), chap. 1.

or People) and advocated that the boundaries of these units correspond to political borders (the State of the Jewish Nation, or Jewish State). 'The ideal typical "nation-state"' in this sense 'is one whose territory belongs to a community whose members share a common origin in the sense of a "common birth"'. When a given territory is inhabited by multiple national-racial groups, '[e]thnic cleansing is the natural corollary of this line of thought'.[67] Given the geographical inter-mixture of national-racial groups in the world, implementing ethnic nationalism in any significant territory is likely to entail some combination of racial discrimination or expulsion. Still, in principle, separate need not mean unequal: to suppose the existence of discrete national-racial units, and to propose that each of these correspond to an independent State, need not imply, as a matter of abstract logic, that these national-racial units or nation-states be ranked in a hierarchy. Israel's 1948 Declaration of Independence reiterated a tenet of Zionist orthodoxy when it affirmed the 'natural right of the Jewish people to be … *like* all other nations'—not, that is, superior to them.[68] If 'Zionism' was defined merely as the doctrine that the Jewish People should be organised as an independent State, and if 'racism' was understood as a doctrine of biological superiority, then to designate Zionism as racist *was* a category error. 'The Zionist national idea is indeed exclusivist and illiberal' and 'does sanction … racial discrimination', an early assessment of Zionist political theory concluded, but 'it is not racist'.[69]

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67 István Hont, 'The Permanent Crisis of a Divided Mankind: "Contemporary Crisis of the Nation State" in Historical Perspective', *Political Studies* 42 (1994), p. 173. Cf. István Hont, 'Introduction', *Jealousy of Trade: International Competition and the Nation-State in Historical Perspective* (Belknap, 2005), pp. 141-42.

68 Provisional Government of Israel, 'Declaration of Independence' (14 May 1948). Emphasis added. But cf. Michael Brenner, *In Search of Israel: The History of an Idea* (Princeton University Press, 2018), pp. 139-40.

69 Norman G. Finkelstein, 'From the Jewish Question to the Jewish State: An Essay on the Theory of Zionism', PhD dissertation (University of Princeton, 1987), p. 4. Cf. ibid., pp. 116-22. Finkelstein, *Image*, chap. 1.

Other arguments cited aspects of Israeli policy that did not obviously follow from Zionist ideology and whose rectification did not seem to require fundamental changes in Israel's constitution. One example was Israel's alleged alliance with the apartheid regime of South Africa. The relationship between the two had been identified in a 1973 General Assembly resolution and was repeatedly highlighted by supporters of UNGA Resolution 3379. In fact, while strenuously denied, economic cooperation between Israel and South Africa had increased in the early 1970s and acquired a military-intelligence dimension in 1974. In June 1975, Israel secretly agreed to sell South Africa two hundred tank engines—the bulk of Israel's arms exports that year—and offered to also sell South Africa *nuclear* missiles and warheads.[70] But although one could argue that this relationship reflected an ideological affinity, and even as this line of criticism was evidently intended to resonate with African States, the fact remained that ties with South Africa were not a necessary playing-out of Zionist ideology, while Israel could have terminated its dealings with South Africa without amending its domestic regime.[71] Another example was Israel's alleged discrimination between its Jewish citizens, advantaging Ashkenazim over Jews from North Africa and the Middle East. Attempts to attribute this discrimination to 'Zionism'—for instance because, '[l]ike cancer, racism has a propensity for expansion', such that, '[h]aving adopted a racist approach towards non-Jews, Zionism soon came to draw a color-line or a racial line among the Jews

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70 Sasha Polakow-Suransky, *The Unspoken Alliance: Israel's Secret Relationship with Apartheid South Africa* (Vintage: 2011 [2010]), pp. 65-67, 81-84. Soviet intelligence was fully apprised of these secret meetings. Ibid., p. 84.

71 Sayegh charged that '[e]very member' of the EC 'maintains relations with South Africa' but did not conclude from this that every EC member was a racist State. UNGA, A/PV.2400 (10 November 1975), p. 772 (Kuwait).

themselves'[72]—were unconvincing. Insofar as discrimination within Israel was merely contingent rather than baked into the State's mission or constitution, and inasmuch as '[a]ll of us practise' such discrimination 'in various forms and shades',[73] it was unpersuasive to cite such discrimination as evidence for a condemnation of 'Zionism'.

The most compelling arguments for UNGA Resolution 3379 focused not on Zionism's internal logic in the abstract but on the *inevitable consequences* of that logic when *applied* in Palestine. The representative of India argued that 'it was not necessary for the Third Committee to attempt to define in scientific terms what Zionism was, or to go into its legendary origins'. It ought instead 'to consider what Zionism had come to mean *in actuality*':

> Clearly, Zionism had deprived the Arab people of their national rights and of the right to self-determination. It had also caused tensions and conflict and, indeed, posed the threat of conflict on a wider scale. It was surely understandable that the victims of Zionism should regard it as a form of racial discrimination and it was therefore proper for the General Assembly also to recognise it as such.[74]

Yugoslavia voted 'for the draft resolution on Zionism—obviously, *as it is practised* today'.[75] 'True, in essence, Zionism is not related to apartheid', the representative of Dahomey

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72 Sayegh, '2134th Meeting', p. 15.

73 UNGA, A/PV.2400 (10 November 1975), p. 787 (Fiji).

74 UNGA, A/C-3/SR.2134 (17 October 1975), p. 116. Emphasis added.

75 UNGA, A/PV.2400 (10 November 1975), p. 780. Emphasis added.

conceded, 'but *in its manifestations*, Zionism is easily comparable to racism and racial discrimination'.[76]

Sayegh's presentation to the Third Committee argued that Zionism was 'racist in its ideology' while its 'practices constitute racial discrimination'. But he, too, rested both elements of this case on Zionism's consequences when realised in Palestine. To prove that Zionist ideology was racist, he quoted resolutions of the Zionist Congress alongside Herzl's diary entries to crystallize its essence. He identified as Zionism's 'central doctrine' that Jews 'constitute one nation, one people'. Its 'principal objective' was to create a *Judenstaat* or 'State of Jews'. And its 'program' was to gather all Jews in, while removing all non-Jews from, this State of Jews:[77]

> Just as the heart-beat consists of two rhythmic operations—pumping-in and pumping-out—so too the program of Zionism consists of two inter-related operations, each of which is essential for the heart-beat of Zionism and neither of which is dispensable: the detachment of Jews from their respective countries and their mass-transfer to Palestine, and the detachment of the indigenous Palestinian Arabs and their mass-transfer from Palestine.[78]

The 'pumping-in operation' took the form of 'manifold inducements for mass-immigration' together with 'legal and organizational arrangements for settling the immigrants'. Sayegh cited, as examples of the latter, Israel's 1950 Law of Return and 1952 Nationality Law, which together provided an automatic right of immigration and citizenship to 'Jews from all

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76 UNGA, A/PV.2400 (10 November 1975), p. 777. Emphasis added.

77 Sayegh, '2134th Meeting', pp. 5-8.

78 Sayegh, '2134th Meeting', p. 8.

countries'.[79] The 'pumping-out operation' entailed the 'dislodgement of the bulk of the indigenous Palestinian Arab population', 'acquisition of their lands, homes and other property', and forcible prevention of Palestinian refugees' 'return to their ancestral Homeland'.[80] Zionist ideology thus met the UN definition of racial discrimination as it vested 'certain … very important rights … in some people' while denying them 'to others': 'a Jew, simply by virtue of being a Jew, has a "right" to "return" to the Palestinian territories occupied by Israel' while 'his compatriot, a non-Jew' as well as 'the indigenous Palestinian Arab, dislodged in 1948 or 1967 … has no such right … because he is not a Jew'.[81]

Sayegh's exposition of Zionist ideology skipped over a critical premise: that the Zionist movement's 'principal objective' was to create a 'State of Jews' *in Palestine*. Furthermore, his framework distinguishing Zionist 'ideology' from Zionist 'practices' was somewhat misleading. Having disaggregated 'ideology' into the sub-categories 'doctrine', 'objective', and 'program', he then presented as 'programmatic principle[s]' what were evidently 'practices', namely, the expulsion of Palestinians and prevention of the refugees' return. That is to say, Sayegh's case that Zionist 'ideology' was 'racist' rested, critically, on what he presented as the *necessary consequences* of the Zionist project *as implemented* in Palestine. The discriminatory character of Zionism did not reside in its positing the existence of a Jewish People, in its desiring a Jewish State, or in its efforts to 'in-gather the exiles'. It resided in the fact that establishing a State with an overwhelming Jewish majority in Palestine, an area that was inhabited overwhelmingly by non-Jews, had required the dispossession of the latter, while

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79 Sayegh, '2134th Meeting', p. 8.

80 Sayegh, '2134th Meeting', p. 9.

81 Sayegh, '2134th Meeting', p. 14.

maintaining such a State necessitated that Palestinian refugees be barred from returning.[82] 'The sponsors were opposed to Zionism not because it called for the emigration of Jews to Israel', the Syrian delegate clarified, 'but because under Zionism one group sought … to invade a land and expel its indigenous inhabitants'.[83] As Sayegh had argued one year prior, in a televised debate with William F. Buckley, 'you can have a Jewish State on Mars without doing injustice to anybody'—but not in Palestine.[84]

To demonstrate that the Zionist project necessarily entailed, and still motivated, discrimination by Jews against Arabs in Palestine, critics had typically pointed, before UNGA Resolution 3379, to Israel's bifurcation of 'nationality' from 'citizenship', which in effect defined the State as belonging to its Jewish citizens only; its granting to Jews everywhere an automatic right to immigrate and claim citizenship while denying these same rights to Palestinian Arabs; its systematic expropriation of land from Arabs while reserving the ownership and use of most public land for Jews alone; and finally, its expulsion of above 700,000 Palestinians from their homes and homeland and forcible prevention of their return.[85] In his 1965 monograph *Zionist Colonialism in Palestine*, Sayegh had argued that,

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82 Fayez A. Sayegh, *Arab Unity: Hope and Fulfilment* (Devin-Adair, 1958), p. 52; *A Palestinian View* (General Union of Palestinian Students, 1970), pp. 3-4. Fouzi el-Asmar, 'Israel Revisited, 1976', *Journal of Palestine Studies* 6.3 (1977), p. 59. Finkelstein, *Image*, p. 85. Benny Morris, 'Revisiting the Palestinian Exodus of 1948' in Eugene L. Rogan and Avi Shlaim eds., *The War for Palestine: Rewriting the History of 1948* (Cambridge University Press, 2001), pp. 39-40; *The Birth of the Palestinian Refugee Problem Revisited* (Cambridge University Press, 2004), p. 60. Ben-Ami, *Scars*, pp. 44, 46-47.

83 UNGA, A/C-3/SR.2133 (17 October 1975), p. 108.

84 Episode 136, *Firing Line with William F. Buckley Jr.: Where Do We Go from Here in the Middle East?* (15 May 1974).

85 E.g., Chomsky, *Peace*, pp. 46 (expulsion, immigration), 101-2 (citizenship, land). Chomsky, 'Letter' (expulsion, land). Jiryis, *Arabs*, pp. 235-36.

whereas 'other forms of European … Colonialism' had sought to dominate and exploit native populations, the Zionist project required that the indigenous Palestinian Arabs be excluded and ultimately removed:

> If *racial discrimination* against the 'inferior natives' was the motto of race-supremacist European settler regimes in Asia and Africa, the motto of the race-supremacist Zionist settler-regime in Palestine was *racial elimination*.

Having expelled the bulk of the Palestinian population in 1947-48, the '*remnants*' were then subjected to '*[d]iscriminatory treatment*' familiar from other settler-states. Here Sayegh pointed, inter alia, to systematic discrimination in land as well as statutory discrimination in the requirements for citizenship.[86]

Participants in the UN debates on UNGA Resolution 3379 repeatedly cited these same dimensions of Israel's regime—expulsion,[87] immigration and citizenship,[88] land[89]—to demonstrate its discriminatory character. Those policies were both fundamental and were either a necessary consequence of (expulsion, prevention of refugee return, initial

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86 Sayegh, *Zionist Colonialism*, pp. 24 ('other forms'), 27 ('racial discrimination', 'remnants'), 29-30 (land, citizenship).

87 UNGA, A/C-3/SR.2116 (29 September 1975), p. 15 (UAE); A/C-3/SR.2118 (1 October 1975), p. 34 (PLO); A/C-3/SR.2120 (3 October 1975), p. 49 (D.R. Yemen); A/C-3/SR.2121 (3 October 1975), p. 55 (Somalia); A/PV.2377 (7 October 1975), p. 505 (Morocco); A/C-3/SR.2133 (17 October 1975), p. 108 (Syria); A/PV.2400 (10 November 1975), pp. 777 (Dahomey), 791 (Kuwait), 799 (Pakistan).

88 UNGA, A/C-3/SR.2119 (2 October 1975), p. 41 (Iraq); A/C-3/SR.2121 (3 October 1975), pp. 55 (Guinea), 56 (Egypt); A/C-3/SR.2134 (17 October 1975), pp. 112-13 (Kuwait).

89 UNGA, A/C-3/SR.2118 (1 October 1975), p. 48 (PLO); A/C-3/SR.2119 (2 October 1975), p. 41 (Iraq); A/C-3/SR.2120 (3 October 1975), p. 49 (D.R. Yemen); A/C-3/SR.2132 (16 October 1975), p. 102 (Iraq).

expropriation of land) or in close nexus with (immigration and citizenship, continued discrimination in land) the underlying Zionist objective of a State dominated demographically, culturally, and politically by Jews in Palestine.

Conclusion

Strikingly, neither Israel nor its allies sought substantively to dispute either the existence of those policies or their characterisation as discriminatory. To be sure, the representative of Israel insisted that 'Zionism had created a society in which Arabs were free and equal citizens'[90] while other states doubted that such discrimination as existed in Israel reached the necessary thresholds of severity or systematisation.[91] But no defence was offered of the specific laws and policies cited by the resolution's supporters. Sayegh was not wrong to observe that, whereas Moynihan had contested the definition of 'racism', '[h]e forgot to answer the question: does the definition of racial discrimination adopted by the United Nations apply to Zionism or does it not?'[92] So, too, did most of the resolution's intellectual critics.[93] Inasmuch as New Antisemitism allegations of antisemitic delegitimisation were

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90 UNGA, A/C-3/2132 (16 October 1975), p. 104. Cf. UNGA, A/C-3/SR.2121 (3 October 1975), p. 53 (Israel).

91 UNGA, A/C-3/SR.2132 (16 October 1975), p. 103 (Bolivia); A/PV.2400 (10 November 1975), p. 799 (Japan).

92 UNGA, A/PV.2400 (10 November 1975), p. 806 (Kuwait).

93 In their criticisms of UNGA Resolution 3379, Jacob L. Talmon, Bernard Lewis, and Robert Wistrich each failed to address how a State with an overwhelming Jewish majority could have been established in Palestine without displacing that territory's non-Jewish inhabitants, how granting to Jews everywhere a right to immigrate while preventing Palestinian refugees from returning to their homes was not an instance of discrimination, or how Israel's constitutional definition as a State belonging to only a portion of its citizens was compatible with liberal democratic norms. Wistrich, *Myth*. Bernard Lewis, 'The Anti-Zionist

predicated on the charge that UNGA Resolution 3379 was wholly untrue, they must therefore be judged unfounded.

II. Motives

This section of the chapter evaluates claims that UNGA Resolution 3379 was the product of an antisemitic agenda. It first appraises efforts to attribute the resolution to the Soviet Union, then considers what contemporary diplomatic observers understood as the real objectives driving it. This historical analysis draws primarily on documents from the archive of the UK Foreign Office. British officials closely monitored the 'Zionist is Racism' initiative and corresponded extensively about it with their US, European, and Israeli counterparts. This illuminating diplomatic record is supplemented by archival material from the German Democratic Republic (GDR), which offers a perspective from within the Soviet bloc, and the UN. The resulting account is not dispositive as to the agenda behind the resolution; that would require drawing directly on documentation from the resolution's authors and instigators. But, inasmuch as it reveals a coherent picture upon which all the sources listed above converged, it is still strongly suggestive and, at minimum, sets up a higher evidentiary standard than that which buttresses existing accounts.

A Soviet initiative?

Resolution', *Foreign Affairs* 55.1 (1976). Jacob L. Talmon, 'The New Anti-Semitism', *The New Republic* (18 September 1976).

US Ambassador to the UN Daniel Patrick Moynihan alleged that the Soviet Union had orchestrated the resolution[94]—an allegation he confessedly could not prove,[95] but which has endured in the 'new antisemitism' literature.[96] Not everyone went so far: '[i]n 1975 it was certainly the Arab states that took the initiative', Israel's New York Consul Meir Rosenne

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94 Bernard Gwertzman, 'Moscow's Africa Policy Criticized by Moynihan', *New York Times* (3 December 1975). Daniel Patrick Moynihan, 'Big Red Lie', *Washington Post* (29 September 1991); 'Hearing on Revoking the U.N. Zionism Resolution', *US Senate Foreign Relations Subcommittee on Near Eastern and South Asian Affairs*, S. HRG. 101-655 (30 March 1990), p. 1. Cf. 'Special Interview: Naum Alshansky Fears USSR Will Use Anti-Zionism Measure to Cut Off All Jewish Emigration', *jta.org* (5 December 1975). 'Gold Warns'. Editorial, 'The U.N. Expunges a Smear', *New York Times* (17 December 1991).

95 In his 1978 memoir, Moynihan recalled that he had 'instantly known … that the Soviets were behind the Zionism resolution' before conceding that this was 'difficult to prove' and finally concluding that 'Arab propagandists can lay as good a claim' to it. Daniel Patrick Moynihan with Suzanne Weaver, *A Dangerous Place* (Berkeley Books, 1980 [1978]), pp. 187, 189.

96 Curtis, 'Introduction', p. 15 ('Soviet attack'). Mark Gardner, '"The Zionists Are Our Misfortune": On the (Not So) New Antisemitism', *Democratiya* 10 (Autumn 2007), p. 80. Joel Fishman, '"A Disaster of Another Kind": Zionism=Racism, Its Beginning, and the War of Delegitimization Against Israel', *Israel Journal of Foreign Affairs* 5.3 (2011), pp. 75, 81. Wistrich, *Ambivalence*, p. xiv. Weiss, *How*, pp. 70-71, 186. AJC, '"Zionism"', Jonathan A. Greenblatt (Anti-Defamation League), 'Zionism Is Nothing Like White Supremacy', *adl.org* (n.d.). Cf. Stern, *Sophisticated*, pp. 6, 8. One recent historian has endorsed Moynihan's account of UNGA Resolution 3379 as 'Soviet-engineered' but provides no supporting evidence. Troy, *Moment*, p. 4; 'Israel in World Opinion' in S. Ilan Troen and Rachel Fish eds., *Essential Israel: Essays for the 21st Century* (Indiana University Press, 2017), p. 165. The lack of evidence on this point was noticed by Troy's scholarly reviewers; cf. Aaron Berman, *The Journal of American History* 100.4 (2014), p. 1295. Peter L. Hahn, *Reviews in American History* 42.3 (2014), pp. 551, 553. By contrast, former US Ambassador to the UN and National Security Adviser John R. Bolton endorsed the view that 'Arab … and Third World' supporters of UNGA Resolution 3379 'were simply playing supporting roles in a Soviet production'. Bolton's enthusiasm for this conclusion—also presented without evidence—testifies to the enduring neoconservative temptation to recast regional or anticolonial disputes in a Cold War guise. *Commentary* 135.3 (2013), pp. 49-50. Certain Israeli and Zionist movement representatives had already in 1975 publicly attributed UNGA Resolution 3379 to Soviet antisemitism. Jacob Tsur (Jewish National Fund), 'Without Apologetics—We Must Respond to the Attack With Complete Self-Confidence', *Israel Digest*, 8.23 (7 November 1975), p. 5. Ze'ev Katz, quoted in 'Arabs, Communists and Zionism Today', *Israel Digest* 19.2 (16 January 1976), p. 8.

lectured in 1984, '[b]ut it is the Soviet Union that is the source of this evil doctrine'.[97] It was possible to combine these perspectives by positing that the Arab and Soviet blocs each supported the resolution for their own (nefarious) reasons.[98]

Within the Soviet Union and its satellites, opposition to 'Zionism' had at times served as justification for anti-Jewish discrimination and violence. Towards the end of his rule, Stalin subjected senior Jewish Communist Party officials to show trials and execution, inter alia on charges of 'Zionist conspiracy', while in 1968, Poland's ruling Communist Party systematically purged Jews from political as well as public service positions and pressured them to emigrate in a so-called anti-'Zionist' campaign.[99] In the early 1970s, Soviet production of anti-Zionist material sharply increased, apparently in response to growing international criticism of Soviet policy towards its Jewish minority.[100] A central motif depicted Zionism as an anti-Communist movement in league with US imperialism; archival research has indicated that such portrayals reflected Soviet officials' sincere worldview and were consistent with 'a general tendency to view all serious opposition as part of a vast anti-

97 Ofra Friesel, 'Equating Zionism with Racism: The 1965 Precedent', *American Jewish History* 97.3 (2013), p. 313. Cf. Fishman, 'Disaster', p. 80.

98 Editorial, 'Shame of the UN', *New York Times* (13 November 1975). Nathan Glazer, 'Zionism Examined', *New York Times* (13 December 1975).

99 Dariusz Stola, 'The Anti-Zionist Campaign in Poland 1967-1968', *marxists.org* (n.d.). Colin Shindler, *Israel and the European Left: Between Solidarity and Delegitimization* (Continuum, 2021), pp. 230-31.

100 Åsmund Borgen Gjerde, 'The Logic of Anti-Zionism: Soviet Elites in the Aftermath of the Six-Day War', *Patterns of Prejudice* 52.4 (2018), pp. 277-78.

Soviet conspiracy'.[101] Another 'theme' presented Zionism as a 'racist' ideology that posited the superiority of Jews as a 'chosen people'.[102]

In this context, and against the backdrop of heightened international attention to the travails of Soviet Jews,[103] UNGA Resolution 3379 was presented by some—including campaigners for Soviet Jewish rights[104]—as a product of Soviet anti-Jewish ideology. But multiple political traditions outside the Communist spectrum had also developed a critical view of Zionism as discriminatory. *Liberal Judaism*. Prior to World War II, liberal Jews tended to reject Zionism, not because of its consequences for Arabs in Palestine, but as a threat to the gains which attended their own hard-won assimilation. They feared that establishing a Jewish national identity would stamp Jews everywhere as 'strangers in their native lands'.[105] In Britain, Lord Edwin Montagu, Minister for India and a prominent member of the Board of Deputies of British Jews, considered the 1917 Balfour Declaration 'an irreparable blow to Jewish Britons' as the Government had 'endeavoured to set up a people which does not exist'. To the Zionists, he protested that 'all my life I have been trying to get out of the ghetto … you want

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101 Gjerde, p. 289. Cf. Christopher Andrew and Vasili Mitrokhin, *The Mitrokhin Archive II: The KGB and the World* (Allen Lane, 2005), pp. 636-39.

102 William Korey, *Russian Antisemitism, Pamyat, and the Demonology of Zionism* (SICSA-Hebrew University of Jerusalem, 1995), pp. 33-34, 43. For Soviet criticism of the 'chosen people' concept, cf. UNSC, S/PV.1582 (25 September 1971), para. 272. UNGA, A/PV.1972 (21 October 1971), paras. 113-14.

103 See, e.g., 'Brussels Declaration on Soviet Jews', *New York Times* (26 February 1971).

104 'Naum Alshansky'. 'Gold Warns'.

105 Lucien Wolf on behalf of the Conjoint Committee of the Board of Deputies of British Jews and the Anglo-Jewish Association, 'Palestine and Zionism—Views of Anglo-Jewry', *The Times* (24 May 1917). Israel Finestein, *Scenes and Personalities in Anglo-Jewry, 1800-2000* (Vallentine Mitchell, 2002), pp. 219-20. Cf. Stuart Cohen, *English Zionists and British Jews: The Communal Politics of Anglo-Jewry, 1895-1920* (Princeton University Press, 1982), pp. 226-27.

to force me back there'.[106] *Anticolonialism*. During the 1960s, the Third World movement came to assimilate the Palestinian cause with the Palestine Liberation Organisation (PLO) as its representative.[107] Already in 1964, the Non-Aligned Summit in Cairo 'declared … full support to the Arab people of Palestine in their struggle for liberation from colonialism and racism'.[108] In January 1966, the Tricontinental Conference in Havana endorsed with near unanimity an Arab draft resolution condemning Zionism as 'an Imperialist movement by nature' with a 'racist and fascist' structure.[109] The 1970 Non-Aligned Summit in Lusaka 'confirmed the strategy of equating the PLO with other liberation movements',[110] while the 1973 Non-Aligned Summit in Algiers condemned 'Zionism' as a 'form of racial discrimination' and equated 'Zionist settler-colonialism in Palestine with 'racist segregation'

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106 Natan Aridan, *Britain, Israel and Anglo-Jewry, 1949-1957* (Routledge, 2004), p. 209. The salience of this tradition had by the 1970s been drastically reduced, but the arguments made by these anti-Zionist Jews retained intellectual force.

107 Paul Thomas Chamberlin, *The Global Offensive: The United States, the Palestine Liberation Organization, and the Making of the Post-Cold War World* (Oxford University Press, 2012). Robert A. Austin, 'Global Palestine: International Solidarity and the Cuban Connection', *Journal of Holy Land and Palestine Studies* 18.2 (2019), pp. 239-62. Yoav DiCapua, 'Palestine Comes to Paris: The Global Sixties and the Making of a Universal Cause', *Journal of Palestine Studies* 50.1 (2021), pp. 19-50. Sorcha Thomson et al. 'Palestine Solidarity Conferences in the Global Sixties', *Journal of Palestine Studies* 51.1 (2022), pp. 27-49. Sorcha Thomson and Pelle Valentin eds., *Palestine in the World: International Solidarity with the Palestinian Liberation Movement* (I.B. Tauris, 2023).

108 Declaration of the Non-Aligned Countries (5-10 October, Cairo), reproduced in Edmund J. Osmańczyk, *Encyclopedia of the United Nations and International Agreements*, vol. III (N to S), 3rd ed. (Routledge, 2003), p. 1578.

109 Maximiliano Jozami, 'Argentine Left Parties and the 1967 Six-Day War through the Prism of Global Networks and South-South Connections', *Jahrbuch für Geschichte Lateinamerikas* 56 (2019), p. 27. It appears that the Soviet Union abstained on this resolution which the Soviet delegate to the Conference, Dmitri Dulidza, described as 'contrary to the Soviet policy'. Ibid., p. 28.

110 Sally Morphet, *The United Nations: Does the Rhetoric Matter? A Case History: Palestine 1947-1983* (FCO Research Department, October 1983), p. 27.

in 'Southern Africa'.[111] By mid-1975, US diplomats could dismiss rhetorical denunciations of Zionism by Arab and Non-Aligned States as 'ritual' 'boiler-plate'.[112]

Most importantly, Palestinian and other Arabs had been critical of Zionism since the late-nineteenth century,[113] driven by 'fear of territorial displacement and dispossession'[114] as well as domination by a perceived alien minority.[115] Long before 1975, depictions of Zionism as 'racist', 'colonialist' and/or 'imperialist' were commonplace in Palestinian and Arab politics.[116] Already during 1947 UN General Assembly debate on the future of Mandate Palestine, Arab representatives condemned the proposed establishment of a Jewish State in Palestine as breaching the 'principle of the illegitimacy of States created by means of racial

111 'Political Declaration of the Fourth Conference of Non-Aligned Countries' (Algiers, 5-9 September 1973)', para. 17 ('racial discrimination'). 'Declaration on the Struggle for National Liberation', NAC/ALG/CONF.4 (9 September 1973) ('Southern Africa').

112 US Department of State (US DoS) to United Nations (Geneva), 'OAU Council of Ministers: Analysis of Texts', 1975STATE114982_b (19 May 1975), para. 18, Wikileaks ('ritual'). US Embassy Algiers, 'Kim Il Sung Leaves Algiers', 1975ALGIER01295_b (3 June 1975), para. 2, Wikileaks ('boiler-plate').

113 Yehoshua Porath, *The Emergence of the Palestinian-Arab National Movement, 1918-1929* (Frank Cass, 1974), Introduction and chap. 1. Muhammad Y. Muslih, *The Origins of Palestinian Nationalism* (Columbia University Press, 1988), pp. 70, 78-79, and passim. Rashid Khalidi, *Palestinian Identity: The Construction of a Modern National Consciousness* (Columbia University Press, 1997), pp. 121-42.

114 Morris, *Righteous*, p. 37.

115 Porath, *Emergence*, pp. 49-63.

116 Palestine National Covenant (1964), article 19 ('racist and segregationist'). Palestinian National Charter (1968), article 22 ('racist and fanatic'). Palestine Liberation Organisation (PLO), 'Democratic State Demand/Offer' (January 1970) quoted in Thomson et al., 'Solidarity', p. 11 ('racist and expansionist system'). PLO Chairman Yasser Arafat, Speech to UNGA, A/PV.2282 and Corr. 1 (13 November 1974), para. 28 ('imperialist, colonialist, [and] racist').

or religious discrimination' and argued that 'Zionism' was 'based on racism'.[117] 'Palestinian characterizations of Zionism as a form of European colonialism date to the 1920s' while, by 1967, 'the accusation that Israel is a colonialist phenomenon' was 'advanced by an almost unanimous Arab intelligentsia, whether on the right or the left'.[118] Before and contemporaneously with UNGA Resolution 3379, Palestinian intellectuals analysed Zionist texts as well as the laws and practices of the State of Israel to argue that 'racism' was 'inherent in the … ideology of Zionism', that the 'Zionist program aimed at the dispossession of the Palestinian Arabs' and betrayed a 'disregard for the rights of others … characteristic of' a 'totalitarian nationalism', that 'Zionists insist on equality for Jews living outside Israel' yet maintain 'racial and religious' discrimination against 'non-Jews living inside the Jewish state', that 'the Zionists … believe in enjoying complete political rights while denying the same rights to the Arabs' while Israeli legislation lent 'compelling weight to the traditional Arab interpretation of Zionism as a movement with an innately racist ideology', and that 'settler regimes' like those in 'South Africa' and 'Palestine' had a 'tendency … to move toward

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117 UNGA Ad Hoc Committee, A/AC.14/SR.5 (3 October 1947), p. 22 ('illegitimacy'—Lebanon); A/AC.14/SR.13 (14 October 1947), pp. 80-81 ('racism'—Syria).

118 Maxime Rodinson, *Israel: A Colonial-Settler State?* (Monad Press, 1973 [1967]), p. 27 ('unanimous'). Derek J. Penslar, *Zionism: An Emotional State* (Rutgers University Press, 2023), p. 67 ('1920s').

exclusivism, exploitation, oppression, and racism'.[119] Other observers, who were neither Marxists nor Communists, reached similar conclusions.[120]

The reflexive association of UNGA Resolution 3379 with Soviet doctrine, and thence with Soviet abuses, unjustifiably overlooks these other traditions. Meanwhile, suggestions that the diplomatic initiative which culminated in UNGA Resolution 3379 was instigated by the Soviet Union are not born out by the documentary record. The Soviet bloc supported and helped lobby for UNGA Resolution 3379 while Soviet publications celebrated its adoption.[121] But so did many Arab and Non-Aligned States. It is true that the first General Assembly amendment to the effect that 'Zionism' was racist had been introduced by the Soviet delegation on 13 October 1965, during negotiations over the International Convention on the Elimination of Racial Discrimination (CERD). This was a (successful)

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119 Fayez A. Sayegh, *Zionist Colonialism in Palestine* (PLO Research Center, 1965), p. 21 ('inherent'). Hassan Sa'ab, *Zionism and Racism* (PLO Research Centre, 1965), quoted in Yehoshafat Harkabi, *Arab Attitudes to Israel* (Routledge, 2017 [1972]), p. 172 ('disregard'). Sami Hadawi, *Bitter Harvest: Palestine, 1914-67* (New World, 1967), p. 201 ('equality'). Sabri Jiryis, 'Recent Knesset Legislation and the Arabs in Israel', *Journal of Palestine Studies* 1.1 (1971), p. 54 ('traditional Arab interpretation'). Jiryis, *Arabs*, p. 238 ('political rights'). Ibrahim Abu Lughod and Baha Abu-Laban, 'Foreword', in Ibrahim Abu Lughod and Baha Abu-Laban eds., *Settler Regimes in Africa and the Arab World: The Illusion of Endurance* (Medina University Press International, 1974), p. viii ('settler regimes').

120 Ian Gilmour, 'Zionism and Anti-Semitism', *Spectator* (24 June 1960), pp. 908-9. Erskine B. Childers, 'The Wordless Wish: From Citizens to Refugees' in Ibrahim Abu Lughod ed., *The Transformation of Palestine: Essays on the Origins and Development of the Arab-Israeli Conflict* (Northwestern University Press, 1971), pp. 167-68, 174. Arnold Toynbee and Louis Eaks, 'Arnold Toynbee on the Arab-Israeli Conflict', *Journal of Palestine Studies* 2.3 (1973), pp. 11-12. Chomsky, *Peace*, p. 144. Uri Davis, 'Introduction' in Fouzi el-Asmar, *To Be an Arab in Israel* (Frances Pinter, 1975), p. 8. Israel Shahak quoted in Patrick Marnham, 'Is Israel Racist?' *Spectator* (6 March 1976), p. 10. Israel Shahak, 'The Racist Nature of Zionism and of the Zionistic State of Israel', *The Link* 8.5 (1975-76), pp. 10-13.

121 A.A. Gromyko and B.N. Ponomarev eds., *Soviet Foreign Policy 1917-1980*, vol. II (Progress, 1981 [1980]), p. 506. (Misreported in Andrew and Mitrokhin, *Mitrokhin Archive II*, p. 416.)

tactical manoeuvre intended to obstruct a US initiative to have CERD condemn antisemitism without reference to 'Nazism'—a proposal the Soviets accurately interpreted as directed at them.[122] Yet the impetus for this move itself appears to have come from Arab States,[123] while it was Arab delegations—not the USSR—that sought unsuccessfully to tie 'Zionism' to racism in the UN system in 1967.[124]

On the other hand, contemporary reporting consistently presented UNGA Resolution 3379 as 'Arab-led'[125] while American Jewish officials denounced 'the Arab bloc' (Israel Miller, Conference of Presidents of Major American Jewish Organisations) and 'the Arab campaign' (Arthur Hertzberg, American Jewish Congress).[126] Israel's Foreign Minister Yigal Allon forewarned UK Prime Minister Harold Wilson that 'the *Arabs* were working for the condemnation of Zionism'[127] and later debriefed his own Cabinet on 'the *Arabs'* move'. Israel's Prime Minister informed the Knesset that the resolution was 'initiated by the *Arab*

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122 Nathan A. Kurz, *Jewish Internationalism and Human Rights after the Holocaust* (Cambridge University Press, 2021), pp. 13-32. This episode is most thoroughly documented in James Loeffler, *Rooted Cosmopolitans: Jews and Human Rights in the Twentieth Century* (Yale University Press, 2018), chap. 9 and Kurz, *Internationalism*, chap. 5. Whereas both the US and Soviet Union manipulated these negotiations, the latter's cynicism bears particular notice. The initial impetus for the diplomatic process that culminated in CERD had been a global 'epidemic' of swastika daubings in 1960. According to Loeffler, it was later revealed that the KGB had covertly triggered the epidemic to tarnish the image of West Germany. Loeffler, *Rooted*, pp. 238-39.

123 Kurz, *Internationalism*, pp. 132-34. Cf. Friesel, 'Equating', pp. 304-5.

124 Kurz, *Internationalism*, p. 136.

125 Paul Hofmann, '30th General Assembly: Strain and Frustration', *New York Times* (19 December 1975). Cf. Paul Hofmann, 'Anti-Zionist Resolution Gains in UN', *New York Times* (10 October 1975) ('Arab-inspired'). Burns, 'Rally' ('Arab-initiated').

126 Spiegel, 'Bitter'.

127 'Talk between the Prime Minister and the Israeli Foreign Minister', PREM 16/554 (13 October 1975), p. 1, TNA. Emphasis added.

states' and Israel's UN Ambassador alleged that 'the driving force behind the initiative … was the PLO.[128] Whereas Moynihan framed the resolution as a cosmic showdown between 'democracy' and 'totalitarianism', 'Israeli diplomats' understood it in the context of 'Mideast dynamics'.[129] British, US, and West German diplomats likewise consistently assessed the resolution as an initiative of those they designated—to be sure, in self-serving and ideologically loaded terms[130]—'the extreme Arabs'.[131]

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128 'Allon Says Many Resisted UN Vote', *New York Times* (20 October 1975) (Foreign Minister). 'Rabin: UN Resolutions Part of a Plan to Remove Israel', *jta.org* (12 November 1975) (Prime Minister). Paul Hofmann, 'UN Again Delays Any Action Linking Zionism with Racism', *New York Times* (14 October 1975) (Ambassador). Emphases added. In the UN, Israel's Ambassador had referred to the resolution as an 'attempt … by certain Arab Governments to strike at the very root of Israel'. UNGA, A/C-3/SR.2132 (16 October 1975), p. 104 (Israel).

129 Troy, 'Oom, p. 53.

130 This chapter quotes diplomatic references to 'extreme' or 'militant' as against 'moderate' Arab actors because this constitutes important evidence that diplomats attributed UNGA Resolution 3379 not to the Arab States in general but rather to a specific subset of them. It bears underlining that these ideological designations reveal more about their authors than their subjects. Cf. Noam Chomsky, 'Thought Control in the US: The Media and the "Peace Process"', *MERIP Middle East Report* 143 (1986), pp. 27-28; *The Culture of Terrorism* (Pluto Press, 1988), pp. 163, 232-33; *Deterring Democracy*, revised ed. (Hill and Wang, 1992), part VI, chap. 6.

131 UK Mission to the UN (UKUN), 'Third Committee: Item 98 (A): Decade against Racism etc', FCO 61/1380 (2 October 1975), para. 2, TNA. For British assessments, see, e.g., FCO, 'Brief No. 5, Agenda Item 8, The World Conference of the International Women's Year', FCO 61/1427 (6 June 1975), para. 18, TNA. UKUN, 'Zionist Resolution at the U.N.', PREM 16/554 (23 October 1975), para. 6, TNA. UKUN, 'The Thirtieth Session of the General Assembly—16 September-17 December 1975—Detailed Analysis', FCO 58/863 (22 December 1975), para. 8, TNA. For internal US assessments, *including by Moynihan*, see, e.g., US Mission to the United Nations—New York (USUN), 'Third Cmte—Decade to Eliminate Racial Discrimination', 1975USUNN04753_b (4 October 1975), paras. 1, 3-4, Wikileaks. USUN, 'Third Committee—Racial Discrimination and Arab Amendments on Zionism', 1975USUNN04923_b (10 October 1975), para. 1, Wikileaks. USUN—Moynihan, 'Third Committee-Racial Discrimination', 1975USUNN04977_b (14 October 1975), paras. 1, 4-5, Wikileaks. USUN, 'Third Cmte Brands Zionism as a Form of Racism', 1975USUNN05127_b (18 October 1975), para. 1, Wikileaks. USUN, 'Strategy on Anti-Zionism Resolution in Plenary', 1975USUNN05341_b (25 October 1975), para. 1, Wikileaks. For West German assessments, see, e.g., New York UNO to Bonn AA, 'Frage des

An Arab initiative

If UNGA Resolution 3379 was, as the evidence overwhelmingly indicates, an Arab initiative, then, what did its initiators hope to achieve by it? Was it, as US and Israeli representatives alleged, intended to delegitimize Israel's ideological basis as a prelude to its military destruction? This is not how British, US, Israeli, and European Community (EC) diplomats interpreted the resolution at the time. They saw it, instead, as one of several UN initiatives by a coalition of Arab actors united neither by broader ideology nor a common attitude towards a diplomatic settlement with Israel but rather in opposition to the negotiations then underway between Israel and Egypt. Before analysing UNGA Resolution 3379 directly, it merits first examining how this political agenda manifested in a contemporaneous initiative to have Israel suspended or expelled from the UN.

The Israel expulsion bid

In 1975, several Arab States led by Syria mounted a bid to suspend or expel Israel from the UN and its agencies. The initiative surfaced in March at the Non-Aligned Co-ordinating Bureau meeting in Havana.[132] It gained steam at the Islamic Foreign Ministers' Conference in Jedda, which on 15 July called unanimously for

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Abstimmungsverhaltens der Neun bei Behandlung der Zionismusres. und der Dekadenres. im Plenum', BA 30 ZA 113324 (27 October 1975), PA AA (FRG).

132 British Embassy Washington, 'Action against Israel at the UN and in the Specialised Agencies', FCO 58/844 (29 May 1975), TNA. Enclosing a 'confidential study' made by the US Mission in New York of the Havana meeting, based on 'a Yugoslav source'. Ibid., paras. 1-2.

> debarring Israel from membership of the United Nations and its specialist agencies and from participating in other international conferences convened under its auspices as long as Israel refuses to obey the decisions of the international organisation, violates its Charter and refuses to withdraw from occupied Arab lands and to recognise the entire national rights of the Palestinian people in their homeland.[133]

It faltered later that month at the Organisation of African Unity (OAU) Heads of State summit in Kampala, which saw 'Black Africa beat back on Arab resolution[s]' for Israel's suspension or expulsion. The OAU instead called on 'all OAU Member States to take all appropriate measures to intensify pressure against Israel at the United Nations and the other Agencies' and merely canvassed 'the possibility of eventually depriving it of its status as a Member of these Agencies'.[134] One 'well-informed West African diplomat' explained that

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133 FM Jedda, 'MIPT: Islamic Foreign Mkoisters [*sic*] Conference', FCO 58/844 (17 July 1975), para. 2(a), TNA. Iran and Turkey subsequently entered reservations to the effect that this was not binding on them. FCO, 'Israel/United Nations', PREM 16/550 (18 July 1975), para. 1, TNA. Cf. D.I. Dunnett, 'Israel/United Nations: Record of Conversation with the Senegalese Foreign Minister', FCO 58/845 (22 July 1975), para. 3, TNA. British Embassy Ankara, 'Turkey and the Islamic Foreign Ministers' Conference', FCO 93/758 (22 July 1975), para. 6, TNA. FCO, 'European Political Cooperation Political Committee Rome, 3/4 September 1975—Brief No 2B: Israel and the United Nations', FCO 93/760 (1 September 1975), para. 4, TNA. M 95/3752, 'Zur Resolution über den UNO-Ausschluß Israels auf der Islamischen Außenministerkonferenz in Djidda' (n.d.), PA AA.

134 AHG/Res. 77 (XII), para. 11. Cf. AHG/Res. 76 (XII) (28 July – 1 August 1975), para. 8. Several States either opposed (Zaire) or entered reservations to (Ghana, Sierra Leone, Senegal, Liberia) even this 'watered-down' formulation. US Embassy Addis Ababa, '12th OAU Summit', 1975ADDIS09779_b (14 August 1975), para. 10 ('watered-down'), Wikileaks.

this 'kills any possibility of African support for Israeli UN expulshion [*sic*] or suspension in the near future'.[135]

The effort finally expired the following month in Lima, at the Foreign Ministers' Conference of the Non-Aligned Countries. This was 'dominated' by the Middle East issue, but notwithstanding strenuous lobbying by its proponents, a 'resolution calling for Israel's expulsion from [the] UN' was 'unsuccessful'.[136] The concluding Programme instead called, inter alia, for 'the Non-Aligned Countries to consider other measures against Israel, in conformity with the provisions of Chapter VII of the United Nations Charter'.[137]

For our purposes, several aspects of this abortive diplomatic initiative bear notice.

First, it was driven by Syria and the PLO with support from Libya and Iraq. In the March 1975 meeting of the Non-Aligned Movement (NAM) Bureau in Havana, it was a 'Syrian resolution' that called for Israel's expulsion from the UN, together with the annulment of UNGA Resolution 273 (which admitted Israel to the UN) and revision of UN Security Council (UNSC) Resolution 242 (which endorsed an Arab-Israel peace settlement based on mutual recognition and Israel's withdrawal to the pre-June 1967 boundaries). Syria was supported by Algeria, Cuba, Senegal, Tanzania, and Kuwait.[138] The PLO publicly announced

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135 US Embassy Addis Ababa, 'OAU Kampala CM and Summit: Some Achievement, Much Procrastination', 1975ADDIS09462_b (6 August 1975), para. 6, Wikileaks.

136 FM Lima, 'Non-Aligned Conference: Middle East', FCO 58/854 (30 August 1975), para. 2, TNA. Cf. FM Lima, 'Non Aligned Conference: Israel', FCO 58/846 (27 August 1975), para. 2, TNA.

137 NAC/FM/CONF.5/15 (30 August 1975), para. 56. Cf. ibid., para. 57.

138 British Embassy Washington, 'Action against Israel at the UN and in the Specialised Agencies', FCO 58/844 (29 May 1975), TNA—based on information provided to the US by a Yugoslav source. Whereas

the diplomatic effort ahead of the Islamic Foreign Ministers' Conference in Jedda,[139] which saw two resolutions for Israel's expulsion introduced by Syria and the PLO respectively ('[b]oth had been accepted but Syria's was more comprehensive').[140] British officials predicted ahead of the OAU summit in Kampala that 'Syria is likely to act through Algeria' there;[141] sure enough, the OAU resolution for Israel's expulsion was 'put forward by Libya and Algeria and supported by [PLO chairman] Yassir Arafat'.[142] At the Non-Aligned Conference in Lima, 'the Syrians brought up their initiative again with the support of the Iraqis, the Libyans and the PLO', who 'went to great lengths to lobby for' it.[143] Both US and UK observers

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Syria pressed for this resolution to be forwarded to the NAM conference in Lima as a 'formally endorsed document', 'less radical participants (led by India)' ensured that it was forwarded only 'informally with the Bureau's "support in principle for its ideas"'. Ibid.

139 Farouk Kaddoumi (PLO), Lebanese *Daily Star* (27 June 1975). Quoted in FM Washington, 'Action against Israel at the UN', FCO 58/844 (1 July 1975), para. 2, TNA. Israeli observers likewise referred to the 'Syrian-PLO resolution' at Jedda. Israeli Embassy Tokyo, 'Possible Arab Initiative to Suspend Israel at the Forthcoming 30th General Assembly of the United Nations', para. 5, appended to British Embassy Tokyo, 'Japan and the Middle East', FCO 93/760 (19 August 1975), TNA. A Pakistani delegate identified Libya as the 'prime mover' behind the expulsion resolution at Jedda. British Embassy Islamabad, 'Islamic Foreign Ministers Meeting: Resolution on Israel's Expulsion from the United Nations', FCO 58/845 (23 July 1975), para. 2, TNA.

140 FM Damascus, 'Islamic Foreign Ministers Conference: Jedda', FCO 58/844, (18 July 1975), para. 3, TNA. Cf. FCO, 'European Political Cooperation Political Committee Rome, 3/4 September 1975—Brief No 2B: Israel and the United Nations', FCO 93/760 (1 September 1975), para. 4, TNA. US Embassy Doha, 'Islamic Foreign Ministers Conference: Influence of Egyptians and Other Moderate Arabs Reportedly Diminished', 1975DOHA00868_b (19 July 1975), para. 1, Wikileaks.

141 UN Department, 'Mrs Williams' Speech to the UNA Annual Dinner: 22 July—Background Note', FCO 58/844 (21 July 1975), TNA.

142 FCO, 'OAU—The Kampala Summit: Draft for *African Review*', FCO 65/1597 (14 August 1975), p. 1, TNA. Cf. FM Algiers, 'Israel/UN', FCO 58/845 (5 August 1975), para. 1, TNA. Another British official at Kampala reported that the expulsion resolution was 'proposed by the PLO'. P.A. Penfold, 'OAU Summit Meeting—Kampala 1975' (13 August 1975), para. 10, TNA.

143 FCO, 'European Political Cooperation Political Committee Rome, 3/4 September 1975—Brief No 2B: Israel and the United Nations', FCO 93/760 (1 September 1975), paras. 5-6, TNA. Pakistan also pointed

considered that the suspension/expulsion bid was a primarily Syrian initiative,[144] an impression that Syria's Foreign Minister Abdul Halim Khaddam was happy to confirm: 'if Syria did drop the initiative the move would end there'.[145]

Second, what united these actors was neither a general diplomatic alignment—Syrian-Iraqi relations, for instance, were in crisis[146]—nor their position on a diplomatic settlement with Israel. Libya and Iraq rejected UNSC Resolutions 242 and 338, opposed any negotiation process with Israel, and called for Israel's replacement by 'a secular State to include both

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to the central role of the PLO and Libya in lobbying for Israel's expulsion. British Embassy Islamabad, 'Islamic Foreign Ministers Meeting: Resolution on Israel's Expulsion from the United Nations', FCO 58/845 (23 July 1975), para. 2, TNA.

144 UKUN, 'Action against Israel at the UN and in the Specialised Agencies', FCO 58/844 (16 May 1975), para. 5, TNA. FCO, 'Mr. Allon', PREM 16/976 (14 July 1975), para. 1, TNA. FCO, 'European Political Cooperation Political Committee Rome, 3/4 September 1975—Brief No 2B: Israel and the United Nations', FCO 93/760 (1 September 1975), para. 3, TNA. FCO, 'Briefs for the Secretary of State's Bilateral Meetings at the United Nations: Israel and the United Nations', FCO 58/893 (19 September 1975), para. 3, TNA. (*UK*) British Embassy Washington, 'Action against Israel at the UN and in the Specialised Agencies', FCO 58/844 (29 May 1975), TNA. FM Washington, 'Action Against Israel at the U.N.', FCO 58/844 (10 July 1975), para. 3, TNA. US Embassy Damascus, 'Syrian Foreign Minister Claims Pleasure over OAU Summit Action on Israeli UN Status', 1975DAMASC02976_b (4 August 1975), para. 5, Wikileaks. 'Record of a Meeting Held at the State Department at 11 am on Wednesday, 17 September 1975', FCO 58/904 (17 September 1975), para. 6, TNA. (*US*)

145 British Embassy Damascus, 'Syrian Minister for Foreign Affairs's Account of the Meeting of the Arab Foreign Ministers at Jedda to the German Ambassador', FCO 93/759 (18 July 1975), para. 6, TNA. Cf. US Embassy Damascus, 'Syrian Foreign Minister Claims Pleasure over OAU Summit Action on Israeli UN Status', 1975DAMASC02976_b (4 August 1975), Wikileaks.

146 Malik Mufti, *Sovereign Creations: Pan-Arabism and Political Order in Syria and Iraq* (Cornell University Press, 1996), p. 206. Cf. FCO, 'Iraq's Foreign Policy', FCO 8/2541 (5 August 1975), para. 6, TNA. FCO, 'Visit of the Prime Minister of Saudi Arabia: Brief on Regional Security', FCO 8/2602 (12 October 1975), para. 4, TNA.

Jews and Arabs'.[147] Libya's Colonel Qaddafi viewed the Jewish State of Israel as a Western-imposed obstacle to pan-Arab unity and advocated its destruction.[148] (In the view of British officials, to be sure, Iraq was likely 'in practice' to 'go along with any real settlement in the Middle East that the other parties, including the Palestinians, accepted' while Libya's public position as of March 1975 was that '[i]t is for the Palestinian people … to decide on peace with Zionism').[149] Neither Iraq nor Libya bordered or had territory occupied by Israel; such rhetoric thereby incurred little cost and was, by the same token, of limited direct consequence. Both Syria and the PLO, by contrast, were open by 1975 to a negotiated settlement with Israel. Syria had accepted UNSC Resolution 338, which affirmed a peace settlement based inter alia on recognition of Israel;[150] reached an interim disengagement agreement with Israel in 1974;[151] and set as its candid objective 'the restoration' to Syrian control of the Golan Heights, occupied by Israel during the 1967 War.[152] As regards the PLO, what is striking about its support for both the Israel expulsion bid and UNGA Resolution

147 FCO, 'Iraq: Annual Review for 1974', FCO 8/2548 (6 January 1975), para. 10, TNA. Cf. FCO, 'Call by Iraqi Ambassador—Background', FCO 8/2548 (10 October 1975), paras. 2-3, TNA.

148 Jacob Abadi, 'Pragmatism and Rhetoric in Libya's Policy Toward Israel', *Journal of Conflict Studies* 20.2 (2000).

149 FCO, 'NATO Expert Working Group on the Middle East: 8-10 November 1976—Iraq: Foreign Relations', FCO 8/2619 (18 October 1976), para. 3 ('in practice'), TNA. US Embassy Tripoli, 'Public Libyan Position on Mideast Negotiations', 1975TRIPOL00369_b (31 March 1975), p. 2 ('peace with Zionism'), Wikileaks. Cf. FCO, 'Iraq's Foreign Policy', FCO 8/2541 (5 August 1975), para. 8, TNA. FM Moscow, 'Middle East', FCO 8/2543 (18 April 1975), para. 2(a), TNA. USINT Baghdad, 'Assessment of Iraqi Regime after Rapprochement with Iran and End of Kurdish War', 1975BAGHDA00501_b (9 May 1975), para. 11, Wikileaks. British Embassy Baghdad, 'Iraq's Relations with Other Arab States', FCO 8/2541 (1 July 1975), para. 2, TNA.

150 UNSC Resolution 338 (22 October 1973).

151 'Separation of Forces between Israel and Syria' (31 May 1974).

152 Lars Hasvoll Bakke and Hilde Henrisken Waage, 'Facing Assad. American Diplomacy Toward Syria, 1973-1977', *The International History Review* 40.3 (2018), p. 550.

3379 is that these initiatives unfolded *just as the PLO's position was shifting decisively in favour of a two-State settlement*.[153] As UK officials surmised in December 1975, 'Arafat's position has shifted towards recognition of Israel'.[154] This was most clearly evident in January 1976, when a UNSC draft resolution initiated by Syria, with critical input from the PLO, called for a settlement based on security guarantees for 'all states in the area', Israel's withdrawal from all territory occupied since 1967, 'an independent [Palestinian] state in Palestine', and return or compensation for Palestinian refugees.[155] In February 1976, a US Middle East visit led by Democratic Senator Adlai Stevenson III found that the PLO as well as 'all Arab governments' bar Iraq 'were willing to accept Israel's existence as a state with minor border revisions and some provision for Palestinian refugees … as a basis for peace'.[156]

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153 Alain Gresh, *The PLO: The Struggle Within: Towards an Independent Palestinian State* (Zed, 1988), pp. 150, 154, 156, 180-83. Muhammad Muslih, 'A Study of PLO Peace Initiatives, 1974-1988' in Avraham Sela and Moshe Ma'oz eds., *The PLO and Israel: From Armed Conflict to Political Solution, 1864-1994* (Macmillan, 1997). Manuel S. Hassassian, 'Policy and Attitude Change in the Palestine Liberation Organisation, 1965-1994: A Democracy in the Making' in Sela and Ma'oz, *PLO and Israel*, p. 81. Yezid Sayigh, *Armed Struggle and the Search for a State: The Palestinian National Movement, 1949-1993* (Clarendon, 1997), pp. 322, 332-39. Khalidi, *Hundred*, p. 123.

154 FCO, 'Brief for Prime Minister's Breakfast with Allon', PREM/16/976 (2 December 1975), para. 11, TNA.

155 UNSC, S/11940 (23 January 1976). Cf. Noam Chomsky, *Fateful Triangle: The United States, Israel & the Palestinians*, updated ed. (Pluto, 1999 [1983]), pp. 67-68. Colter Louwerse, '"Tyranny of the Veto": PLO Diplomacy and the January 1976 United Nations Security Council Resolution', *Diplomacy & Statecraft* 33.2 (2022), pp. 303-29.

156 Quoted in Colter Louwerse, *The Struggle for Palestinian Rights: The Palestinian Campaign for Self-Determination and Statehood at the United Nations, 1967-1989*, PhD thesis (University of Exeter, 2022), p. 133. After January 1976, PLO overtures became increasingly frequent and explicit. Yaqub, *Strangers*, pp. 247-50. Jensehaugen, *Diplomacy*, pp. 58-61, 69-73. Louwerse, *Struggle*, chap. 5.

If not a shared position on Israel-Palestine, then, what did bring these actors together in support of a bid to expel Israel from the UN? This brings us to our final insight from the Israel expulsion bid, namely, that official observers consistently viewed it in the context of the US-mediated negotiations then underway between Israel and Egypt, which stalled in March 1975 but eventually issued in the Sinai Interim (Sinai II) Agreement of 4 September 1975.[157] The connection between those talks and the Syrian-led expulsion bid was two-fold. On the one hand, so long as Israel's diplomatic posture was perceived as intransigent,[158] broad support for action against Israel at the UN would critically depend on visible progress toward a diplomatic settlement. Romania's President Nicolae Ceauşescu, an influential early supporter of what would become known as the two-State settlement, warned in June 1975 of 'a radical change in thinking throughout the world': 'while everyone was in favour of adequate guarantees for Israel, the Israelis risked losing a great deal if they remained as rigid as they were at present'. Israel's 'increasing international isolation' was fuelled by its 'lack of flexibility'.[159] After negotiations broke down in March 1975, Britain's Ambassador to Israel cautioned an Israeli counterpart that, 'if there were no progress towards peace soon, Israel risked being classified along with South Africa and Rhodesia in the eyes of the third world

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157 For an overview of this phase of negotiations, see Quandt, *Peace Process*, pp. 161-70.

158 President Ford had publicly blamed Israel for the collapse of talks with Egypt in March 1975. Quandt, *Peace Process*, p. 164. Cf., more broadly, 'The Jarring Initiative and the Response', *mfa.gov.il* (8 February 1971). Ze'ev Maoz, *Defending the Holy Land: A Critical Analysis of Israel's Security & Foreign Policy* (University of Michigan Press, 2006), pp. 412-20.

159 'Record of a Meeting between the Prime Minister and the President of Romania over Breakfast at Chequers on Thursday, 12 June, 1975, at 8.15 a.m.', FCO 58/901 (12 June 1975), p. 17 ('radical change'), TNA. Romanian Ambassador Pretor Popa, 'Letter to UK Foreign Secretary James Callaghan', PREM 16/550 (11 September 1975), pp. 3 ('isolation'), 4 ('flexibility'), TNA.

as a European colony'.[160] Yugoslavia observed that an interim agreement between Israel and Egypt 'would effectively shelve the issue of expulsion/suspension of Israel'.[161] Bangladesh argued that the July 1975 Jedda expulsion resolution was intended as 'an extra element of pressure to get the Israelis to move' toward 'an equitable solution'.[162] For Senegal, a 'difficult[y]' in opposing an expulsion resolution was that it 'was an answer to various questions' that were legitimate, i.e., what to do about Israel's breach of UN resolutions and 'occupation of territory by aggression'.[163] A Saudi Ministry of Foreign Affairs official explained that, 'after almost two years of negotiation have produced so little, the moderate countries, are not merely themselves frustrated but also exposed to the derision of their radical colleagues'.[164] Such representations were taken seriously by UK officials, who consistently assessed that 'evidence of [diplomatic] progress' would give 'the Syrians …

160 W.B.J. Ledwidge—British Embassy Tel Aviv, 'Israel: Menaced and Menacing', PREM 16/976 (26 March 1975), para. 5, TNA. His interlocutor, Mordechai Kidron of Israel's Ministry of Foreign Affairs, agreed that 'this danger did indeed exist' and hoped that 'the Americans and West Europeans would rally to her support'. Commenting on this exchange, the UK's Ambassador in Washington found it 'depressing' that Israel's 'main preoccupation appears to be with defending their decision to hold on to the occupied territories for a further indefinite period'. Peter Ramsbotham—British Embassy Washington D.C., 'Israel: Menaced and Menacing', PREM 16/976 (9 April 1975), paras. 1-2, TNA.

161 British Embassy Belgrade, 'Yugoslav Preoccupations as at August 1975', FCO 58/854 (13 August 1975), para. 13, TNA. Cf. British Embassy Copenhagen, 'Danish Bilateral Discussions at Helsinki', FCO 93/760 (14 August 1975), para. 2(b), TNA.

162 British High Commission Dacca, 'Record of a Meeting between the High Commissioner and Dr Kamal Hossain, Foreign Minister of Bangladesh, Saturday 26 July 1975', FCO 93/760 (29 July 1975), para. 4, TNA.

163 D.I. Dunnett, 'Israel/United Nations: Record of Conversation with the Senegalese Foreign Minister', FCO 58/845 (23 July 1975), para. 4, TNA.

164 FM Jedda, 'Israel/United Nations', FCO 58/844 (22 July 1975), para. 2, TNA.

problems in mobilising they support they need'.[165] 'It goes without saying', the Foreign Office assessed in April 1975,

> that if the Israelis were made to look increasingly intransigent in the negotiations, or if there was another outbreak of hostilities, and particularly if these had been initiated by Israel, then the balance in the Assembly would tip further in favour of successful action by the Arabs.[166]

US and EC officials concurred. US officials expected a move to suspend or expel Israel from the UN inter alia because of 'radical Arab sentiment that *unless further movement toward a Middle East settlement* is underway by fall, it will be both desirable and feasible to act against Israel in this manner'.[167] At a June 1975 meeting of EC Middle East experts, there was 'general agreement' that the 'likelihood of the threat' of an expulsion bid 'would probably depend on the state of play in negotiations at the time'.[168]

On the other hand, the instigators and key proponents of the expulsion bid saw it primarily as a means by which to frustrate Israel-Egypt negotiations while embarrassing Egyptian

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165 'Israel and the UN: Speaking Notes', FCO 58/904 (n.d.), para. 3, TNA. Cf. UKUN, 'Action against Israel at the UN and in the Specialised Agencies', FCO 58/844 (16 May 1975), para. 4, TNA. FCO, 'Action against Israel at the UN', FCO 58/844 (24 June 1975), para. 2(b), TNA. UKUN, 'Action against Israel at the UN', FCO 58/845 (5 August 1975), para. 1, TNA. FCO, 'Briefs for the Secretary of State's Bilateral Meetings at the United Nations: Israel and the United Nations', FCO 58/893 (19 September 1975), para. 3, TNA.

166 FCO, 'Possible Action against Israel at the Next General Assembly—Briefing Paper', FCO 58/844 (15 April 1975), para. 9, TNA.

167 US Embassy Dublin, 'Note to Irish EEC Political Director', FCO 58/844 (27 June 1975), TNA.

168 UKUN, 'Action against Israel at the UN', FCO 58/844 (17 June 1975), para. 5, TNA.

President Anwar Sadat. According to the Foreign Minister of Oman, the Jedda expulsion resolution had been 'a quid pro quo for agree[m]ent not to discuss (and, implicitly, to condemn) Egyptian policy of … negotiations'; it was thus 'as much an anti-Egyptian move as an anti-Israeli one'.[169] For the 'more extreme Arabs' such as Libya and Iraq, a meeting of EC Middle East experts agreed, the expulsion bid was 'a means to prevent further partial agreements on Sinai and the Golan'.[170] It was also a vehicle through which to undermine Sadat's regional standing by forcing him to choose between appearing 'soft' on Israel or endorsing a measure that would strain the diplomatic process with Israel. In the view of a Pakistani delegate, Libyan 'enthusiasm' for the Israel expulsion resolution at Jedda was 'prompted by its desire to embarrass Egypt'; the Jedda debate 'was, under the surface, a reflection of the relationship between Libya and Egypt'.[171] In Kampala, meanwhile, the rivalry was very much surface level: when Egypt withdrew its draft resolution for Israel's suspension (not expulsion), Qaddafi 'shouted' 'abus[e]' ('bastards') at the Egyptian delegation and 'walk[ed] out' before the end.[172] Following the conference, the PLO launched a 'wide-ranging

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169 US Embassy Muscat, 'Secretary's July 14 Speech on UN; Omani Reaction', 1975MUSCAT00842_b (23 July 1975).

170 FCO, 'Action against Israel at the U.N.', FCO 58/844 (30 June 1975), para. 3, TNA. As regards the 'extreme'/'moderate' terminology, cf. note 130 above.

171 British Embassy Islamabad, 'Islamic Foreign Ministers Meeting: Resolution on Israel's Expulsion from the United Nations', FCO 58/845 (23 July 1975), para. 2, TNA. Cf. US Embassy Islamabad, 'Secretary's July 14 Speech on UN', 1975ISLAMA06715_b (23 July 1975), Wikileaks.

172 British Embassy Addis Ababa, 'OAU Middle East Resolutions', FCO 65/1597 (13 August 1975), para. 5 ('abus[e]'), TNA. US Embassy Addis Ababa, 'OAU Kampala CM and Summit: Some Achievement, Much Procrastination', FCO 65/1597 (n.d.), para. 6 ('bastards'), TNA. Cf. US Embassy Tripoli, 'Libyan Press Attacks Sadat for Opposing Israel's Expulsion from the UN', 1975TRIPOL00844_b (29 July 1975), Wikileaks.

attack on Egypt' through its weekly *Filastin ath-Thawra*, whose editorial denounced Egypt's 'successive deviations' as abandoning the 'cause of Palestine'.[173]

The PLO and Syria were also 'delighted … to throw a spanner in the Israeli/Egyptian works',[174] not because they opposed a diplomatic settlement (see above) but because a separate agreement between Israel and Egypt was bound to reduce Israel's incentive to relinquish territory on other fronts.[175] Syria's Foreign Minister Khaddam thus insisted that 'an agreement between Israel and Egypt which did not satisfy Palestinian and Syrian demands would not be enough to make Syria withdraw its demand for expulsion of Israel from the UN'.[176] Khaddam similarly informed a US Ambassador that Syria 'would decide whether to proceed with' the expulsion bid depending on whether there was 'movement by Israel to withdraw from occupied Arab lands … on all fronts and not just on one of them (ie. Sinai)'. Khaddam asked rhetorically, 'What do you expect us to do if Israel will not pull back from Golan?'[177] In short, as the UK's Embassy in Damascus concluded, 'this expulsion move is

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173 US Embassy Beirut, 'Media Reaction—Kampala Resolution on Israeli Participation in UN', 1975BEIRUT09939_b (5 August 1975), para. 2, Wikileaks.

174 'Anglo-American Consultations on UN Affairs held at the FCO on 21 July 1975', FCO 58/904 (21 July 1975), para. 2, TNA (quoting Mr Weir, FCO).

175 Bakke and Waage, 'Facing'.

176 FM Damascus, 'Islamic Foreign Ministers Conference: Jedda', FCO 58/844 (18 July 1975), para. 5, TNA.

177 British Embassy Washington, 'Action Against Israel at the U.N.', FCO 58/844 (10 July 1975), para. 4, TNA.

directed to preventing another step forward in Sinai' to the exclusion of Syrian and PLO claims.[178] This analysis was shared by EC[179] and US officials.[180]

This inter-Arab dynamic also explains why Egypt consistently opposed the expulsion bid. At Jedda, Egyptian and Saudi delegations had reluctantly acquiesced in the Syrian-PLO expulsion resolution.[181] According to a Saudi minister, Egypt 'had been subject to something approaching ridicule' for this 'lack of enthusiasm'.[182] In July, Egypt had held out the prospect of expulsion 'if Israel continues to stall' even as it 'privately' assured British officials that was 'fully in control' of the initiative and 'does not (not) want to expel or suspend Israel from the UN'.[183] As the General Assembly loomed while prospects for an agreement with Israel

178 British Embassy Damascus, 'Syrian Minister for Foreign Affairs's Account of the Meeting of the Arab Foreign Ministers at Jedda to the German Ambassador', FCO 93/759 (18 July 1975), para. 7, TNA.

179 UKUN, 'Israel and the UN', FCO 93/759 (15 August 1975), para. 2, TNA.

180 'Anglo-American Consultations on UN Affairs held at the FCO on 21 July 1975', FCO 58/904 (21 July 1975), para. 2, TNA.

181 British Embassy Ankara, 'Turkey and the Islamic Foreign Ministers' Conference', FCO 93/758 (22 July 1975), para. 4, TNA. Cf. US Embassy Doha, 'Islamic Foreign Ministers Conference: Influence of Egyptians and other Moderate Arabs Reportedly Diminished', 1975DOHA00868_b, para. 1, Wikileaks. US Embassy Tehran, 'Iran's Position on Anti-Israel Resolution at Islamic Conference', 1975TEHRAN07114_b (23 July 1975), para. 1, Wikileaks. US Embassy Jakarta, 'US Views on UN; Expulsion of Israel', 1975JAKART09056_b (25 July 1975), para. 4, Wikileaks. US Embassy Cairo, 'Staffdel Powers: Egyptian Position on Israeli Expulsion', 1975CAIRO08003_b (13 August 1975), para. 2, Wikileaks.

182 US Embassy Jidda, 'Saudi Views on Israel and the UN', 1975JIDDA05216_b (23 July 1975), para. 1, Wikileaks.

183 FM Cairo, 'Action against Israel at the UN', PREM 16/550 (14 July 1975), para. 1 ('privately', 'does not'), TNA. FCO, 'Meeting of Socialist Leaders in Stockholm: Israel and the UN', FCO 58/845 (31 July 1975), para. 4 ('stall'), TNA. FM Cairo, 'Israel and the UN', PREM 16/550 (7 August 1975), para. 1 ('control'), TNA. On 27 July 1975, Robert Guyer, representing the UN Secretary-General (UNSG), reported to Mordechai Kidron, Political Advisor to Israel's Minister of Foreign Affairs, on discussions between the UNSG and Sadat. 'President Sadat's main concern', Guyer relayed, 'was his fear that there was a lack of

improved,[184] Egyptian leaders came out publicly against Israel's expulsion. 'Israel would love to be expelled from the UN', Sadat told an interviewer in *Al-Hawadeth* on 14 August 1975, 'because this would polarise American public opinion against us'.[185] Algeria blamed Egypt for the expulsion bid's failure at the OAU,[186] apparently with justification: Sadat informed UN Secretary-General Waldheim that Egypt 'had been very active against the extremists at Kampala' while Foreign Minister Mahmoud Riad claimed credit for 'moderating [the] Syrian draft resolution' at Jedda and opposing Israel's expulsion at the OAU.[187] At the Non-Aligned conference in Lima, 'the "moderate" Arabs, led by Egypt and backed by Yugoslavia and

political will towards a settlement in Israel'. Sadat 'had said that Egypt was not in favour of' expelling Israel from the UN, but the UNSG 'had sensed a warning that unless there were clear indications that Israel was willing to move towards peace in the next few months, Egypt would throw its weight behind the expulsion move and eventually take other measures'. S-0904-0068-0014-00001, 'Notes on the Meeting Between Mr. Mordechai Kidron and Mr. Roberto Guyer held at the Israeli Ministry of Foreign Affairs on 27 July 1975 at 3.30 p.m.', UN Archives (UNA), pp. 1-2. Cf. UKUN, 'Action against Israel at the UN', FCO 58/844 (30 June 1975), para. 2, TNA. FCO, 'Action against Israel at the UN', FCO 58/844 (30 June 1975), para. 2(ii), TNA.

184 British Embassy Cairo, 'Action Against Israel at the UN', FCO 58/845 (11 August 1975), para. 2, TNA.

185 FM Cairo, 'Sadat Interview with Al Hawadeth', FCO 58/845 (15 August 1975), para. 1.II, TNA. Cf. FM Cairo, 'Israel and the UN', FCO 65/1595 (7 August 1975), TNA. Egypt's opposition to a suspension or expulsion bid was widely known, which itself emboldened African and Non-Aligned resistance. See, e.g., FM Rabat, 'Israel/U.N.', FCO 58/846 (22 August 1975), para. 1, TNA. British Embassy Islamabad, 'Israel and the UN', FCO 58/846 (1 September 1975), para. 2, TNA.

186 FM Algiers, 'Israel/UN', FCO 58/845 (5 August 1975), para. 1, TNA.

187 'Record of Conversation between the Foreign and Commonwealth Secretary and the Secretary-General of the United Nations at the United Nations Building in New York at 0945 on Thursday 4 September 1975', FCO 93/760 (4 September 1975), para. 3 (Sadat), TNA. US Embassy Cairo, 'Staffdel Powers: Egyptian Position on Israeli Expulsion', 1975CAIRO08003_b (13 August 1975), para. 2 (Riad), Wikileaks. Cf. US Embassy Addis Ababa, 'OAU Kampala CM and Summit: Some Achievement, Much Procrastination', 1975ADDIS09462_b (6 August 1975), para. 1, Wikileaks. 'Hintergrund—und Argumentationsmaterial zum Angestrebten Ausschluß Israels aus der UNO', M 33/589190 (n.d.), PA AA (GDR).

several African delegations, prevailed over those of Syria, Libya, Iraq and the PLO'.[188] The fact that the 'Arabs themselves' were 'disunited' made it impossible for any expulsion bid to succeed: 'the attitude of Egypt in particular seems to have had a considerable effect'.[189] A US State Department official reflected that, 'after an uncertain start at … Jedda', the Egyptians 'had played their hand well'.[190]

UNGA Resolution 3379

British diplomats interpreted UNGA Resolution 3379 as 'a substitute for the [failed] attempt to drive Israel out of the UN'.[191] This was not an eccentric analysis: 'almost every diplomat

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188 US DoS, 'Non-Aligned Conference: INR Preliminary Assessment', 1975STATE207679_b (1 September 1975), para. 1, Wikileaks. Compare Paul Hofmann, 'Third-World Parley Asks UN Pressure on Israelis', *New York Times* (30 August 1975). On Egyptian co-operation with Yugoslavia at Lima, and Yugoslav co-operation with India to thwart an Israel expulsion bid, cf. FM Cairo, 'Israel and the UN: Lima Conference', FCO 93/759 (18 August 1975), TNA. FM Delhi, 'Israel and the U.N.', FCO 93/759 (19 August 1975), TNA. Note 138 above.

189 UKUN, 'Israel/UN', FCO 93/760 (21 August 1975), para. 2, TNA. Cf. GDR Ministerium für Auswärtige Angelegenheiten (MfAA), 'Zur V. Außenministerkonferenz der Nichtpaktgebundenen Länder in Lima (25-31 August 1975)', M 95/4024 (8 September 1975), pp. 1-2, PA AA (GDR) (Egypt placed among the 'pro-imperialist currents' at Lima). Translated from German.

190 Roy Atherton quoted in 'Record of a Meeting Held at the State Department at 11 am on Wednesday, 17 September 1975', FCO 58/904 (17 September 1975), para. 6, TNA.

191 UKUN, 'The Thirtieth Session of the General Assembly (16 September-17 December 1975): General Impressions', FCO 58/863 (22 December 1975), para. 3, TNA. Cf. UKUN, 'Zionist Resolution at the U.N.', PREM 16/554 (23 October 1975), para. 2, TNA. Callaghan, 'Anti-Zionist Resolution at UN', FCO 61/1380 (24 October 1975), para. 1, TNA. The resolutions for Israel's expulsion from the UN adopted by the Conference of Islamic Foreign Ministers in Jedda had themselves referred to 'Zionist racist colonialism' (Resolution 2) and urged 'boycott measures against all racial regimes…, in particular those in Palestine and Southern Africa and Rhodesia' (Resolution 3). IS/PC/Rep.1, pp. 11 and 15, reproduced in British Embassy Jedda, 'The Sixth Islamic Foreign Ministers Conference', FCO 93/759 (26 July 1975), TNA.

… questioned' by a *New York Times* reporter expressed the same judgement, as did Israel's Foreign Minister,[192] while the head of the PLO's political department, Farouk Kaddoumi, likewise testified that

> 'many friendly countries' asked the PLO to postpone its call for Israel's expulsion from the United Nations until the summit conference of non-aligned nations is held in Colombo, next year. 'So, we adopted the other alternative, and submitted a resolution condemning Zionism as a form of Racism'.[193]

The records I have examined do not permit a definitive conclusion on this point. On the one hand, as will be documented below, it is evident that the ground for such a resolution was being prepared already in June 1975, well before the expulsion bid stalled (or indeed gained traction). On the other hand, the expulsion bid was never considered likely to succeed even at the outset. What is clear is that some delegates reluctantly voted for UNGA Resolution 3379 having depleted their political capital thwarting the expulsion initiative.[194] Also evident

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192 Paul Hofmann, 'Why and How the Anti-Zionism Move Won', *New York Times* (12 November 1975) ('almost every'). 'Allon Says' (Israel). Cf. UKUN, 'The Thirtieth Session of the General Assembly—16 September-17 December 1975—Detailed Analysis', FCO 58/863 (22 December 1975), para. 8, TNA. Raymond Carroll with Bruce van Voorst, 'An "Infamous Act" at the UN', *Newsweek* (24 November 1975), p. 51.

193 'Kaddoumi Calls for Arab Summit to Take a Stand against U.S., Britain, West Germany', FCO 93/742 (21 November 1975), TNA. Internal quotes from Kaddoumi's interview with 'the Beirut pro-Libyan newspaper AS SAFIR', published 20 November 1975.

194 Federal Republic of Germany (FRG) Embassy Jaunde to Auswärtiges Amt (AA) Bonn and New York, 'Aufnahme der Westlichen Reaktion auf die Zionismus-Resolution der 30. gv der un durch Kamerun', BA 30 ZA 113323 (25 November 1975), PA AA (FRG) (Cameroon). Yugoslavia had worked with Egypt and India to divert the expulsion bid in Non-Aligned meetings; cf. footnote 188 above. But the Yugoslavs 'agreed to support the Zionist resolution with great reluctance' as 'the price they had to pay to preserve the unity of the non-aligned'. FCO 61/1383 (13 November 1975), TNA.

is that, whether viewed as a substitute or as a parallel track, a close nexus tied UNGA Resolution 3379 to the expulsion bid. They both resulted from common authors pursuing the same agenda.

The first sign of a General Assembly move to designate 'Zionism' a form of racism and racial discrimination, to be combated as part of the UN Decade for Action to Combat Racism and Racial Discrimination ('the Decade'),[195] appeared in June 1975 at the World Conference of International Women's Year (WCIWY) in Mexico City. In deliberations by the Group of 77 (G-77) countries on a 'Declaration' to mark the conference, an attempt was made to insert 'Zionism' among the evils ('imperialism, colonialism, neo-colonialism', etc.) to whose eradication the Decade would be devoted. The proposal to incorporate a reference to 'Zionism' in the Declaration was controversial: '[a]n early version … contained a foot note saying that the 77 were not agreed as a whole on the inclusion of this term'[196] while the 'various votes' on references to 'Zionism' within the resolutions of the conference were adopted by 'far lower majorities for the Group of 77 than might have been expected'. This was an augur of troubles to come.[197] Still, both the 'Zionism' amendments and a separate resolution to the same effect were eventually adopted,[198] prompting the US and Western

195 The Decade was launched on 10 December 1973, having been proposed by Egypt in 1971. See UNGA Resolution 2906 (XXVII) (15 November 1972). UNGA Resolution 3057 (XXVIII) (2 November 1973).

196 UK Delegation to World Conference of the International Women's Year [WCIWY]—Mexico City, 'MIPT', FCO 61/1426 (3 July 1975), para. 1, TNA.

197 Millie Miller MP, 'International Women's Year Conference—Mexico City. Political Comments', FCO 61/1426 (17 July 1975), para. 28, TNA.

198 'Declaration of Mexico on the Equality of Women and Their Contribution to Development and Peace, 1975' and Resolution 32 on 'Palestinian and Arab Women', E/CONF.66/34, pp. 3, 6, 7, 110-11.

European States to abstain on the Declaration while voting against the specific references to 'Zionism'.[199]

The July 1975 OAU assembly declared 'Zionism a danger to world peace' and resolved to expose 'the racist aggressive nature of the Zionist entity', while the August 1975 Non-Aligned summit condemned 'Zionism as a threat to world peace and security' as well as a 'racist and imperialistic ideology'.[200] The initiative eventually surfaced in the UNGA Third Committee in October 1975 as an amendment[201] to a resolution on the Decade.[202] The amendment, sponsored by Cuba, Libya, Syria, Somalia, and the Democratic Republic of Yemen, proposed to consider 'Zionism' as one of the 'forms of racial discrimination' to be combated under the Decade. Many African delegations objected to the Decade's diversion 'away from southern African issues and into the Arab/Israeli dispute'—British observers estimated that approximately half the African delegates were 'unable to support the amendments'.[203] The amendment was therefore dropped and replaced, on 16 October 1975, by a separate resolution determining 'Zionism' a form of 'racism and racial discrimination'. That resolution was tabled by Somalia and co-sponsored by 24 other States, 19 of them Arab.[204] It was

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199 The reference to 'Zionism' in the draft Declaration was adopted by 61 to 23 with 25 abstentions. The resulting Declaration as a whole was adopted by 89 to 3 with 14 abstentions. E/CONF.66/34, p. 152.

200 'Resolution on the Middle East and Occupied Arab Territories', AHG/Res. 76 (XII) of the OAU Assembly of Heads of State and Government (Kampala, 28 July—1 August 1975), operative para. 9. NAM, 'Political Declaration…', NAC/FM/CONF.5/15, reproduced in A/10217 (5 September 1975), para. 58.

201 UNGA, A/C.3/L.2157 (1 October 1975).

202 UNGA, A/10145 (25 July 1975).

203 UKUN, 'Third Committee: Item 68a—Decade against Racism', FCO 61/1380 (3 October 1975), para. 3, TNA.

204 UNGA, A/C.3/L.2159 (15 October 1975).

adopted in the Third Committee on 17 October 1975 by 70-29, with 27 abstentions[205]—'the yes votes thus totalled less than half of the UN membership at the time, 70 out of 142'.[206] It was finally adopted in the UNGA plenary on 10 November 1975 by a vote of 72 to 35, with 32 abstentions.[207]

The 'Zionism' bid was orchestrated by the just the same coalition of Arab actors that had been responsible for the bid to expel Israel. The *New York Times* reported, on the basis of interviews with 'two dozen diplomats from Asia, Africa and Latin America', that the 'anti-Zionist campaign' had been 'started' by 'the hard-line Arab governments—especially Syria, Iraq and Kuwait—and the Palestine Liberation Organisation'.[208] A subsequent *New York Times* feature on Moynihan reported that the Third Committee texts on Zionism 'had been drawn up and circulated … by five junior diplomats from Somalia, Southern Yemen, Libya, Syria … and Cuba' as well as 'the chief of the Palestine Liberation Organization's observer team at the UN, Zehdi Labib Terzi'.[209] I.F. Stone's assessment of their motivations was characteristically astute:

> The anti-Zionist resolution will be seen in calmer days as the answer to the Sinai disengagement agreement. To the Palestinian Arabs this agreement looked like a maneuver to split the Arab camp, to divorce Egypt from the Arab front and once more to postpone consideration of the Palestinian issue … It is worth noting that in Le Monde

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205 UNGA, A/C.3/SR.2134 (17 October 1975), p. 119.

206 AJC, *AJYB 1977*, p. 100.

207 UNGA, A/PV.2400 (10 November 1975), pp. 794-95.

208 Hofmann, 'Why and How'.

209 Buckley, 'Brawler'.

> of Nov. 13 both Wafa, the Palestinian press agency, and al-Baath, the organ of the Syrian ruling party, hailed passage of the resolution as a defeat for the Sinai accord. The resolution was intended to put President Anwar el-Sadat of Egypt and the Arab moderates on the spot.[210]

The diplomatic record bears out this analysis.

It is evident that Iraq played a leading role at the outset of the anti-Zionism campaign. In April 1975, Iraq had sent a note to the UN Secretary-General reiterating 'its views against racial discrimination practised by the Zionist regime in Israel' and proposing 'that the Programme of the Decade [for Action to Combat Racism and Racial Discrimination] should contain a separate item to deal with the plight of the Palestinians and to ensure implementation of United Nations resolutions pertaining to racial discrimination against the people of Palestine and the Arab people in occupied Arab lands'.[211] Britain's delegation to the WCIWY in June 1975 reported that '[m]uch of the impetus' for the 'Zionism' initiative there 'has come from Iraq and it seems likely that they sent' their delegate 'with the sole objective of getting the word Zionism introduced'.[212] Another described how 'one delegation in particular'—presumably, Iraq—'went from Committee to Committee inserting into

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210 I.F. Stone, 'Zionism and Peace', *New York Times* (23 November 1975). Cf. Homer A. Jack, 'Is Zionism Racism? Twenty-Two Questions', *Bulletin of Peace Proposals* 7.4 (1976), p. 382. 'Moynihanism at the United Nations', *Third World Quarterly* 2.3 (1980), p. 504. Note 11 above.

211 ECOSOC E/5637/Add.2, reproduced in FCO 61/1380 (15 April 1975), para. 2, TNA.

212 FM Mexico City, 'MIPT', FCO 58/844 (3 July 1975), para. 1, TNA.

resolutions, and finally into the Declaration … the elimination of Zionism'.[213] A third, Labour MP Millie Miller, recalled how '[t]he delegate from Iraq, a most aggressive and violent man, referred to the Israeli delegate at one stage as "[t]he delegate for Zionism", this making quite clear his intention'.[214]

But even at this early stage, Iraq did not act alone. The PLO delegation to the WCIWY was led by Issam Abdulhadi of the PLO Central Legislative Council. She recalled that 'Palestinians and Arabs' lobbied together for the 'Zionism' amendments, 'divid[ing] … the delegations' between them, so that 'the Maghreb took those who spoke French, others took those who spoke English'. According to Abdulhadi, the non-aligned, Muslim, and socialist European delegations did not take much persuading.[215] British delegates likewise reported that the 'Zionism' initiative had been undertaken by multiple Arab delegations, even as Iraq took the lead:

- 'Iraq *on behalf of* Arab countries attempted to secure a reference to the call by many speakers for the elinination [*sic*] of Zionism' in the Plenary[216]

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213 UKUN, 'Third Committee: Item 75 and 76: International Women's Year—Explanation of Vote', FCO 61/1428 (8 December 1975), p. 1, TNA. Cf. UK Delegation to WCIWY, 'UN Conference on International Women's Year: Final Report', FCO 61/1426 (4 July 1975), para. 4, TNA.

214 Millie Miller MP, 'International Women's Year Conference—Mexico City. Political Comments', FCO 61/1426 (17 July 1975), para. 26, TNA.

215 Amal Kawar, *Daughters of Palestine: Leading Women of the Palestinian National Movement* (SUNY, 1996), pp. 61-62. The PLO delegation additionally included Jehan Helou (Head of External Relations Committee, General Union of Palestinian Workers) and Mai Sayigh (Fatah).

216 British Embassy Mexico City, 'WCIWY Report—Draft Section on Plenary', FCO 61/1426 (3 July 1975), para. 3, TNA. Emphasis added.

- 'Spearheaded by Iraq, *the Arab group*' pressed the G-77 to include 'Zionism'.[217]

Resolution 32 on 'Palestinian and Arab women', which called for the 'elimination of … Zionism', was introduced by '20 Arab and other non-aligned dels'—at the 'instigation of PLO observers'.[218]

The WCIWY proved a 'testing ground for the anti-Zionism resolution' introduced in the General Assembly later that year.[219] British delegates to the WCIWY already inferred as much. The 'aggressiveness with which' the 'Zionism' votes were approached left Miller 'in no doubt that the performance will be repeated at the General Assembly'.[220] Another dispatch likewise reported:

> It seems unlikely that Iraq was working without instructions and unlikely that they would have taken this initiative with the Women's Conference solely in view. It is therefore at least possible that this represents the beginning of a new thrust which will be developed

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217 UK Delegation to WCIWY, 'UN Conference on International Women's Year: Final Report', FCO 61/1426 (4 July 1975), para. 1, TNA. Emphasis added.

218 AMEmbassy Mexico to State Department, 'WC/ICY: Resolution on Palestinian and Arab Women', 1975MEXICO005695_b (26 June 1975), Wikileaks.

219 Kawar, *Daughters*, pp. 61-62. It is significant, in this respect, that the PLO's newly installed representative at the UN, Zehdi Terzi, who helped steer UNGA Resolution 3379 through the General Assembly, advised the PLO delegation in Mexico City. Cf. Jane Rosen, 'The PLO's Influential Voice at the UN', *New York Times* (16 September 1984).

220 Millie Miller MP, 'International Women's Year Conference—Mexico City. Political Comments', FCO 61/1426 (17 July 1975), para. 28, TNA.

> at the 30th General Assembly. Indeed the Iraqi Delegation have as much as told this to me.[221]

Importantly, and contrary to Abdulhadi's recollection,[222] it appears that not every Arab delegation was in favour of the 'Zionism' amendment at the WCIWY: the 'Arab group' was forced to lobby 'without overt support from Egypt', which, indeed, 'claimed to be unhappy about it'.[223] At the UN, too, British observers were clear that the 'Zionism' resolution was the work of those they designated 'the extreme Arabs'[224] rather than a united Arab bloc:

> My information is that the sponsors of this nasty little initiative were the PLO, Libya, Syria and Cuba. They introduced their resolution without prior consultation with the Arab group who, in varying degrees, disliked it but felt they could not oppose it. The Egyptians we know are unhappy at the outcome: and the Jordanian Ambassador last

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221 FM Mexico City, 'MIPT', FCO 58/844 (3 July 1975), para. 2, TNA. British officials appear not to have fully registered these warning signs. 'Talk between the Prime Minister and the Israeli Foreign Minister', PREM 16/554 (13 October 1975), p. 1, TNA. FCO, 'United Nations: Annual Review for 1975', FCO 58/953 (25 February 1976), para. 3, TNA. By contrast, West German officials preparing for the UNGA 30th Session considered the possibility 'that the Arab states—as during the International Women's Conference—will strive to include the term "Zionism" in the passages on racism, racial discrimination, and apartheid'. 'Unsere Haltung', BA 30 ZA 113324 (n.d.), PA AA (FRG). Translated from German.

222 Kawar, *Daughters*, pp. 61-62 ('we were united, Palestinians and Arabs').

223 UK Delegation to WCIWY, 'UN Conference on International Women's Year: Final Report', FCO 61/1426 (4 July 1975), para. 1 ('overt'), TNA. FM Mexico City, 'MIPT', FCO 58/844 (3 July 1975), para. 1 ('unhappy'), TNA. Cf. Millie Miller MP, 'International Women's Year Conference—Mexico City. Political Comments', FCO 61/1426 (17 July 1975), para. 29, TNA.

224 See footnote 131 above.

> night privately described the whole operation to me as nonsense. There is now a move among the Arab group to tighten up their whipping arrangements in future.[225]

Egypt had informed British officials that 'the Arabs as a whole were not in fact behind the Zionist amendment and that it was the work of the PLO and the Cubans'. The diplomat considered that the 'Egyptians have certainly been embarrassed' though he doubted that 'the Libyans, Algerians or the Syrians' would have 'neglected a chance to stir the pot'.[226] Pointing to the critical context of Arab divisions over the Sinai agreement, the diplomat assessed that a further anti-Zionist effort 'will, presumably, depend on the extent to which' the 'extreme Arabs' will 'wish to continue to try and embarrass Egypt'.[227] West German officials similarly understood the 'Zionism' amendments as serving 'to aggravate the position of moderate

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225 UKUN (Ambassador Ivor Richard), 'The Zionist Resolution at the UN', FCO 58/862 (13 November 1975), para. 2, TNA. Cf. UKUN, 'Visit of Vice-President Quayle: Zionism/Racism', FCO 58/5476 (December 1989), para. 4, TNA. Egypt forwarded an unofficial draft of the separate Zionism resolution to West Germany nearly a week before it was formally tabled. West Germany then distributed it immediately to Israel and the Western States. The fact that British officials were apparently caught unawares by the appearance of the Zionism amendments in the Third Committee thus adds credibility to Egypt's claim that it had not been consulted on the initiative. See footnote 221 above (unawares). New York UNO to AA, '3. Ausschuss der 30. Gv. Hier: Zionismus-Problem im Rrahmen der Dekade Gegen Rassendiskriminierung (Top 68a)', BA 30 ZA 113324 (15 October 1975) (Egypt).

226 UKUN, 'Zionist Resolution at the U.N.', FCO 61/1380 (23 October 1975), para. 5, TNA. Cf. Paul Hofmann, 'UN Fight Widens on Zionism Issue', *New York Times* (23 October 1975).

227 UKUN, 'Zionist Resolution in the Third Committee', FCO 61/1380 (28 October 1975), para. 6, TNA.

Arab states, especially Egypt'.[228] The 'actual goal of the Zionism resolution', they reported, 'is to impede the negotiation process in the Near East, if not to derail it entirely'.[229]

'Most Israeli insiders' also 'interpreted' UNGA Resolution 3379 'as a Syrian-Libyan-Palestinian powerplay against Egypt' while Israel's Foreign Minister Yigal Allon informed allied counterparts as well as Israeli emissaries worldwide that the 'purpose' of the anti-Zionism campaign was 'to thwart the [Sinai II] agreement and to annoy Egypt'.[230] 'The goal of this campaign, initiated by Libya, Syria, and the Palestinians, is to sabotage the [Sinai] process', Israeli diplomat Pinhas Elias assessed.[231] Indeed, Israel's Ambassador alluded to this context in the UNGA plenary when he attributed UNGA Resolution 3379 to 'those who have sworn to block the current move towards accommodation and ultimately towards peace in the Middle East'.[232] In the immediate aftermath of the vote on UNGA Resolution 3379, senior PLO officials themselves identified as their overarching diplomatic priority the strengthening of cooperation between Arab States opposed to Sinai II:

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228 New York UNO to Bonn AA, '3. (Sozial-) Ausschuss der 30. Gv, Hier: Dekade Gegen Rassendiskriminierung (Top 68a)', BA 30 ZA 113324 (3 October 1975), PA AA (FRG). Translated from German.

229 New York UNO to Bonn AA, 'Frage des Abstimmungsverhaltens der Neun bei Behandlung der Zionismusres. und der Dekadenres. im Plenum', BA 30 ZA 113324 (27 October 1975), PA AA (FRG). Translated from German.

230 Troy, 'Oom', pp. 54-55. Cf. Troy, *Moment*, pp. 110, 112-13.

231 Troy, *Moment*, p. 112.

232 UNGA, A/PV.2400 (10 November 1975), para. 70.

> The Sinai agreement affected the balance of power in the following way, the Arabs were weakened through the elimination of Egypt in the confrontation with Israel, while Israel and the USA could gain considerable positional advantages.
>
> Thus arose the need to balance out this strategic disadvantage. In particular, a new axis needs to be forged between Syria-PLO-Iraq-Algeria and Libya, whereby the joining of Iraq, in particular, would be able to compensate decisively for the absence of Egypt.
>
> […]
>
> In short, it is about an attempt to create an Arab front without Egypt, in order to derail the Sinai agreement and achieve a new balance of power.[233]

PLO officials listed action at the UN among the tactics they would employ to facilitate this alliance of 'States … who decisively position themselves against the Sinai agreement'. In this context, they considered that 'the recent resolutions' constituted 'notable victories' among which UNGA Resolution 3379 was 'the most important'.[234]

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233 GDR Embassy Damascus, 'Kurzinformation Nr. 64/75—Palästinensische Partner zu Aktuellen Fragen der Entwicklung des NOK', M 1-C/7663 (23 November 1975), pp. 173-175, PA AA (GDR). Translated from German. GDR officials met over the period 10-17 November 1975 with Abu Maher (Fatah Central Committee) and, from the PLO Executive Committee, Zuhdi Nashashibi, Abderazzak Yahia, Samih Samara, and Salah Khalaf.

234 The officials argued that UNGA Resolution 3379 had 'laid a new important foundation for the struggle' and 'nullifies Israel's demand to be recognised as a State. This question [now] only arises after the elimination of the racist character of the State. Furthermore, the military struggle in the Occupied Territories gains from it additional legitimacy'. Ibid. This is difficult to interpret, since the PLO did not subsequently mobilise UNGA Resolution 3379 to justify a policy of non-recognition, but on the contrary, just several weeks later, indicated its willingness to recognise Israel.

That Egypt co-sponsored UNGA Resolution 3379 is not inconsistent with this analysis. Egypt was weathering harsh criticism from other Arab states, especially Libya and Syria, over the Sinai II agreement. Having expended diplomatic capital in defusing the bid for Israel's expulsion, incurring further censure in the process, its scope for resisting the 'Zionism' resolution was limited. West German diplomats noted that, in the same session of the Third Committee, Egypt had agreed to remove a separate draft amendment that would have implicitly indicted Israel.[235] This 'contradictory behaviour shows how the Egyptian delegation had to walk a tight-rope', 'trying to please all sides' without 'giving up the basic position of the radicals'.[236] The Ambassador of Egypt to the UN informed his French counterpart that 'all their efforts to find an avenue of escape' from endorsing UNGA Resolution 3379 'were unsuccessful' and expressed concern that this support would 'erase … the positive impression' from Sadat's visit to the US.[237] In this light, and given the priority they accorded the still fragile Sinai process, US and Israeli officials excused Egypt's position as 'forced' and a 'function of inter-Arab struggles'.[238]

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235 Amendment L.2155 (co-sponsored by Egypt) to A/10145, Annex, Resolution A (Implementation of the Programme) would have requested the UN Commission on Human Rights to study ways and means to implement UN resolution on apartheid, racism, racial discrimination, 'and other similar manifestations'. That last phrase was understood to refer to Israel. See UNGA, A/10145 (25 July 1975); A/C.3/L.2155 (1 October 1975).

236 New York UNO to Auswärtiges Amt, '3. Ausschuss der 30. Gv. Hier: Zionismus-Problem im Rahmen der Dekade Gegen Rassendiskriminierung (Top 68a)', BA 30 ZA 113324 (10 October 1975), PA AA (FRG). Translated from German.

237 New York UNO to Bonn AA, 'Zionismus-res. in der 30. Gv (Top 68)', BA 30 ZA 113324 (8 November 1975), PA AA (FRG). Translated from German.

238 Moynihan quoted in 'Legitimize' ('forced'). Herzog quoted in Paul Hofmann, 'Arabs Hope Anti-Zionism Vote Will Lead to Vast Reappraisals', *New York Times* (15 November 1975) ('function'). Cf. Troy, 'Oom', p. 55.

Conclusion

In short, then, the available evidence strongly indicates that UNGA Resolution 3379 was instigated by the PLO and Arab States opposed to the Sinai II agreement. The same coalition had orchestrated the bid to expel Israel from the UN and would repeatedly intervene to frustrate the Sinai process both in the General Assembly's 30th Session (1975) and after. Concurrently with UNGA Resolution 3379, Syria introduced what US diplomats termed 'extreme' amendments to an Egyptian draft resolution inviting the PLO to the Geneva Peace Conference, 'mainly to embarrass Egypt'.[239] In the same General Assembly session, Syria pressed for a separate debate on the Middle East, 'supported by a number of the other Arabs, particularly Iraq', to which Egypt was 'generally opposed'. 'The Egyptians have apparently insisted that any resolution must be one which all the Arabs could support—ie there must be no criticism of the Israel/Egypt agreement'.[240] In April 1976, 'Iraq, Libya and Syria were reported to have called for a new campaign against Zionism … during a conference of Arab and African foreign ministers in Dakar'.[241] In 1977, the PLO together with Libya, Syria, Algeria and South Yemen formed the Steadfastness and Confrontation Front to oppose a separate Israel-Egypt peace. In 1978, a Conference of Non-Aligned Foreign Ministers indirectly criticised 'the Sadat initiative' and 'reaffirmed Zionism-as-racism'. These positions were introduced by 'the Arab foreign ministers' and endorsed by the Non-Aligned inter alia as a quid pro quo for 'amending the Syrian-PLO draft to drop direct criticism of Sadat, a

239 USUN, 'Syrian Draft Resolution on Palestine Question', 1975USUNN05682_b (6 November 1975), para. 1, Wikileaks.

240 UKUN, 'Middle East Debate', FCO 93/766 (14 November 1975), paras. 1-2, TNA.

241 Paul Hofmann, 'Zionism Attacked in the UN Again', *New York Times* (28 April 1976).

continuing Egyptian priority'.[242] In 1975 and after, this anti-Sinai coalition was far from united in opposition to Israel's existence. (In any case, a symbolic gesture such as UNGA Resolution 3379 was not a plausible vehicle for bringing about Israel's demise—see below.) Rather, the resolution was interpreted by diplomatic observers at the time as part of an attempt to frustrate separate negotiations between Israel and Egypt by embarrassing Sadat while, in the case of Syria and the PLO, demonstrating a capacity to act as spoilers. Libya and to some degree Iraq rejected any agreement with Israel, but Syria and the PLO—whose positions were of greater consequence in Arab-Israeli diplomacy—opposed the Sinai process because their demands, *which were consistent with the emerging international consensus for resolving the Middle East conflict*, were excluded from it.[243]

Conclusion

This chapter showed, through a close reading of the UN debates around 'Zionism' as 'racism' in the mid-1970s, that the New Antisemitism discourse which arose in response to UNGA Resolution 3379 did not persuasively address or substantively engage with the serious concerns raised by the resolution's proponents. The chapter also established, based on an original study of the resolution's diplomatic history, that New Antisemitism-inspired attempts to attribute the 'Zionism is racism' initiative primarily to Arab and/or Soviet antisemitism lacked empirical foundation. By demonstrating that New Antisemitism

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242 US DoS, Peter Tarnoff to Zbigniew Brzezinski, 'A Preliminary Assessment of the Non-Aligned Conference in Belgrade', GALE|CK2349567174 (2 August 1978), pp. 1, 4, USDDO. For Egypt's quiet opposition, cf. White House Situation Room, 'Noon Notes for Dr. Brzezinksi', GALE|CK2349700167 (16 August 1978), p. 1, USDDO.

243 Cf. David Ennals, 'Middle East Tour', FCO 8/2550 (21 November 1975), paras. 2, 4, 6-7.

discourse failed to grapple seriously with the intellectual substance underpinning UNGA Resolution 3379, and also that it misconstrued the diplomatic agenda that animated the resolution, the chapter has cleared the ground for historians to interpret the consolidation of New Antisemitism discourse in response to the charge that 'Zionism Is Racism' in terms of the developing international legitimacy contest over the Israel-Palestine conflict. If New Antisemitism-inspired analyses of the resolution failed to compel intellectually, but still resonated in Western political and intellectual precincts, this points to the ideological function of New Antisemitism discourse as a defence of Israel's legitimacy. The chapter thereby helps to substantiate the overarching claim of this thesis, while also presenting the first diplomatic history of UNGA Resolution 3379 to be firmly anchored in the archival record. This original contribution to Israel-Palestine historiography restores the primacy of local and regional contexts in explaining the resolution's genesis.

But if New Antisemitism discourse of the mid-1970s should be understood as part-and-parcel of the long-running international legitimacy war over Zionism, it should also be located more precisely as an intervention in the distinct, post-1967 phase of that contest. On the one hand, it could hardly be doubted that the resolution's text effectively delegitimised Israel's character as a Jewish State. Whatever the technicalities, the bottom line was that the resolution took a significant rhetorical step toward grouping Israel with South Africa in that camp of regimes whose essential legitimacy was, in the decolonization period, denied. On the other hand, by 1975, a broad international consensus had consolidated that recognised Israel's legitimacy as a State while simultaneously calling for Israel to withdraw from the occupied territories in exchange for peace. The General Assembly's adoption of UNGA Resolution 3379 seems, at first glance, to contradict this consensus. But the diplomatic history presented in this chapter helps resolve this apparent paradox. The resolution's key

sponsors—Syria and the PLO—saw it as a means to register their opposition, not to *any* peace with Israel, but specifically to a *separate* agreement between Israel and Egypt, because this would undercut their own leverage. More broadly, Western diplomatic observers were clear that, insofar as the resolution gained broad international support, this reflected widespread frustration over Israel's intransigence rather than its existence. Indeed, the overwhelming majority of UN member States that endorsed UNGA Resolution 3379—including the Non-Align and Soviet blocs[244]—also recognised Israel and accepted UNSC Resolution 242. For them, the resolution did not register opposition to Israel's existence but rather support for a political framework that presupposed this.

But if the political stakes of UNGA Resolution 3379 were more limited than the text itself suggested, what explains the intensity of the US and Israeli reaction? If this resolution truly targeted Israel's occupation, rather than its existence, why did it provoke an outcry over antisemitism? To begin with, it merits noting that UNGA Resolution 3379 was a *low-stakes* initiative. Western diplomatic observers saw it as a rhetorical substitute for another symbolic venture (to suspend Israel from the UN) that was itself a watered-down version of a plan (for Israel's expulsion from UN membership) that would itself have been an exercise in political theatre.[245] It is arguably *because* the UNGA Resolution 3379 was of little practical

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244 Indeed, Cuba and Yugoslavia encouraged the PLO factions to accept the two-State framework. Shafiq al-Hout, *My Life in the PLO: The Inside Story of the Palestinian Struggle* (Pluto Press, 2011), p. 127 (Yugoslavia). Sorcha Thomson, 'Demystifying Third World Solidarity: Cuba and the Palestinian Revolution in the Seventies' in Rasmus C. Elling and Sune Haugbolle eds., *The Fate of Third Worldism in the Middle East: Iran, Palestine, and Beyond* (Oneworld, 2024) (Cuba).

245 See, e.g., 'Anti-Israel Forces in UN to Continue Campaign Despite Fizzle of Moves to Oust Israel from UN', *jta.org* (3 October 1975). David Anable, 'Arab Attack on Israel Blunted', *Christian Science Monitor* (20 October 1975), p. 9. Paul Hoffman, 'U.N. Fight Widens on Zionism Issue' (23 October 1975), p. 6. Paul Jacobs, 'U.N.'s "Racism" Vote Muddied Complex Question of Zionism', *LA Times* (2 November 1975),

consequence that it became a vehicle for ulterior agendas, including diplomatic grandstanding. Thus, Mexican President Luis Echeverria supported the resolution to boost his Third Worldist credentials ahead of a rumoured bid to become UN Secretary-General; the president of Brazil voted to appease the Arab States on which Brazil depended for energy imports, to display independence from the US, and out of a broader distaste for diaspora nationalism; India was perceived as 'anxious to rally Arabs to their side over their Security Council candidature'; the foreign minister of Cyprus explained that it 'needed the non-aligned vote' in the UNGA for its own international dispute while 'the Arab countries had offered work on a significant scale to unemployed Cypriots'; Spain mooted a 'horse-trade' by which it would oppose UNGA Resolution 3379 if 'Western Governments' discouraged criticism by Mexico and Sweden over the Spanish Government's 'recent executions'; a representative of Colombia explained its abstention as intending to signal autonomy from all voting blocs; and so forth.[246]

There are grounds to suspect that the US and Israeli delegations, too, saw UNGA Resolution 3379 more as an opportunity than a threat. On the part of the US, it was Ambassador Moynihan's personal initiative to seize upon the Zionism issue and stage a dramatic

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p. 4. I.L. Kennen, 'Shallow Generalizations', *Near East Report* 19.52 (24 December 1975), p. 224. Rachel Wirnik, 'The Other News', *The American Zionist* (January 1976), p. 26. FSP 139.vi.35.

246 FCO 58/845, 2 August 1975 (Echeverria). FCO 58/854, 12 August 1975 (India). FCO 61/1383, 4 November 1975 (Spain), 3 December 1975 (Cyprus), 5 December 1975 (Colombia). Sochaczewksi, 'Controversies', pp. 85-86 (Brazil—US). Norma Breda dos Santos and Eduardo Uziel, 'Forty Years of the United Nations General Assembly Resolution 3379 (XXX) on Zionism and Racism: The Brazilian Vote as An Instance of United States-Brazil Relations', *Revista Brasileira de Política Internacional* 58.2 (2015), pp. 88, 91-92 (Brazil—US). Jonathan Grossman, 'Diaspora, Delegitimisation, and Foreign Policy: Unpacking Brazil's Vote for the "Zionism Is Racism" United Nations Resolution', *Diplomacy & Statecraft* 33.3 (2022), pp. 523-24 (Brazil—economic), 528-33 (Brazil—diasporist). Cf. UKUN, 'Zionist Resolution in the Third Committee', FCO 61/1380 (28 October 1975), para. 4.

controversy around it. 'Did I make a crisis out of this of this obscene resolution?' Moynihan rhetorically queried. 'Damn right I did!' By his own account, Moynihan did not take up Israel's defence out of any deep-seated pro-Israel conviction. Knowing little of Zionism, he was unable to answer elementary points at a lunch meeting with Fayez Sayegh prior to the UNGA debate and relied on *Commentary* editor Norman Podhoretz for research.[247] Nor was Moynihan acting upon instruction from on high; quite the contrary, Secretary of State Henry Kissinger disapproved of his theatrical style, while Britain's Ambassador to the UN Ivor Richard disparaged Moynihan as a counterproductive 'Wyatt Earp'.[248] Instead, if Moynihan escalated what might otherwise have passed unnoticed as UNGA boilerplate into an international melodrama, it likely traced back to reasons having nothing to do with the Middle East. In narrow terms, some observers suspected that Moynihan's performance was conducted with a view to his New York Senate candidacy that materialised the following year.[249] Moynihan's denials on this point have not been refuted; the most that can be said with confidence is that, insofar as it was a publicity stunt, it was an effective one.[250]

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247 Troy, *Moment*, pp. 5 (conviction), 6 ('Damn'), 53-54 (conviction), 122 (Podhoretz), 148 (Sayegh), 145 (Podhoretz), 149 (Podhoretz). On the political relationship between Moynihan and the American Jewish Cold War liberal milieu, cf. Donald T. Critchlow, *The Conservative Ascendancy: How the GOP Right Made Political History* (Harvard University Press, 2007), pp. 112-14. Malachi Haim Hacohen, 'The Jewishness of Cold War Liberalism' in Abigail Green and Simon Levis Sullam eds., *Jews, Liberalism, Antisemitism: A Global History* (Palgrave Macmillan, 2020), pp. 387-410.

248 'Anti-Zionism Resolution', PREM 16/554 (7 November 1975). Daniel J. Sargent, *A Superpower Transformed: The Remaking of American Foreign Relations in the 1970s* (Oxford University Press, 2015), pp. 198-200. (Kissinger). Richard Steele, 'The Perils of Pat', *Newsweek* (1 December 1975), p. 48 ('Wyatt').

249 Troy, *Moment*, p. 155.

250 Cf. Peter Steinfels, *The Neoconservatives: The Origins of a Movement*, updated ed. (Simon & Schuster, 2013 [1979]), p. 124.

More broadly, Moynihan had been appointed ambassador on the back of his 1975 article in *Commentary*, in which he urged that US representatives abandon their 'appeasement' of Third World critics, cease 'to apologize for an imperfect democracy', and go on the rhetorical offensive against the UN's Third World majority.[251] While in office, Moynihan articulated a 'politics of patriotic indignation' intended to remoralise US power projection after the 'fall' of Saigon. This posture also served the project of those liberal hawks opposed to US-Soviet détente.[252] 'A world with America demoralised and Third World nations on the offensive … terrified Moynihan' and, by mid-1975, he was actively 'seeking opportunities to confront Third Worlders, the Soviets, and their appeasers' in international fora.[253] When the relatively trivial anti-Zionist resolution crossed his desk, Moynihan seized the opportunity to spotlight and denounce Third World hypocrisy. In the process, he recast broad international opposition to Israel's post-1967 expansionism as a cosmic clash pitting liberal democracy against Soviet-led tyranny.[254] As this chapter has shown, Moynihan's presentation misconstrued the political dynamics UNGA Resolution 3379 expressed. But it was neither

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251 Daniel P. Moynihan, 'The United States in Opposition', *Commentary* (March 1975). Cf. Jeane J. Kirkpatrick, 'Dictatorships & Double Standards', *Commentary* (November 1979). Leonard Garment, *Crazy Rhythm: From Brooklyn and Jazz to Nixon's White House, Watergate, and Beyond*, updated ed. (Da Capo Press, 2001), pp. 304-5.

252 William B. Quandt, *Decade of Decisions: American Policy Toward the Arab-Israeli Conflict, 1967-1976* (University of California Press, 1977), p. 279. Justin Vaïsse, *Neoconservativism: The Biography of a Movement* (Belknap Press, 2010), pp. 9-10. Sargent, *Transformed*, chap. 7.

253 Troy, *Moment*, pp. 9 ('indignation'), 56 ('terrified'), 87 ('seeking'). Cf. Vaïsse, *Neoconservatism*, pp. 123-24. Andrew J. Whitford, *"The Quality of the Ordinary": Anglo-American Diplomacy and the Third World 1975-1980*, PhD thesis (Columbia University, 2015), pp. 83, 90-93, 97-98, 108-9.

254 Don Shannon, 'U.N. Zionism Vote Called Losers' Victory', *Los Angeles Times* (22 October 1975), p. 11. 'Moynihan: Anti-Zionist Draft "Must Not Pass General Assembly"', *JTA* (22 October 1975), p. 1. Cf. Charles W. Yost, 'UN: Hitting at Reflections in a Mirror', *Christian Science Monitor* (30 October 1975), p. 27. FSP.128.ii.63.

the first nor the last time that Cold War framing was deployed to obscure the character of North-South disputes.[255]

Israel and its supporters also appear to have stoked the 'Zionism' controversy for strategic purposes. Initially, just like Moynihan vis-à-vis Kissinger, Israel's UN ambassador Chaim Herzog appears to have been at odds with his colleagues over whether to take the resolution seriously. After Herzog berated American Jewish leaders for their muted response, he was embarrassed to discover that Israel's own embassy in Washington had advised them to 'forget' this 'nonsense'. Indeed, 'most diplomats' in Israel's Foreign Ministry 'considered Moynihan and Herzog hysterical'.[256] Israel's Foreign Minister Yigal Allon informed Mexican President Echeverria that Israel 'did not take this blabber seriously' and elsewhere downplayed the Zionism resolution as a 'nuisance'.[257] But as the UNGA vote neared, Israel's Foreign Ministry began to mobilise diaspora Jews in opposition to the resolution, with two

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255 Chomsky, *Towards*, pp. 20-25, 39-46, 85, 401n33, and passim. Piero Gleijeses, 'Cuba and the Cold War, 1959-1980' in Melvyn P. Leffler and Odd Arne Westad eds., *The Cambridge History of the Cold War*, vol. II (Cambridge University Press, 2010), pp. 342-45. Kenneth Osgood, 'The American Construction of the Communist Threat' in David C. Engerman et al. eds., *The Cambridge History of America and the World*, vol. IV (Cambridge University Press, 2021), pp. 124-47.

256 'Herzog Asserts Jews Didn't Aid Israelis in U.N. Zionism Debate', *New York Times* (25 October 1975) (berated). Chaim Herzog, *Living History: The Memoirs of a Great Israeli Freedom-Fighter, Soldier, Diplomat and Statesman* (Weidenfeld & Nicolson, 1997), p. 199 ('nonsense'). Troy, 'Oom', p. 53 ('hysterical'). Cf. Garment, *Crazy*, pp. 309-10. Troy, 'Oom', p. 55.

257 'Allon Gives Luncheon', *Jerusalem Domestic Service* (9 August 1975), FBIS-MEA-75-155 (11 August 1975), p. N1 ('blabber'). Zvi Lavi, 'Additional Difficulties for Israel in UN Assessed', *Ma'ariv* (6 October 1975), FBIS-MEA-75-196 (8 October 1975), p. N6 ('nuisance'). Cf. 'Davar Commentator Assesses Impact of UN Resolutions' (12 November 1975), FBIS-MEA-75-220 (13 November 1975), p. N2. Abba Eban, 'Reflections on the Jewish Condition', *Jerusalem Post Weekly* (9 December 1975), p. 9. FSP.139.ii.12.

strategic objectives: to get people to 'identify with Zionism, Israel and the Jewish people, as well as to denounce anti-Semitism'.[258]

The political context provides a plausible explanation for this response. After the 1973 October War, and amidst an economic crisis, Israeli Jewish morale was at a low ebb[259] while, on the international stage, Egypt's unexpectedly impressive military performance in the war had increased pressure on Israel to withdraw from the Arab territories it occupied.[260] In this context, staging a confrontation over Resolution 3379 allowed Israel to reframe the international pressure it was under as directed against its existence rather than its occupation. This in turn enabled Israel to mobilise its core constituencies—Jews in Israel and in key Western States—behind a renewed and revitalised identification with it, while rhetorically grouping Israel with the US and Western Europe in a global clash of 'democratic countries' against tyranny.[261] In short, a counter-offensive against 'anti-Zionism', presented as a new antisemitism, offered a political framework that would allow Israel to divide its critics while unifying and energising its base.

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258 Director-General of Israel's MFA, quoted in Troy, 'Oom', p. 60.

259 David Landau and Yitzhak Shargil, 'Confidence Expressed That Anti-Zionist Resolution Will Have No Practical Political Consequences', *JTA Daily News Bulletin* (14 November 1975), p. 4. Victor Vancier, 'A Lesson We Never Seem to Learn', *Jewish Press* (21 November 1975), p. 48. FSP.138.vii.14.

260 Notably, international recognition of the PLO was proceeding apace while the March 1975 Ford administration 'reassessment' has already been mentioned. Cf. Norman G. Finkelstein, *Beyond Chutzpah: On the Misuse of Anti-Semitism and the Abuse of History* (University of California Press, 2005), pp. 24, 28.

261 'Allon Interviewed', *Tel Aviv IDF Radio* (14 November 1975), FBIS-MEA-75-222 (17 November 1975), p. N1.

'While Israel's enemies kept trying to distinguish between Zionism and Judaism', one historian accordingly reports, 'their attack on Zionism reinforced the way most post-1948 Jews integrated Zionism… the Jewish State, and Judaism together'.[262] In fact, the resolution didn't automatically produce this effect. Its depiction as manifesting of a new antisemitism, accompanied by efforts to cement the identification of Jews with Zionism and Israel, were part of a calculated strategy employed by Israel to exploit the resolution. Thus, Israeli leaders responded to the resolution by 'calling on the Jewish people in all parts of the world to stand firm … because Zionism, Judaism, the State of Israel and the Jewish people are one' (Israeli Prime Minister Yitzhak Rabin); to 'increase their immigration to Israel' (Knesset); to make *aliya* and thereby 'show the world that there was no longer any difference between those who were Jews and those who were Zionists' (former Israeli Prime Minister Golda Meir, to a rally of 8,000 Jews in London's Royal Albert Hall); to 'deepen, develop and strengthen the bonds linking the Jewish people to the State of Israel' (Zionist Executive, Jerusalem); to demonstrate 'that Israel, Zionism and Judaism are one' by 'increasing immigration and land settlement' as well as 'intensifying the Jewish consciousness of youth both in Israel and the Diaspora' (Israeli President Ephraim Katzir). The Board of Deputies of British Jews announced a 'year-round campaign to demonstrate Anglo-Jewry's solidarity with Israel'; the Israeli Government convened a Conference of Jewish Solidarity in Jerusalem, at which 170 world Jewish leaders pledged 'to stand by the State of Israel with all our heart and soul'; the World Zionist Organization (WZO) urged '[a]ll Jews around the world … to wear lapel buttons carrying the legend: "I am a Zionist"' (*Fig. 2*) while members of the Women's International Zionist Organization (WIZO) sported badges declaring 'Judaism is Zionism'; the Zionist General Council proclaimed 1976 a 'crisis year for the rallying of all forces in

262 'Oom', p. 61.

Jewry around Zionism'; and the Israeli Government along with the WZO prepared an information campaign 'to infuse the aims and development of Zionism into the current Jewish reality'.[263]



Fig. 2. World Zionist Organization lapel pin reading 'I am a Zionist'

US, Israeli, and Zionist movement officials appeared pleased with the results of this campaign to mobilise support for Israel by depicting UNGA Resolution 3379 as antisemitic. American Jewish organizations reported 'a new rise in Jewish affirmation on campus, as intense if not

263 Judy Siegel, 'WZO Mounts Counterattack', *Jerusalem Post* (28 October 1975), p. 2 (WIZO). Jacobson, 'Battle', p. 3 (Rabin). Sofer, 'Schenker', p. 4 ('deepen'). 'Knesset Adopts Resolution Against UN Resolutions', *Jerusalem Domestic Television Service* (11 November 1975), FBIS-MEA-75-219 (12 November 1975), p. N2 (Knesset). 'The Resolution of Solidarity', *JTA* (8 December 1975), p. 4 ('soul'). WZO, 'Jerusalem Solidarity Conference', *Israel Digest* 18.26 (19 December 1975), p. 2. FSP 139.iii.5 (Katzir). 'The Zionist General Council', *Israel Digest* 19.2 (16 January 1976), p. 2 ('crisis year'). 'Golda: Aliya the Best Answer', *Jewish Chronicle* (23 January 1976), p. 6. FSP 139.v.60 (Meir). 'Solidarity Year Under Way', *Jewish Chronicle* (23 January 1976), p. 6. FSP 139.v.62 (Board of Deputies). 'Strengthening Zionist Information', *Israel Digest* (30 January 1976), p. 7 ('infuse'). '2nd European Zionist Conference Calls for Aliyah, Education, Service—An Interview with Abraham Schenker', *Israel Digest* 19.14 (2 July 1976), p. 3. FSP 140.i.15 (WZO).

as widespread' as student responses during the 1967 and 1973 Arab-Israel wars.[264] Moynihan took heart that on a series of disputes, including 'the Zionism issue', the Third World bloc at the UNGA had 'broken up very clearly'—'obviously, it is easier for us when we do not have that enormous solidarity against us'.[265] Britain's Ambassador to the UN, Ivor Richard, observed that the controversy over Zionism had 'consolidated' international support for Israel, such that the 'Israeli mission' to the UN 'are not unhappy at the result': 55 votes in the Third Committee to defer the anti-Zionism resolution 'they regard as possibly the best thing that has ever happened to Israel in the Assembly'.[266] 'The anti-Zionist resolution did more for us' at the UN 'than years of pro-Zionist activity and thousands of speeches', Herzog crowed, while Israeli Foreign Minister Allon expressed satisfaction that, 'when it comes to the condemnation of Zionism, Americans and us are forming one united front'.[267]

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264 'Hillel Survey Finds Jewish Students Reacted Intensely to UN Resolution', *JTA* (9 January 1976), p. 1. FSP.139.v.21. Cf. WZO, 'Protests in Paris… Seminars in Sweden… Conference in Canada… as International Protests Against U.N. Vote Continue', *Israel Digest* (5 December 1975), pp. 2-3. 'Jews of 27 Countries Pledge Support for Zionism', *New York Times* (6 December 1975), p. 10. David Landau, 'Zionism in Action Membership Drive Drives Ahead', *JTA Daily News Bulletin* (10 August 1976), p. 4. FSP.140.i.20. P.H., 'Zionists Indebted to UN Prejudice for Huge Growth', *Jewish Week* (30 May 1977), p. 20. FSP 141.vii.12.

265 US Mission to the UN, 'Press Release', USUN-189 (17 December 1975), p. 3. FSP.139.iii.1.

266 UKUN (Ambassador Ivor Richard), 'The Zionist Resolution at the UN', FCO 58/862 (13 November 1975). Richard added that 'Herzog is making the most of his martyrdom'. Cf. UKUN, 'Zionist Resolution in the Third Committee', FCO 61/1380 (28 October 1975), para. 5.

267 'Foreign Minister Discusses U.S.-Israeli Solidarity', *Jerusalem International Service* (28 October 1975), FBIS-MEA-75-209 (29 October 1975), pp. N4-N5 (Allon). David Landau, 'The U.N. Battlefield', *Jerusalem Post* (2 December 1975), p. 8 (Herzog).

A British official reflected, in 1989, that UNGA Resolution 3379 'is today generally regarded as irrelevant within the United Nations, even by members of the Arab group'. Indeed, 'it seems virtually meaningless'.[268] If the resolution nevertheless became notorious in Western histories of the UN, this was arguably because, for different reasons, political actors in the US and Israel as well as the international Zionist movement *chose* to stage a confrontation over it. The veteran Israeli diplomat Abba Eban observed in 1990 that '[n]obody cares about' the 'completely ineffective' resolution against Zionism, and added: 'I think it is really perpetuated because Israel perpetuates it'.[269] UN Secretary-General Perez de Cuellar similarly opined that UNGA Resolution 3379 'is actually dead but the Israelis have kept it alive'.[270] Viewed in this context, the ambiguous ideological character of the New Antisemitism response to UNGA Resolution 3379 comes into focus. On the one hand, the resolution expressed, while the New Antisemitism registered, the fact that international recognition of Israel's legitimacy as a State was, even in the post-1967 period, still ultimately contingent upon Israel's acceptance of the international consensus framework for resolving the conflict. Insofar as Israel was viewed as rejecting that framework, its essential legitimacy would remain in question. On the other hand, the resolution primarily reflected Palestinian, Arab, and international opposition to Israel's occupation, not its existence, while the New Antisemitism reaction primarily served to shield Israel from *this* pressure.

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268 UKUN, 'Visit of Vice-President Quayle: Zionism/Racism', FCO 58/5476 (December 1989), para. 4, TNA.

269 Eban, 'Interview'.

270 'Memorandum of Conversation: Meeting with United Nations Secretary General Perez de Cuellar (U)', *bush41library.tamu.edu* (6 June 1990), p. 2.

Chapter 2.

Double Standards

'What is equal is to be treated equally and what is different is to be treated differently'

'Politics are susceptible of gradation, in contrast to law which is categorical and absolute'

—Judge Tanaka, International Court of Justice[1]

Since the Mandate period, international law has been a crucial arena in the international legitimacy war over Zionism. One scholar observes with understatement that 'neither side' in the Zionist-Arab controversy 'has taken the position that the creation of the State of Israel was merely a question of fact'; from the outset, 'international legal arguments' were 'adduced for and against the existence of States' by both sides.[2] The main criterion of 'legitimacy' to which Zionists and their opponents alike appealed was the international legal norm of 'self-

1 Judge Tanaka, Dissenting Opinion, *South West Africa Cases (Liberia and Ethiopia v. South Africa)* (Second Phase, Judgment), ICJ Reports 1966, pp. 282 ('politics'), 305 ('equal').

2 James Crawford, *The Creation of States in International Law*, 2nd ed. (Clarendon Press, 2006), p. 421. Cf. Mark Tessler, *A History of the Israeli-Palestinian Conflict*, 2nd ed. (Indiana University Press, 2009 [1994]), pp. 290-91. Victor Kattan, *From Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict, 1891-1949* (Pluto Press, 2009), p. 3.

determination'.[3] In the Mandate period, self-determination was a *political* 'principle' that was 'applied … to the territory of Palestine' by the League of Nations. In the decades after World War II, and in particular under the influence of decolonisation in the 1950s and 1960s, the *legal* right of peoples to self-determination became 'firmly established' as 'a criterion for statehood' and 'one of the essential principles of … international law'.[4] Those States or national movements that were considered as breaching the right of self-determination—'racist régimes' or forms of 'colonial and alien domination'—were in consequence delegitimised.[5]

When Zionism was challenged at the United Nations General Assembly (UNGA), in November 1975, critics effectively sought its classification as one of those racist, colonial, and alien regimes that had, since World War II, been internationally delegitimised. Israel's defenders did not deny that such regimes were illegitimate but argued that critics of Zionism had confused a legitimate 'nationalism' with 'racism'.[6] Put otherwise, both supporters and

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3 John Quigley, *The Legality of a Jewish State: A Century of Debate Over Rights in Palestine* (Cambridge University Press, 2022), p. 83. Cf. ibid., pp. 32, 75, 117, 176. Alexander Yakobson and Amnon Rubinstein, *Israel and the Family of Nations: The Jewish Nation-State and Human Rights* (Routledge, 2009), pp. 30-41. John Dugard, 'Foreword' in Ardi Imseis, *The United Nations and the Question of Palestine: Rule by Law and the Structure of International Legal Subalternity* (Cambridge University Press, 2023), pp. xi, xiii.

4 *Case Concerning East Timor (Portugal v. Australia)*, Judgment, ICJ Rep. 1995, p. 102, para. 29 ('essential'). Crawford, *Creation*, pp. 122 ('firmly'), 428 ('applied'), 434 ('criterion'). David Raič, *Statehood and the Law of Self-Determination* (Kluwer Law International, 2002), p. 199; Malcolm N. Shaw, 'Self-Determination, *Uti Possidetis* and Boundary Disputes in Africa' in Chia-Jui Cheng ed., *A New International Legal Order* (Brill, 2016), pp. 99, 102; Imseis, *Palestine*, pp. 55-56. (decolonisation) Cf. Raič, *Statehood*, pp. 442-51.

5 UN General Assembly (UNGA) Resolution 3103 (XXVIII) (12 December 1973). This was the basis on which, for instance, international recognition was withheld from Southern Rhodesia as well as the South African 'bantustans'. Crawford, *Creation*, pp. 130-31 (Rhodesia), 341-45 (bantustans).

6 See Chapter 1 above.

opponents of Zionism agreed that clear, universal standards existed by which to distinguish legitimate from illegitimate national formations; where they differed was over what those standards concretely entailed. This premise—that international law furnishes clear, general criteria by which to adjudicate self-determination claims—finds both support and scepticism in international law scholarship.[7] That same premise also underpins the core New Antisemitism concept of 'double standards', which this chapter critically scrutinises.

In 2005, a coalition of Palestinian civil society groups called for international boycott, divestment, and sanctions (BDS) against Israel. They did so on the basis of a political programme that arguably revived UNGA Resolution 3379's attempt to delegitimise the essence of Israel as a Jewish State.[8] New Antisemitism writers accused BDS of hypocrisy because it endorsed Palestinian yet rejected Jewish self-determination rights in Palestine. This argument presumed that self-determination claims were judicable based on clear general standards; otherwise, divergent judgments in respect of particular cases might just have reflected good faith disagreement. In other words, the dispute over 'double standards' between the New Antisemitism and BDS rested upon the same common premise that underpinned aspects of the UNGA debate over Zionism in 1975. The present chapter examines this premise through a comparative conceptual analysis of 'White' and Jewish self-determination claims in southern Africa and Palestine, respectively, as these were contested on the terrain of international law. The chapter finds that the standards invoked to validate or delegitimise 'White' and Jewish self-determination claims, respectively, were limited and ambiguous, affording ample room for discretionary judgment when applied to concrete

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7 E.g., Michla Pomerance, *Self-Determination in Law and Practice: The New Doctrine in the United Nations* (Martinus Nijhoff, 1982) (scepticism). Crawford, *Creation*, pp. v-vi, ix, 124-27 (support).

8 Discussed below.

situations. It therefore concludes that apparently 'selective' rejection of Israel's legitimacy as a Jewish State need not indicate hypocrisy or prejudice; that is, the notion of a Jewish right to self-determination through statehood in Palestine was arguably tenable as well as untenable under international law.

The argument is developed through an original reading of the critical international debates over Jewish statehood in Palestine, alongside the 12 volumes of written and oral pleadings in the *South West Africa Cases* litigated before the International Court of Justice (ICJ) between 1960 and 1966. Conceptually, the chapter employs a novel analytical framework for appraising self-determination claims in comparative perspective. Empirically, it is grounded in voluminous ICJ archival records that have scarcely been consulted by scholars, and—most importantly—never for the purpose of appraising the coherence of international self-determination norms.[9] The South African presentation before the Court proved to be a rich lode to mine on the right of peoples to self-determination.

By showing that the New Antisemitism-inspired critique of BDS is unpersuasive, the chapter clears the ground for interpreting New Antisemitism discourse in the post-Second Intifada period primarily as an ideological intervention in defence of Israel—and, specifically, as resting on nationalist precepts that date back to the earliest phase of the Israel-Palestine

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9 Neither of the two authoritative texts on the *South West Africa Cases* analyse the extensive written and oral pleadings for insights on the principle of self-determination. This aspect also does not figure in the extensive secondary literature on the case. The lacuna likely reflects the fact that the ICJ eventually based its decision on a technicality as it declined to address the substantive issues in dispute. John Dugard ed., *The South West Africa/Namibia Dispute: Documents and Scholarly Writings on the Controversy Between South Africa and the United Nations* (University of California Press, 1973). Solomon Slonim, *South West Africa and the United Nations: An International Mandate in Dispute* (Johns Hopkins University Press, 1973).

legitimacy war. In the long-running dispute over whether to classify Zionism/Israel as a (presumptively legitimate) *nationalism* or alternatively as a (presumptively illegitimate) *colonialism*, the New Antisemitism is revealed as a strong variant of the 'legitimate nationalism' position. This substantiates the thesis's overarching claim and contribution to Israel-Palestine historiography, viz., that New Antisemitism discourse should be understood as an ideological defence of the Jewish national project. The chapter additionally concludes by suggesting that, whereas the political salience of BDS primarily reflected international opposition to Israel's occupation as well as the repressive policies this entailed, the movement's manifesto also incorporated the anticolonial critique of Israel's essential legitimacy as a State. The New Antisemitism-inspired response to BDS reflected this ambiguity. It served primarily to delegitimise civil society opposition to Israel's occupation, but also engaged an emergent discourse that rejected Israel's existence as an unjust, colonial imposition.

As well as advancing the overarching claim of the thesis, the present chapter also speaks to live debates among historians about the applicability to the Israel-Palestine conflict of settler-colonial as against nationalist paradigms. For much of the twentieth century, Israeli and Western scholarship tended to depict the conflict in Palestine as a national one.[10] Even at the

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[10] Walter Laqueur, *A History of Zionism* (MJF Books, 1972), pp. 593, 595-97. Jacob L. Talmon, 'Israel Among the Nations' in N. Gordon Levin, Jr. ed., *The Zionist Movement in Palestine and World Politics, 1880-1918* (DC Heath and Company, 1974), pp. 248-51. Bernard Avishai, *The Tragedy of Zionism: How Its Revolutionary Past Haunts Israeli Democracy* (Helios, 2002 [1985]), pp. 147-48. Yosef Gorny, *Zionism and the Arabs, 1882-1948: A Study of Ideology* (Clarendon Press, 1987), pp. 6-7. Itamar Rabinovich, *The Road Not Taken: Early Arab-Israeli Negotiations* (Oxford University Press, 1991), p. v. Walid Khalidi, 'The Palestine Problem, Past and Future' in *Palestine Reborn* (I.B. Tauris, 1992), pp. 1-2. Anita Shapira, *Land and Power: The Zionist Resort to Force, 1881-1948* (Stanford University Press, 1992), pp. 107, 135, 356. Israel Kolatt, 'The Zionist Movement and the Arabs' in Jehuda Reinharz and Anita Shapira eds., *Essential Papers on Zionism* (New York University Press, 1996). Tessler, *History*, parts I-II. Shapira's *Land and Power* recognised colonial aspects of Zionism even as it hewed overall to the nationalist framework; for discussion cf. Norman G.

most critical pole of the mainstream US spectrum, Noam Chomsky took it as axiomatic in the 1970s that 'the essence of the problem of Israel and the Palestinians' was that of '[o]ne land—two nations'.[11] Palestinian and Arab scholars frequently employed colonial or settler-colonial frameworks instead,[12] followed from the 1980s by several Israeli researchers.[13]

Finkelstein, *Image and Reality of the Israel-Palestine Conflict*, 2nd ed. (Verso, 2003), pp. 99, 105-6. The analogue in historical sociology to the nationalist framework in in historiography was the 'dual society paradigm'. Gabriel Piterberg, *The Returns of Zionism: Myths, Politics and Scholarship in Israel* (Verso, 2008), pp. 63-64. Cf. Uri Ram, 'The Colonization Perspective in Israeli Sociology' in Ilan Pappé ed., *The Israel/Palestine Question* (Routledge, 1999), pp. 60-62. Baruch Kimmerling, *The Invention and Decline of Israeliness: State, Society, and the Military* (University of California Press, 2001), pp. 7-8. A notable early exception to the nationalist paradigm was Maxime Rodinson, *Israel: A Colonial-Settler State?* (Pathfinder Press, 1973).

11 Noam Chomsky, 'Israel and the Palestinians' (1975) in Noam Chomsky, *Towards a New Cold War: Essays on the Current Crisis and How We Got There* (Pantheon, 1982), p. 230. Cf. John Galvani in *MERIP Reports* 32 (1974), pp. 31-32. Noam Chomsky, *Chronicles of Dissent* (Common Courage, 1992), pp. 33, 89; *Fateful Triangle: The United States, Israel, and the Palestinians*, updated ed. (Haymarket, 1999 [1983]), p. 197 ('right').

12 Fayez Sayegh, *Zionist Colonialism in Palestine* (PLO Research Centre, 1965). George Jabbour, *Settler Colonialism in Southern Africa and the Middle East* (PLO Research Centre, 1970). Ibrahim Abu-Lughod and Baha Abu-Laban eds., *Settler Regimes in Africa and the Arab World: The Illusion of Endurance* (Medina University Press International, 1974). Abdelwahab M. Elmessiri, 'Distinctive Traits of Zionist Settler Colonialism' in International Organization for the Elimination of All Forms of Racial Discrimination, *Zionism & Racism: Proceedings of an International Symposium* (North American, 1979), pp. 145-51.

13 Baruch Kimmerling, *Zionism and Territory: The Socio-Territorial Dimensions of Zionist Politics* (Institute of International Studies, 1983). Gershon Shafir, *Land, Labor and the Origins of the Israeli-Palestinian Conflict, 1882-1914* (Cambridge University Press, 1989). Gershon Shafir, 'Zionism and Colonialism: A Comparative Approach' in Michael N; Barnett ed., *Israel in Comparative Perspective: Challenging the Conventional Wisdom* (SUNY Press, 1996). Benny Morris, *Righteous Victims: A History of the Arab-Zionist Conflict, 1881-2001*, rev. ed. (Vintage, 2001 [1999]), pp. 676-79. Kimmerling, *Israeliness*, chaps. 1-2. For an earlier forerunner, cf. Haim Hanegbi et al., *The Class Nature of Israel* (MERIP, 1971), pp. 3-5. See also Nathan Weinstock, 'The Impact of Zionist Colonization on Palestinian Arab Society Before 1948', *Journal of Palestine Studies* 2.2 (1973), pp. 49-63. In respect of Morris, see Daniel Gutwein, 'Left and Right Post-Zionism and the Privatization of Israeli Collective Memory' in Anita Shapira and Derek J. Penslar eds., *Israeli Historical Revisionism: From Left to Right* (Routledge, 2013 [2003]), p. 29. For broader discussion, see Ram, 'Colonization'.

Recent years—stimulated by increased attention to settler colonialism more broadly[14] as well as mounting despair at the prospect of resolving the Zionist-Arab conflict through partition[15]—have seen a proliferation of studies that seek to interpret the conflict in light of the experience of European settler-colonial projects elsewhere.[16] This paradigm has made

14 Caroline Elkins and Susan Pedersen eds., *Settler Colonialism in the Twentieth Century* (Routledge, 2005). Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (Palgrave Macmillan, 2010). Lorenzo Veracini, 'Introducing', *Settler Colonial Studies* 1 (2011), pp. 1-12.

15 Areej Sabbagh-Khoury, 'Tracing Settler Colonialism: A Genealogy of a Paradigm in the Sociology of Knowledge Production in Israel', *Politics & Society* 50.1 (2022), pp. 45, 58-59.

16 Lorenzo Veracini, *Israel and Settler Society* (Pluto Press, 2006). Mahmood Mamdani, *Neither Settler nor Native: The Making and Unmaking of Permanent Minorities* (Belknap Press, 2020), chap. 5. See, too, the three *Settler Colonial Studies* special issues on Israel-Palestine in 2012, 2015, and 2019. This historiographical shift is registered in Piterberg, *Returns*, chap. 2. Nadim N. Rouhana and Areej Sabbagh-Khoury, 'Memory and the Return of History in a Settler-Colonial Context' in Nadim N. Rouhana ed., *Israel and Its Palestinian Citizens: Ethnic Privileges in the Jewish State* (Cambridge University Press, 2017), p. 397. Nadim N. Rouhana, 'Decolonization as Reconciliation: Rethinking the National Conflict Paradigm in the Israeli-Palestinian Conflict', *Ethnic and Racial Studies* (2017), pp. 5-8. Rachel Busbridge, 'Israel-Palestine and the Settler Colonial "Turn": From Interpretation to Decolonization', *Theory, Culture & Society* 35.1 (2018), pp. 92-97.

significant headway,[17] eliciting responses that reassert the nationalist position[18] or attempt a synthesis.[19]

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17 One index of the mainstreaming of the settler-colonial paradigm has been the evolving position of eminent British-Israeli 'New Historian' Avi Shlaim. Shlaim's pioneering work on the 1948 War conceptualized the Zionist-Arab conflict as one 'between two national movements'. He retained this framework in the mid-1990s and, two decades later, still drew 'a clear distinction' between Zionism as 'a national liberation movement' before 1967 and 'the Zionist colonial project beyond the Green Line'. By 2023, though, Shlaim had reconceptualized Zionism as an inherently 'settler-colonial movement' from the outset and Israel's post-1967 occupation as 'merely' an 'extension' of this 'Zionist colonial project'. Another indicator was the positive critical and scholarly reception afforded Rashid Khalidi's history of the Israel-Palestine conflict, which employed settler colonialism as its organising framework. Avi Shlaim, *Collusion Across the Jordan: King Abdullah, the Zionist Movement, and the Partition of Palestine* (Columbia University Press, 1988), p. 2 ('national'); *War and Peace in the Middle East*, revised ed. (Penguin, 1995), p. 21 (mid-1990s); *Israel and Palestine: Reappraisals, Revisions, Refutations* (Verso, 2009), p. 299 ('distinction'); *Three Worlds: Memoirs of an Arab-Jew* (Oneworld, 2023), p. 294 ('extension'). Rashid Khalidi, *The Hundred Years' War on Palestine: A History of Settler Colonial Conquest and Resistance, 1917-2017* (Metropolitan, 2020).

18 E.g., Ruth Gavison, 'The Jewish State: A Justification' in David Hazony et al. eds., *New Essays on Zionism* (Shalem Center, 2006). Efraim Karsh, 'Zionism and the Palestinians', *Israel Affairs* 14.3 (2008), pp. 355-56. Yakobson and Rubinstein, *Israel*. Cf. Avi Bareli, 'Forgetting Europe: Perspectives on the Debate about Zionism and Colonialism' in Shapira and Penslar, *Revisionism*, pp. 99-120.

19 The notion that Zionism had both 'national' *and* 'colonial' aspects is long-standing. See, e.g., David Waines, 'The Failure of the Nationalist Resistance' in Ibrahim Abu-Lughod ed., *The Transformation of Palestine: Essays on the Origin and Development of the Arab-Israeli Conflict* (Northwestern University Press, 1971), pp. 215, 219. Edward W. Said, 'Zionism from the Standpoint of Its Victims' in Edward W. Said, *The Question of Palestine* (Vintage, 1980 [1979]), pp. 72, 88, 183-84; 'Permission to Narrate', *London Review of Books* 6.3 (1984). Zachary Lockman, *Comrades and Enemies: Arab and Jewish Workers in Palestine, 1906-1948* (University of California Press, 1996), pp. 363-65. Shlomo Ben-Ami, *Scars of War, Wounds of Peace: The Israeli-Arab Tragedy* (Oxford University Press, 2006), pp. 2-4. Rashid Khalidi, *The Iron Cage: The Story of the Palestinian Struggle for Statehood* (Oneworld, 2006), p. xxxiv. One recent history accepts that the Zionist-Arab conflict was '*both* a colonial and a national' one but focuses on the 'colonial … aspect'. Another recognises Zionist 'commonalities with other forms of settlement colonialism' but emphasises that assimilating Zionism to 'Western colonialism leaves unexplained many of its key aspects'. Khalidi, *Hundred*, p. 14 ('*both*'). Derek J. Penslar, *Zionism: An Emotional State* (Rutgers University Press, 2023), pp. 70 ('key'), 95 ('commonalities'). Cf. Ethan B. Katz et al. eds., *Colonialism and the Jews* (Indiana University Press, 2017), pp. 275-338.

Such work typically compares Zionist discourse and practice with European settler-colonial experiences—in the US, Canada, Australia, etc.—to often-fruitful effect.[20] But if one is interested primarily in the dynamics of external *legitimation*, as is the present thesis, those comparators are limited to some extent by the historical distance separating them from the Zionist project. Whereas many parallels can be discerned between Zionist and preceding settler-colonial legitimation discourses, nevertheless, they unfolded in epochs that were normatively as well as legally distinct. In view of this limitation in the extant literature, the present chapter contributes a comparison between two cases that could scarcely be more similar. As will be elaborated further below, both the Palestine and Namibia questions were forged in the Mandate period and unfolded over the first half of the twentieth century within the politico-legal framework of decolonization, while international deliberations on Palestine as well as Namibia turned on the self-same legal norm of self-determination, which was invoked by all parties to both disputes. By exploiting the rich and hitherto untapped written records from the ICJ's *South West Africa Cases*, the chapter illuminates in fine-grained detail how two of the most controversial settlement projects of the twentieth century sought defended their legitimacy in terms of the post-World War I international normative regime.

Developing this comparison in view of the New Antisemitism-inspired charge of 'double standards' also brings into view an incoherence in Zionist legitimation discourse as this was articulated in international fora. Many scholars have examined how Christian as well as 'racial' othering of Jews figured in Western support for Zionism from the nineteenth century

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20 In addition to the references above, see Norman G. Finkelstein, *The Rise and Fall of Palestine: A Personal Account of the Intifada Years* (University of Minnesota Press, 1996), pp. 104-21; *Image*, pp. 88-120.

onward,[21] how Jewish suffering culminating in the Nazi holocaust became 'the primary marker of Jewish exceptionalism' after World War II,[22] how Jewish as well as Zionist traditions uneasily combined an embrace of Jewish exceptionalism with a desire to overcome it,[23] and how this tension between a sense of 'chosenness' and a desire to 'normalise' was not unique to Zionism but inherent in nationalist ideology.[24] By carefully scrutinising the cases made for Jewish and Afrikaner self-determination, respectively, which unfolded on closely similar lines and yet provoked radically divergent international responses, the chapter helps clarify in what respects Zionist legitimation discourse was singular.

I. Background

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21 James Renton, *The Zionist Masquerade: The Birth of the Anglo-Zionist Alliance, 1914-1918* (Palgrave Macmillan, 2007), chaps. 1-2. Yair Wallach, 'The Racial Logic of Palestine's Partition', *Ethnic and Racial Studies* 46.8 (2023), pp. 1576-98.

22 Adam Sutcliffe, *What Are Jews For? History, Peoplehood, and Purpose* (Princeton University Press, 2020), p. 204. On the politics of Holocaust 'uniqueness' as they related to the Israel-Palestine legitimacy war in its distinctive post-1967 period, cf. Boas Evron, *Jewish State or Israeli Nation?* (Indiana University Press, 1995), pp. 250-54. Norman G. Finkelstein, *The Holocaust Industry: Reflections on the Exploitation of Jewish Suffering*, 2nd ed. (Verso, 2003), chap. 2. Idith Zertal, *Israel's Holocaust and the Politics of Nationhood* (Cambridge University Press, 2005), pp. 4, 182-84. Avraham Burg, *The Holocaust Is Over; We Must Rise from Its Ashes* (Palgrave Macmillan, 2008). Ian S. Lustick, 'The Holocaust in Israeli Political Culture: Four Constructions and Their Consequences', *Contemporary Jewry* 37 (2017), pp. 125-70.

23 This is the organising theme of a major recent history of Zionism: Michael Brenner, *In Search of Israel: The History of An Idea* (Princeton University Press, 2018). Cf. Charles S. Liebman and Eliezer Don-Yehiya, *Civil Religion in Israel: Traditional Judaism and Political Culture in the Jewish State* (University of California Press, 1983), pp. 26-28, 216. Evron, *Jewish*, pp. 226-27. Sutcliffe, *Purpose*, chaps. 4-5. Penslar, *Emotional*, p. 3.

24 Yaacov Yadgar, 'From the Particularistic to the Universalistic: National Narrative in Israel's Mainstream Press, 1967-97', *Nations and Nationalism* 8.1 (2002), pp. 56-58. Sutcliffe, *Purpose*, pp. 22, 158, 160-61. Cf. Hans Kohn, 'Zion and the Jewish National Idea' (1958), reproduced in Walid Khalidi ed., *From Haven to Conquest: Readings in Zionism and the Palestine Problem until 1948* (Institute for Palestine Studies, 1971), p. 807. Linda Colley, *Britons: Forging the Nation, 1707-1837*, 2nd ed. (Pimlico, 2003 [1992]), pp. 29-43. Anthony D. Smith, *Chosen Peoples: Sacred Sources of National Identity* (Oxford University Press, 2003).

The New Antisemitism, BDS, and double standards

It is a tenet of the New Antisemitism that Israel is subject to unfair criticism—a double standard—such as gives rise to legitimate concern by Jews. For Irwin Cotler, 'the new antisemitism involve[d] … discrimination against … the right of the Jewish people to live as an *equal* member of the family of nations'. Israeli Minister Natan Sharansky distilled the 'new anti-Semitism' as comprising, inter alia, 'double standards': 'When criticism of Israel is applied *selectively*; when Israel is *singled out* by the United Nations for human rights abuses … this is anti-Semitism'. The 2005 Working Definition of Antisemitism, drafted under the auspices of the American Jewish Committee (AJC), cited as an example of antisemitism '[a]pplying double standards by requiring of [Israel] … a behavior not expected or demanded of any other democratic nation'.[25] Indeed, the double standards criterion is often construed as the essence of the new antisemitism, assimilating Sharansky's other categories: 'demonization' denotes 'criticism of Israel' not 'similar to that levelled against any other countries'[26] while 'delegitimization' is considered antisemitic because it is said to target the State of the Jews 'alone among all peoples in the world'.[27]

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25 Irwin Cotler, *Human Rights and the New Anti-Jewishness: Sounding the Alarm* (Jewish People Policy Planning Institute, 2004 [2002]), pp. 3-4. Natan Sharansky, '3D Test of Anti-Semitism: Demonization, Double Standards, Delegitimization', *Jewish Political Studies Review* 16.3-4 (2004). European Union Monitoring Centre on Racism and Xenophobia (EUMC), Working Definition of Antisemitism, *eumc.eu.int* (28 January 2005; accessed via the WayBack Machine). Emphases added. Cf. Introduction above.

26 EUMC, Working Definition. Cf. Kenneth S. Stern, *Why Campus Anti-Israel Activity Flunks Bigotry 101* (AJC, 2002), p. 12. Cotler, 'Human Rights', p. 5.

27 Sharansky, '3D Test'. Cf. Stern, *Campus*, pp. 11-12. Cotler, 'Human Rights', pp. 4, 5. Abraham H. Foxman, *Never Again? The Threat of the New Anti-Semitism* (HarperCollins, 2003), p. 18. David Matas, *Aftershock: Anti-Zionism and Antisemitism* (Dundurn Press, 2004), chap. 2, para. 7. Robert Wistrich, 'When Is Opposition to Israel and Its Policies Antisemitic?' *en.qantara.de* (3 September 2005). Walter Laqueur, *The Changing Face*

In 2005, a coalition of Palestinian civil society organisations called for boycotts, divestment, and sanctions against Israel until it met three demands: withdraw from all occupied Arab territory, end discrimination against Israel's Arab citizens, and implement the right of Palestinian refugees to return to their homes.[28] Critics of BDS mobilised the notion of antisemitic double standards, as elaborated by New Antisemitism writers, to discredit and delegitimise it.[29] This charge could not plausibly rest merely on the fact that BDS targeted Israel selectively; scarcity of resources makes prioritising inevitable. Nor could the allegation persuasively indict BDS methods as inherently illegitimate. On the one hand, Israel and its supporters have employed these same tactics.[30] On the other hand, they have espied double standards in not just BDS but the full panoply of efforts to hold Israel accountable, from

of Anti-Semitism: From Ancient Times to the Present Day (Oxford University Press, 2006), pp. 7-8. Kenneth L. Marcus, *The Definition of Anti-Semitism* (Oxford University Press, 2015), p. 159. Israel Ministry of Strategic Affairs and Public Diplomacy (MSA), *Behind the Mask: The Antisemitic Nature of BDS Exposed* (September 2019), p. 15.

28 BDS Movement (BDS), 'Palestinian Civil Society Call for BDS', *bdsmovement.net* (9 July 2005).

29 Stern, *Campus*, pp. 2-3, 17. Jerry Gordon, 'Interview with Professor Robert Wistrich', *canisa.org* (21 December 2011). Abraham H. Foxman, 'An Open Letter on Academic Freedom and University Responsibility', *adl.org* (26 February 2013 [8 February 2013]). Marcus, *Definition*, p. 211. Jonathan Sacks, 'Rabbi Sacks on the Boycott, Divestment and Sanctions (BDS) Campaign', *rabbisacks.org* (17 February 2017). MSA, *Mask*, pp. 6, 11. Daniel Schwammenthal (AJC), 'BDS Is Antisemitic', *neweurope.eu* (23 September 2019). NGO Monitor, 'BDS (Boycotts, Divestment, and Sanctions)', *ngo-monitor.org* (n.d.; accessed 20 September 2022).

30 'Boycott by Jews Upsets Mexicans', *New York Times* (30 November 1975). Danielle Ziri, 'US Jewish Groups Applaud Trump's New Iran Sanctions', *Jerusalem Post* (5 February 2017). Irit Shmuel and Nir Cohen, 'The Geographical Imagination of Israeli Tourists to Turkey', *International Journal of Culture, Tourism and Hospitality Research* 14.3 (2020), pp. 394-95.

media scrutiny and human rights inquiries to UN resolutions and international court judgments.[31]

The more credible charge was that BDS hypocritically affirmed 'the Palestinian people's inalienable right to self-determination'[32] even as it was perceived as rejecting a corresponding self-determination right of Jews.[33] This rejection was inferred from BDS's demand for a full return of Palestinian refugees together with equal rights in Israel—paving the way for a referendum in which a reconstituted Palestinian majority would likely vote to abolish Israel as a Jewish State[34]—as well as statements from BDS leaders rejecting a Jewish State.[35] 'The

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31 Jerold S. Auerbach, *Print to Fit: The New York Times, Zionism and Israel (1896-2016)* (Academic Studies Press, 2019), esp. chap. 13 (media). NGO Monitor, *Amnesty International's Cruel Assault on Israel: Systematic Lies, Errors, Omissions & Double Standards in Amnesty's Apartheid Report* (14 April 2022; updated 19 April 2022) (human rights). World Jewish Congress, 'Antisemitism Defined: Double Standards against the State of Israel', *worldjewishcongress.org* (4 May 2022) (UN). Jerusalem Post Staff, 'Netanyahu: ICC War Crimes Probe Is "Pure Antisemitism"', *Jerusalem Post* (4 March 2021) (court).

32 BDS Movement, 'Call'.

33 It was also argued that BDS hypocritically urged the isolation of Israel but not comparable or worse offenders. This argument will not be addressed here.

34 Robert S. Wistrich, 'A Deadly Mutation: Antisemitism and Anti-Zionism in Great Britain' in Eunice G. Pollack ed., *Anti-Semitism on the Campus* (Academic Studies Press, 2010), p. 67. Honest Reporting, *BDS: An Introduction* (January 2012), pp. 6, 7. Cary Nelson, 'BDS: A Brief History' in Cary Nelson ed., *Dreams Deferred: A Concise Guide to the Israeli-Palestinian Conflict and the Movement to Boycott Israel* (Indiana University Press, 2016), p. 53. David M. Halbfinger et al., 'Is B.D.S. Anti-Semitic? A Closer Look at the Boycott Israel Campaign', *New York Times* (27 July 2019). Natan Sharansky, 'A 3D Test for BDS' in MSA, *Behind*, p. 6. Alan Dershowitz, 'BDS Discrimination Is Not Freedom of Speech' in MSA, *Behind*, p. 8. Alex Feuerherdt, 'The BDS Movement: Why Israel?' in Armin Lange et al. eds., *Confronting Antisemitism in Modern Media, the Legal and Political Worlds*, vol. V of *An End to Antisemitism!* (De Gruyter, 2021), pp. 309-10. Talia Naamat, 'Are the New Forms of Antisemitism Prohibited in European Legal Systems?' in Lange et al., *Confronting*, p. 395. Foxman, 'Open Letter'. NGO Monitor, 'BDS'.

35 BDS's leading spokesperson personally opposed a two-State solution and considered the BDS programme incompatible with it, but also claimed the 'rights-based' BDS Movement did not prescribe a political framework. On the other hand, most constituent organisations in the Boycott National Committee

boycotters would deny to Jews the rights that they uphold for other peoples', Anthony Julius and Alan Dershowitz objected. 'They adhere to the principle of national self-determination, except in the Jews' case'. According to an American Jewish Committee publication, '[i]t is this entrenched opposition to Jewish self-determination—in an age, no less, when progressives celebrate the identity politics of marginal, disempowered groups—that has led to the charge of anti-Semitism'. '[B]ecause Israel is the world's only Jewish state, and the only state whose very right to exist has been constantly challenged', Britain's former Chief Rabbi Jonathan Sacks argued, 'the campaign against it is recognisably the latest mutation of the world's oldest hate: antisemitism'.[36]

The subject of this chapter is not BDS but instead the broader issues raised by the allegation of antisemitic double standards against BDS. Is it hypocritical to oppose the Jewish State while supporting Palestinian self-determination? If so, is this double standard antisemitic? The present chapter addresses these questions through a comparative analysis on the terrain of international law. Comparative, because the 'double standards' charge implies that BDS

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endorsed two-States. Omar Barghouti, 'Relative Humanity: The Fundamental Obstacle to a One-State Solution in Historic Palestine', *electronicintifada.net* (6 January 2004); '"Boycotts Work": An Interview with Omar Barghouti', *electronicintifada.net* (31 May 2009); 'A Forum on Boycott, Divestment, Sanctions (BDS)', *The Nation* (3 May 2012).

36 Anthony Julius and Alan Dershowitz, 'This Boycott Is Not Just Wrong, It's Anti Semitic', *Sunday Times* (14 June 2007). Ben Cohen, *The Ideological Foundations of the Boycott Campaign Against Israel* (AJC, 2007), p. 2. Sacks, 'BDS'. Cf. Editorial, 'Is BDS Hate Speech?' *Forward* (14 February 2013). Sina Arnold, 'From Occupation to Occupy: Antisemitism and the Contemporary Left in the United States' in Alvin H. Rosenfeld ed., *Deciphering the New Antisemitism* (Indiana University Press, 2015), p. 378. Julie Nathan (Executive Council of Australian Jewry), 'The Antisemitism of BDS', *timesofisrael.com* (6 July 2016). Ari Ingel (Creative Community for Peace), 'Letter to the Editor', *The Nation* (13 August 2019). Michael Bueckert, *Boycotts and Backlash: Canadian Opposition to Boycott, Divestment, and Sanctions (BDS) Movements from South Africa to Israel*, PhD thesis (Carleton University, 2020), p. 244. CAMERA, 'Double Standard on Self-Determination', *israeliapartheidweek.com* (n.d.).

demands are anomalous, i.e., that they violate general norms. Assessing this contention requires that BDS demands be juxtaposed with international practice in analogous cases. Legal, because international law furnishes the standards to which BDS supporters and opponents alike appeal.[37] In light of this approach, the central research questions of this chapter may usefully be refined: *Is it hypocritical to reject the legal right of Jews, while affirming the legal right of Palestinians, to self-determination and statehood in Palestine?* If so, *is this double standard antisemitic?*

An affirmative answer to these questions presupposes that there *are* clear legal standards by which to adjudicate self-determination claims. Insofar as the international law of self-determination is comprehensive, precise, and unambiguous, then, to that extent, it would be plausible to characterise the law's erroneous application in a particular case as hypocritical and perhaps revealing of prejudice. Contrariwise, to the extent that the international law of self-determination leaves room for reasonable disagreement in its application to particular cases, then, divergent judgments need not betoken hypocrisy while apparent hypocrisy need not be ascribed to prejudice. Is the presumption valid that self-determination claims may be

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37 BDS asserts that Palestinians have a legal *right* to self-determination and anchors its demands in 'the precepts of international law' while critics charge that BDS hypocritically rejects the self-determination *right* of Jews. BDS, 'Call'. This chapter does not itself undertake a legal analysis—it is not, for instance, concerned with questions of jurisdiction or the binding status of invoked norms. Rather, it conceptually analyses the normative categories invoked by parties to international legal disputes. For other works in this area which pursue a similar approach, cf. Martti Koskenniemi, 'National Self-Determination Today: Problems of Legal Theory and Practice', *International and Comparative Law Quarterly* 43.2 (1994), pp. 241-69. Peter Malanczuk, *Akehurst's Modern Introduction to International Law*, 7th ed. (Routledge, 1997), pp. 332-33. James J. Summers, 'The Right of Self-Determination and Nationalism in International Law', *International Journal on Minority and Group Rights* 12 (2005), pp. 325-54. Fernando R. Tesón ed., *The Theory of Self-Determination* (Cambridge University Press, 2016). Alex de Waal and Sarah M.H. Nouwen, 'The Necessary Indeterminacy of Self-Determination: Politics, Law and Conflict in the Horn of Africa', *Nations and Nationalism* 27 (2021), pp. 41-60.

straightforwardly, reliably, and uncontroversially determined by applying general legal standards? Put otherwise, does the position imputed to BDS—recognising a right of Palestinians while rejecting a right of Jews to self-determination through statehood in Palestine—fall outwith the scope for good faith disagreement?

The present chapter investigates these questions in light of an illuminating precedent: South Africa's charge of double standards against critics of its apartheid policy in South Africa and South West Africa.[38] This comparison holds promise for several reasons. *First*, the Palestine and apartheid questions alike unfolded within the post-World War II 'integral political and legal paradigms of decolonization and self-determination'.[39] *Second*, the analogy is already salient in scholarly, political, and legal debate. BDS targets Israel's 'regime of settler-colonialism and apartheid' and is explicitly modelled on the international anti-apartheid movement.[40] Many observers have similarly concluded that Israel practices apartheid either in the Occupied Palestinian Territory or across Mandate Palestine as a whole;[41] others have

38 Hereafter: Namibia. The name change was recognised by UN General Assembly Resolution 2372 (XXII) of 12 June 1968.

39 Norman G. Finkelstein, *Gaza: An Inquest into Its Martyrdom* (University of California Press, 2018), p. 393. Namibia and Palestine were also the only Mandates to have 'survived the dissolution of the League of Nations without being converted into U.N. Trusteeships'. Ibid., p. 390.

40 BDS Movement, 'Call' (modelled). Palestinian BDS National Committee, 'Historic Palestinian Anti-Apartheid Call', *bdsmovement.net* (25 January 2023) ('regime').

41 See, e.g., Finkelstein, *Gaza*, pp. 394-95nn96-98. B'Tselem, 'A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This Is Apartheid', *btselem.org* (21 January 2021). Human Rights Watch (HRW), *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (27 April 2021). Amnesty International, *Israel's Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity* (1 February 2022). Shibley Telhami and Marc Lynch, 'Middle East Scholar Barometer No. 3 (March 14-28, 2022)', *criticalissues.umd.edu* (n.d.), Q13.

vigorously disputed this contention.[42] *Third*, the partition of Palestine was considered by multiple international tribunals as well as the UNGA while apartheid was litigated in extenso before the ICJ. Crucially, all parties to both disputes appealed to the same set of international legal standards pertaining to self-determination. The written records of these proceedings accordingly offer valuable raw material for this chapter's comparative analysis. *Fourth*, even as the voluminous *South West Africa* pleadings represent a rich source of insight on the right of peoples to self-determination, scholars have not analysed them for this purpose. *Fifth*, South Africa's double standards claim—a staple of its official rhetoric,[43] UN interventions,[44]

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42 Benjamin Pogrund, *Drawing Fire: Investigating the Accusations of Apartheid in Israel* (Rowman & Littlefield, 2014). Robbie Sabel, 'Israel Has Nothing in Common with Apartheid' in Jamie Stern-Weiner ed., *Moment of Truth: Tackling Israel-Palestine's Toughest Questions* (OR Books, 2018), pp. 377-82, 385-87. NGO Monitor, *Amnesty*. But cf. Benjamin Pogrund, 'I Have Long Rejected Claims That Israel Is an Apartheid State. Now I Believe That Is Where It Is Heading', *Guardian* (19 August 2023).

43 South Africa Prime Minister B.J. (John) Vorster, 'Press Conference, Vienna' (20 May 1977) in Vorster et al., *South Africa and the World: A Political Backgrounder* (South Africa Embassy London, 1977), p. 6. Vorster quoted in '[No Headline]', *Associated Press* (24 August 1977). Vorster quoted in *PBS NewsHour* (6 December 1977). Nicholas Ashford, 'Vorster May Get Mandate to Turn to Dictatorship', *Globe and Mail* (30 November 1977). South Africa President Pieter W. Botha, 'Discussion Between State President P W Botha and Dr Chester Crocker [U.S.] Assistant Secretary of State, on Monday 11 February, 1985 at 11h00', *disa.ukzn.ac.za* (11 February 1985), p. 11. Allister Sparks, 'Botha Underlines Intent to Maintain Segregation', *Washington Post* (3 October 1985). Botha quoted in 'Press Release: South Africa State President Appeals for Fairness and Tolerance' (12 August 1986), MSS. AAM 914, AAM, pp. 3-5. Cf. Vorster et al., *South Africa*, pp. 26-29. Paul Gordon Lauren, *Power and Prejudice: The Politics and Diplomacy of Racial Discrimination* (Westview, 1988), p. 277. Jamie Miller, *An African Volk: The Apartheid Regime and Its Search for Survival* (Oxford University Press, 2016), p. 292.

44 The theme was a particular favourite of South Africa's UN representative and then Foreign Minister Eric Louw. Hugo H.H. Bierman ed., *The Case for South Africa: As Put Forth in the Public Statements of Eric H. Louw, Foreign Minister of South Africa* (Macfadden Books, 1963), pp. 10-11, 23-24, 27, 33, 67-70, 72-75, 77-79, 88, 97-101, 103, 108-9, 126-27, 142, 144. Jack E. Spence, 'The Most Popular Corpse in History', *Optima* 34.1 (1986), p. 14. Jeremy Shearar, *Against the World: South Africa and Human Rights at the United Nations, 1945-1961* (University of South Africa, 2017), pp. 37, 39-40, 47, 167, 183, 185, 194n71, 196, 200-1, 203-4, 211.

and propaganda publications,[45] as well as the arguments of sympathetic observers abroad[46]—rested on the same grounds as those that underpinned the allegation of antisemitic double standards against BDS.[47] *Finally*, even as the cases made for Jewish and 'White' self-determination in Palestine and southern Africa, respectively, were in critical respects homologous; and notwithstanding that supporters of Jewish and 'White' self-determination accused their respective critics of double standards on identical grounds—still, the international reception of these self-determination claims radically diverged.

The apartheid precedent

South Africa's policy of comprehensive racial separation or 'apartheid' became the object of growing international criticism after World War II. From the late 1950s, South Africa responded by attempting to reframe apartheid in terms consistent with international norms

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24 Les de Villiers, *South Africa: A Skunk Among Nations* (International Books, 1975), pp. 10-11, 13, 18, 20, 22-24, 28-30, and passim. Alexander Steward, *The World, the West and Pretoria* (David McKay, 1977), pp. 138, 151, 172-73, 206-7. Vorster et al., *South Africa*, pp. 5-6, 15, 23, 26-27, 28, 29. Connie P. Mulder, *Plural Democracies: A Political Backgrounder* (South Africa Embassy London, 1977), pp. 2, 19. Francis de Guingand, *From Bass Hat to Bowler Hat* (Hamish Hamilton Books, 1979), p. 107. Cf. Mokhtar Taleb-Bendiab, *South African Propaganda*, SEM/2 (UN Centre Against Apartheid, June 1976), p. 1. James Sanders, *South Africa and the International Media 1972-1979: A Struggle for Representation* (Routledge, 2011 [2000]), pp. 56, 65-66. Ron Nixon, *Selling Apartheid: South Africa's Global Propaganda War* (Pluto Press, 2016 [2015]), p. 55. Simon Stevens, *Boycotts and Sanctions against South Africa: An International History, 1946-1970*, PhD thesis (Columbia University, 2016), p. 171. Bueckert, *Boycotts*, pp. 169-72.

46 Charles A.W. Manning, 'South Africa and the World: In Defense of Apartheid', *Foreign Affairs* (October 1964), p. 147. Douglas Brown, *Against the World: A Study of White South African Attitudes* (Collins, 1966), pp. 9, 212, 215. Stefan T. Possony, 'South Africa, the Hague Decision and the United Nations', *Reports on the State of South Africa* 31 (South Africa House, April 1967), p. 10.

47 South Africa accused its external critics of double standards on the additional grounds that they singled out apartheid for disproportionate censure. This argument will not be addressed here. Cf. note 33 above.

relating to group rights, cultural pluralism, and decolonisation.[48] Racial distinctions between 'Whites' and 'Blacks' were redescribed in terms of 'culture' and 'nationality'. Segregation was said to reflect not hierarchy but difference. And it was purported that 'Whites' sought not supremacy but self-determination. Central to this 'rebranding' exercise was the policy of 'territorial' apartheid or 'separate development', which envisaged 'the transformation of … "native" reserves into self-governing homelands and recast colonial labour controls in national terms' by reclassifying 'Black' citizens as guest workers.[49] South African Prime Minister Hendrik Verwoerd explained that, given 'new views in regard to human rights' and 'the power of the world and world opinion', 'Bantu' self-government 'in line with the objects of the world at large' was the necessary price 'buying for the white man his freedom and his right to retain domination in what is his country'.[50] During the 1960s and 1970s, ten such 'homelands' were established in South Africa,[51] of which four attained nominal independence;[52] three 'homelands' attained nominal self-government in South African-administered Namibia.[53]

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48 Miller, *Volk*. Roland Burke, '"A World Made Safe for Diversity": Apartheid and the Language of Human Rights, Progress, and Pluralism' in A. Dirk Moses et al. eds., *Decolonization, Self-Determination, and the Rise of Global Human Rights Politics* (Cambridge University Press, 2020).

49 Laura Evans, 'South Africa's Bantustans and the Dynamics of "Decolonisation": Reflections on Writing Histories of the Homelands', *South African Historical Journal* 64.1 (2012), p. 119 ('transformation'). Burke, 'Safe', pp. 317-18 ('rebranding').

50 Quoted in John Dugard, *Independent Homelands: Failure of a Fiction* (South Africa Institute of Race Relations, 1979), pp. 3-4. Cf. V.271-72, 337.

51 The 'homelands', with their dates of nominal self-governance: Transkei (1963), Bophuthatswana (1972), Ciskei (1972), Lebowa (1972), Venda (1973), Gazankulu (1973), Qwaqwa (1974), Kwazulu (1977), KwaNdebele (1981), and KaNgwane (1984).

52 Status of Transkei Act No 100 (1976). Status of Bophuthatswana Act No 89 (1977). Status of Venda Act No 107 (1979). Status of Ciskei Act No 110 (1981).

53 Ovamboland (1973). Kavangoland (1973). East Caprivi (1976).

South Africa's defence of 'racial … partition' to secure 'White' statehood in southern Africa in critical respects resembled the defence offered in and by international bodies of 'racial segregation' to secure Jewish statehood in Palestine.[54] Both rationales offered similar answers to the critical questions every self-determination claim must address. Upon *whom* does the right redound? South Africa identified 'Whites' as a 'nation' committed to retaining its distinct identity; supporters of Jewish statehood insisted the Jewish 'people' was neither able nor obliged to assimilate with others.[55] *Where* do they have title?[56] South Africa grounded 'White' claims in southern Africa on their allegedly legitimate arrival as well as longstanding presence (in South Africa) or economic investment (in Namibia). Supporters of a Jewish State in Palestine advanced similar arguments alongside a historical claim based on the existence of a Jewish polity there in antiquity. *How* should this right of self-determination be realised? Supporters of 'White' and Jewish statehood alike argued that universal suffrage across the territories concerned—one democratic State—would violate 'White' or Jewish

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54 *South West Africa Cases*, Second (Merits) Phase, Pleadings, ICJ Rep. 1966, IV.282 ('partition'—G.V. Doxey, a critic of apartheid). Herman L. Weisman, *The Future of Palestine: An Examination of the Partition Plan* (Lincoln, 1937), pp. 24, 41 ('segregation'). Weisman was an American Zionist opposed to partition in Palestine. Harry Schneiderman ed., *American Jewish Year Book 1938-1939*, vol. 40 (Jewish Publication Society of America, 1938), p. 107. References to the *South West Africa* pleadings will henceforth take the format [vol].[page], as in, IV.282.

55 It might be objected that 'Jewish' is not equivalent to 'White'—the former being a national, the latter a racial category: '"Jewish state" does not mean a racial state … "Jewish state" means Israel is a nation-state'. Alan Johnson, 'On Amnesty's Antisemitic "Apartheid" Report', *fathomjournal.org* (October 2022). The notion that a bright line separates 'race' from 'nation' will be scrutinised below. The relevant point for now is not that 'Jewish' and 'White' are sociologically equivalent but that each served the same function in the legal arguments for 'White' and Jewish self-determination respectively, i.e., each identified the 'self' entitled to 'determine'. Cf Chapter 1 note 39 above.

56 'Title'—like all other terms in this chapter, where not otherwise specified—is used in its colloquial, not its technical-legal, sense.

self-determination by subordinating these national minorities to, while leaving them at the mercy of, an alien majority. They advocated partition as an alternative that would enable each national group to govern itself without dominating others.

These logical parallels did not go wholly unnoticed by representatives and supporters of the Jewish State[57] or, indeed, by South African officials and publicists.[58] When the UN condemned Israel for discriminating against or denying self-determination to the Palestinians, South African advocates accordingly compared this 'double-standard treatment' to that suffered by South Africa.[59] Conversely, when US President Jimmy Carter endorsed a

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57 Henry Katsew, 'South African Jews and Politics: Another View', *Africa Report* (May 1970), pp. 22-23. Shlomit Morris, 'Raful: We Are Like the White Minority in South Africa', *Yedioth Aharonot* (25 December 1987) [Hebrew]. Benjamin Beit-Hallahmi, *The Israeli Connection: Whom Israel Arms and Why* (I.B. Tauris, 1988), p. 115. Akiva Eldar, 'Sharon's Bantustans Are Far from Copenhagen's Hope', *Ha'aretz* (13 May 2003). Gershom Gorenberg, 'Road Map to Grand Apartheid?' *The American Prospect* (16 June 2003). Meron Benvenisti, 'Bantustan Plan for an Apartheid Israel', *Guardian* (26 April 2004). Rotem Giladi, 'Negotiating Identity: Israel, Apartheid, and the United Nations, 1949-1952', *English Historical Review* CXXXII.559 (2017), p. 1452.

58 V.385. XI.651. Staff Report, 'Premier Lashes Israel', *Rand Daily Mail* (23 November 1961), front page. Manning, 'Defense', p. 136. C.L. Sulzberger, 'Strange Nonalliance', *New York Times* (30 April 1971). 'South Africa and Israel', *Journal of Palestine Studies* 3.1 (October 1973), p. 172. Government of South Africa, *Multi-national Development in South Africa: The Reality* (State Department of Information Pretoria, 1974), p. 83. Hermann Giliomee, 'The Making of the Apartheid Plan, 1929-1948', *Journal of Southern African Studies* 29.2 (2003), p. 386. Amy Kaplan, *Our American Israel: The Story of an Entangled Alliance* (Harvard University Press, 2018), pp. 115-16.

59 De Villiers, *Skunk*, p. 26n2. Cf. Vorster: South Africa-Israel Relations Better Than Ever', *jta.org* (12 April 1976). Steward, *World*, pp. 5-6, 145. Bueckert, *Boycotts*, p. 171. Some African nationalists likewise drew parallels with Israel. UNGA, A/C.3/SR.2133 (17 October 1975), p. 106. Earl Raab, 'American Blacks and Israel' in Robert S. Wistrich ed., *Anti-Zionism and Antisemitism in the Contemporary World* (Macmillan, 1990), p. 155. Adom Getachew, *Worldmaking After Empire: The Rise and Fall of Self-Determination* (Princeton University Press, 2019), pp. 96, 103-4.

'Palestinian homeland' yet opposed South African 'homelands', Afrikaner newspaper *Hooftstad* decried the 'double standard'. (*Fig. 1*)[60]



Figure 9.1 Jimmy Carter: "Away with the South African homelands," he says sternly; "Create a Palestinian homeland in Israel . . . ," he says enthusiastically. Below, a little bird asks, "Mommy, mommy, what's a double standard?" Also of note is the United States crest on the podium, on which the national motto has been altered to read: "Interchangeable values." Source: *Hooftstad*, 19 October 1977. Caxton Company.

Fig. 1.[61]

Yet even as the arguments for securing 'White' and Jewish self-determination through partition overlapped, they met with radically different international responses. The same overwhelming UN General Assembly majority which rejected the 'homelands' in southern

60 Cf. Sasha Polakow-Suransky, *The Unspoken Alliance: Israel's Secret Relationship with Apartheid South Africa* (Pantheon, 2010), p. 157.

61 Miller, *Volk*, p. 292.

Africa[62] endorsed partition in Palestine.[63] To what extent was this divergent treatment explicable on general principles? What was the distinctive legal 'wrong' in apartheid that did not inhere in the partition of Palestine or elsewhere? This chapter will address these questions with close reference to the attempt, which unfolded between 1960 and 1966, to put 'apartheid … on trial'.[64] The litigation which resulted saw South Africa mount a comprehensive defence of apartheid as conforming to international legal norms as well as a thorough-going critique of this defence.

II. Arguments

The issue of double standards figured centrally in the *South West Africa Cases*. On the one hand, Applicants alleged that apartheid constituted an unlawful 'double … standard' as it discriminated between racial groups.[65] On the other hand, Respondent argued that apartheid was consistent with 'modern conceptions of human rights, dignities and freedoms',[66] in particular the international legal principle of national self-determination, so that criticism of the policy was either misinformed or 'hypocritical'.[67] It was noted above that any self-

62 UNGA Resolution 3411 D (XXX) (28 November 1975). UNSC Resolution 402 (22 December 1976). UNSC Resolution 407 (25 May 1977). Crawford, *Creation*, pp. 341-42.

63 The 1947 UN Partition Plan was adopted by 33 to 13 with 10 abstentions. What became known as the 'two-State solution' was eventually embraced by an international consensus that encompassed virtually every UN member State. UNGA Resolution 181 (II) (29 November 1947). UNGA Resolution ES-10/13 (29 October 2003).

64 Ernest A. Gross, 'The South West Africa Cases: On the Threshold of Decision', *Columbia Journal of Transnational Law* 3.1 (1963), pp. 19-20.

65 IV.468. Cf. IV.594.

66 II.467. Cf. II.488. III.529. V.174, 186-87. VIII.276-77, 693, 695, 707.

67 IX.109. Cf. V.380-81.

determination claim must establish that *a people* has rights in *a territory* to be realised through a given *political framework*. The ensuing analysis will present and appraise Respondent's case, as well as the indictment of apartheid by Applicants, in respect of these elements—*who*, *where*, and *how*. It will then examine the arguments for and against Jewish self-determination through partition in Palestine in light of this appraisal.

It perhaps merits reiterating that the object of this exercise is neither to relitigate apartheid[68] nor to comprehensively assess the 'wealth' of 'complex' issues[69] raised in the ICJ pleadings. It is instead to interrogate the tacit premise underpinning the charge of antisemitic double standards against BDS, viz., that there are clear legal standards by whose unambiguous application particular self-determination claims may be adjudicated and in light of which the Jewish claim in Palestine is manifestly legitimate. The analysis will therefore consider the arguments over apartheid as well as partition in Palestine on their merits, notwithstanding that they were strategic interventions that offered a poor guide to the parties' real practices and motivations. It will also narrow in on those aspects of the ICJ pleadings which most closely parallel the dispute over partition in Palestine. This means focusing on apartheid as such rather than issues attending Namibia's status as a Mandate;[70] on 'territorial' rather than

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68 This author finds little intrinsic value in revisiting South Africa's defence as he concurs with the overwhelming contemporary consensus that apartheid was not just inhumane but fundamentally inhuman. The interest instead lies in what the contestation over apartheid reveals about the international legal standards pertaining to self-determination and the extent to which those standards may be regarded as dispositive in the case of Palestine.

69 Rosalyn Higgins, 'The International Court and South West Africa: The Implications of the Judgment' (1966) in Rosalyn Higgins, *Themes and Theories: Selected Essays, Speeches, and Writings in International Law* (Oxford University Press, 2009), p. 762.

70 Applicants hoped to secure a judgment that would delegitimise apartheid in South Africa as well as Namibia. VIII.113, 271. Both parties to the ICJ pleadings noted that Respondent's apartheid policies in

'petty' apartheid;[71] on Respondent's defensive case for apartheid as a means to secure 'White' self-determination rather than its paternalistic claim that apartheid benefited 'non-White' groups;[72] and on Applicants' contention that apartheid was unlawful in principle, not just on account of its contingent effects.[73]

Who?

One might accept the principle that national self-determination in general finds fulfilment in statehood, but oppose its application to Jews in Palestine, on the grounds that Jews do not constitute a self-determination unit or 'people'. Could this rationale be defended in terms of the legal standards pertaining to 'peoplehood' or, contrariwise, would it hypocritically breach

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Namibia substantively replicated those in South Africa. II.457, 472, 474, 476, 481, 487. III.173-76, 185, 238. IV.312, 329. V.242. XI.51-53, 332.

71 'Petty' apartheid designated the racial segregation of public facilities and events. Unless otherwise stated, subsequent references to 'apartheid' should be understood as referring to *territorial* apartheid, i.e., the 'homelands' policy. Whereas allegations of discrimination in, e.g., land and employment figured in debates over Mandate Palestine, that territory's political status was the overriding issue in dispute. In the *South West Africa Cases*, Respondent likewise identified partition as 'the very essence' of its apartheid policy, insisted that 'the primary question at issue is political', and justified its 'unpopular control measures' as well as discriminatory policies as being 'of a temporary, transitional nature' en route to this end goal. Applicants agreed that the 'homelands' policy was 'the ultimate and extreme form of … apartheid'. II.465 ('unpopular'—Verwoerd), 466 ('transitional'). IV.326 ('extreme'). V.253 ('primary'). VI.5 ('essence'). Cf. II.475. III.56, 232, 297, 529. IV.73, 272. V.244, 246, 253-54, 258, 307, 309-10, 420-21, 423. VI.4, 12-13, 300-1. VIII.697. (*Respondent*) IV.226-27, 318-19, 325, 446. VIII.113. (*Applicants*)

72 For this distinction cf. IV.329, 337. Ryan M. Irwin, *Gordian Knot: Apartheid and the Unmaking of the Liberal World Order* (Oxford University Press, 2012), p. 114. Shearar, *Against*, p. 73. Zionist representatives alleged that Jewish colonisation had benefited the Arab population but did not rest their political claim on this. Note 215 below.

73 Whereas Applicants at first argued that apartheid was unlawful on account of its consequences, they ultimately argued that it was unlawful irrespective of these.

those standards? This section presents the arguments advanced by Respondent to prove that 'Whites' were entitled to self-determination followed by Applicants' response. It then appraises these arguments and finds that neither party employed clear universal standards to establish or refute claims of 'White' peoplehood; both did concur, however, on the minimum criterion of voluntary affiliation (i.e., 'Whites' would not constitute a people if they did not believe themselves to constitute a people). The section then examines how the notion of Jewish peoplehood was contested before international tribunals and UN plenaries weighing partition in Palestine. It finds that the case for Jewish nationality was in certain respects anomalous but, like the 'White' nationality asserted by Respondent, could not be definitively refuted on the basis of general criteria. The section concludes that there is some basis for the allegation that selective denial of Jewish peoplehood is hypocritical. But such selectivity, even if hypocritical, need not be attributed to antisemitism. Put otherwise, if Africans uniformly denied that 'Whites' in South Africa constituted a 'people', but do affirm that Palestinians constitute a people, it isn't necessarily because they are anti-'White' per se.

Respondent

Respondent's defensive case for territorial apartheid was anchored in the bedrock premise that 'Whites' or 'Europeans'[74] residing in southern Africa[75] constituted a distinct 'group',

74 Respondent used these terms interchangeably. I.110. II.311, 347, 401. IX.515. This chapter employs Respondent's demographic terminology (always in quotation-marks) for the purpose of presenting and appraising its arguments. This does not indicate agreement with the value-judgments those categories express.

75 'Southern Africa' refers in this chapter to South Africa and Namibia.

'nation' or 'people'.[76] In an ethnographic survey Respondent presented Namibia's 'European or White population' as one of 'at least nine major population groups differing widely as to appearance, ethnic stock, territories of origin, culture, language and general level of development'.[77] A photographic supplement sought to render these demographic portraits vivid[78] and a historical account to show that the diverse affiliations were not superficial but had crystallised over centuries and been fortified by inter-communal conflict.[79] Whereas the 'indigenous'[80] groups were said to vary dramatically among themselves, '[t]he most significant difference' was purportedly that 'between the White group, on the one hand, and the various non-White groups, on the other', these allegedly separated by a 'vast' gulf in 'civilization and culture, levels of development, standards of living and ways of life, social and political institutions and habits of thought'.[81]

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76 II.311, 430 and III.106, 112 ('group'). Verwoerd, cit. V.252 ('nation'), 320 ('people').

77 Alongside the Eastern Caprivi, Okavango, Ovambo, Bushmen, Dama, Nama, Herero, and Rehoboth Basters. II.311. Cf. II.312-48, 409. III.238. This taxonomy purported to describe the demographic situation at the Mandate's inception in 1920. The 1964 report of South Africa's (Odendaal) Commission of Enquiry into South West Africa Affairs recommended the establishment of 10 'homelands' in Namibia alongside a 'Coloured' and a 'White' area. IV.341-42. Cf. notes 51 and 53 above.

78 ICJ, *Counter-Memorial filed by the Government of the Republic of South Africa* (ICJ, 1963), vol. IV, bk. IX, pp. 19-42.

79 II.312, 318, 332-33, 349, 407, 408. V.472-73. Cf. Robert J. Gordon, *South Africa's Dreams: Ethnologists and Apartheid in Namibia* (Berghahn Books, 2021), pp. 88, 96, 99, 103n27.

80 Also referred to by Respondent as 'Native' or 'aboriginal'. Respondent used 'Bantu' as an umbrella term denoting some, but not all, 'Native' groups, and 'non-White' to encompass, where relevant, 'Asiatics' and 'Coloureds' alongside 'Natives'. See, e.g., I.109. II.401. III.105, 112. IV.276-77. Whereas Respondent deployed these terms concurrently, their development actually corresponded to different phases of its segregationist/apartheid policy. Adam Ashforth, *The Politics of Official Discourse in Twentieth-Century South Africa* (Clarendon Press, 1990), pp. 153-55. Aletta J. Norval, *Deconstructing Apartheid Discourse* (Verso, 1996), pp. 31, 150. Cf. ibid., pp. 108, 144-49, 151, 170.

81 II.408 ('significant'), 422 ('vast'). Cf. II.409-10, 430, 434, 438, 454-55, 469, 475. V.200, 245. But see also II.417.

Such *objective* characteristics were said to anchor the 'White' group's *subjective* sense that it formed a discrete community as well as its determination to retain this distinct identity. Respondent at times suggested there was a necessary relationship between objective and subjective particularities, i.e., that certain kinds of group divergence were so 'fundamental' and 'profound' as to inevitably give rise to separate identities.[82] But in more nuanced formulations Respondent argued that racial, economic, and cultural differences acquired political salience *when*, through force of circumstance, they became markers around which 'group preferences, group self-protection[,] group assertiveness, group conceptions of differences in social and cultural levels, or sometimes simply group prejudices' cohered. Respondent alleged that the 'nature and intensity' of these 'in-group preferences and out-group aversions' was 'in large part … determined' by the degree and character of the objective differences between groups, together with 'the nature of the contact situation'. What differences, in which 'contact situation[s]', were decisive? Respondent identified certain patterns and 'probabilit[ies]' but its bottom-line position was, it was contextually contingent which distinctions gained political significance. 'The differences which give rise to group preferences and prejudices can be of many kinds', it allowed, while '[group] differences which appear to an outsider as unsubstantial or even insignificant, nevertheless result in complete unassimilability, whereas apparently major differences may, by the pressure of circumstances, not constitute an unsurmountable obstacle in the way of integration'.[83]

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82 IV.270 and 330 (Odendaal Commission, quoted by Applicants and Philip Mason, Director of the Institute of Race Relations). Cf. V.194.

83 III.528 ('prejudices'). V.198 ('outsider', 'probabilit[ies]'), 406 ('kinds'), 407 ('intensity', 'determined', 'contact'), 454 ('in-group'). Cf. V.280, 281, 403, 408. Respondent claimed apartheid did not rest on any assumption of 'innate differences' in intellectual or cultural capacity. It pointed instead to historical

The conclusive fact, '[w]hatever' its 'exact nature or cause',[84] was that 'Whites' in southern Africa formed a self-conscious affinity group 'proud' of its singular 'national identity'.[85] A state-appointed commission thus reported, in 1954, that South Africa's 'European' inhabitants evinced 'an unshakeable resolve to maintain their right of self-determination as a national and racial entity'. This acute group (or 'tribal') consciousness was indexed by overwhelming 'White' support for racial separation—and, among 'Whites' in Namibia, for union with South Africa—as well as 'resistance to everything leading in the direction of assimilation'. Indeed, such was the visceral hostility of 'Whites' to 'integration' that, so far from tolerating political 'equality', the 'vast majority' could not countenance labouring under 'Bantu' supervision in the workplace.[86]

Applicants

Applicants distanced themselves from Respondent's demographic categories[87] but accepted its 'lengthy history and ethnology of the Territory [i.e., Namibia] … as substantially accurate' and conceded as 'indisputable' that 'in the Territory there do exist groups differing in

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circumstances to explain why 'Whites' in South Africa came 'naturally' to 'differentiate on a basis of race or colour'. V.412 and 419 ('innate'), 478 ('differentiate').

84 III.528.

85 Verwoerd (January 1962), cit. II.468.

86 II.52, 56 (union). III.528 (workplace). IV.81 (union), 283 and 594 ('tribal'). V.269-70 ('integration'), 283 ('unshakeable', 'assimilation'—quoting the 1954 report of the (Tomlinson) Commission for the Socioeconomic Development of the Bantu Areas), 329 (separation), 334 ('equality'). Cf. III.55-56, 529. IV.356. V.270n1, 393. VI.222. X.156, 158, 451.

87 See, e.g., I.109-10. II.400-1. IV.579. VIII.115, 213.

language, custom and economy'.[88] Specifically, Applicants did not dispute that 'Whites' constituted a distinct population group and indirectly conceded that, at any rate in South Africa, 'they and their culture are threatened with extinction unless special measures are taken'.[89] Applicants also did not contest that 'Whites' considered themselves a distinct national group while authorities cited by Applicants lamented this reality.[90] However, Applicants appeared not to accept that, if a group considered itself a nation, others were obliged to defer to this self-conception. Thus, an authority cited by Applicants argued ad absurdum that, if Nigeria or Kenya were disaggregated according to tribal or linguistic origins, this would create dozens or even 'hundreds' of discrete entities, each still harbouring 'ethnic minorities' within them.[91]

Appraisal

Respondent's identification of a distinct 'White' nationhood was wholly unpersuasive insofar as this was derived straightforwardly from that group's objective traits. *First*, Respondent did not explicitly define its central categories while no consistent meaning could be inferred from

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88 IV.261. Respondent highlighted this concession at V.109, 182, 255. For Applicants' caveats, see IV.458-64.

89 Mason quoted at IV.329. Cf. IV.335, 337. Applicants presented Mason as a 'highly respected' authority and reproduced his 'balanced' analysis 'in support of' their case. IV.265 ('respected'), 326 ('balanced'), 327 ('support').

90 IV.282 (Doxey), 318 (Professor S. Herbert Frankel). V.334 (Professor D.V. Cowen). Cf. V.387 (Denmark Minister of Foreign Affairs).

91 IV.335. This point anticipates the discussion below regarding partition; the issues cannot be considered entirely in isolation as Respondent defined a 'people' inter alia as a group unwilling to amalgamate with others.

its use of them. 'Ethnicity', for example, was distinguished from 'race',[92] tribe',[93] 'language',[94] and 'culture'[95]—leaving unclear what it *did* denote.[96] *Second*, Respondent did not describe in any detail the 'White' population in terms of the ethnographic categories it applied to 'non-White' groups. Nor did it use those categories to set out systematically how 'Whites' and 'non-Whites' were supposed to differ.[97] *Third*, Respondent grounded its demographic taxonomy in a hodgepodge of characteristics—'language', 'custom', 'levels of development', 'standards of living', 'ways of life', 'social and political institutions', 'habits of thought', 'outlook', 'attitude', 'aspirations', 'ethnic[ity]', 'interests' , 'laws', 'tribal characteristics', 'type and level of civilization', 'race', 'culture', 'pattern of life', 'socio-cultural characteristic[s]', 'religion', 'moral standards', 'modes of dress and adornment', dwelling construction, histories of conflict or separation[98]—but failed to clarify which of these sufficed to render a group

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92 II.311. V.198, 434. Respondent defined 'race' as heritable 'physical differences'. V.408.

93 V.198, 280-81, 452-53.

94 II.311. III.175, 238. V.220.

95 II.311. IV.270, 330 (Odendaal Commission, quoted by Applicants and Mason).

96 Perhaps 'ethnicity' signified 'race' with 'culture' combined—but, then, how to parse Respondent's assertion that in Nigeria 'ethnic groups' differed 'by culture and religion' but not 'race or colour'? Or, perhaps 'ethnicity' was a synonym for 'nationality'—but, then, if a 'nation' was an unassimilable group, wasn't Respondent's claim that 'ethnic differences' rendered groups 'incapable of peaceful co-operation within a single state' tautologous, and didn't its caveat that 'there may be features tending towards co-operation which are stronger than the disruptive forces involved in ethnic differentiation' self-contradict? V.220 (Nigeria), 280 ('ethnic differences'). Cf. X.142-43. Norval, *Deconstructing*, pp. 145-51, 171.

97 For passing notice of alleged 'White' particularities, see II.409 (government). III.243 (private property). Cf. Gordon, *Dreams*, p. 63.

98 II.316 and 324 (dwelling), 407 ('language', 'custom'), 422 ('development', 'standards', 'ways', 'institutions', 'habits'), 455 ('outlook', 'attitude'). III.106 ('aspirations'), 175 ('ethnic[ity]'), 232 (separation), 240 ('interests'), 241 (conflict), 243 ('laws'). V.197 ('tribal'), 317 ('civilization'), 408 ('race', 'culture'), 434 ('socio-cultural', 'religion', 'moral', 'dress'). Cf. II.401, 409, 414. III.238, 240. IV.329. V.184, 196, 242, 292, 337, 339, 390, 409, 435, 461. VI.5, 301.

nationally distinct.[99] At times, Respondent suggested that differences of 'race or colour' were more 'fundamental' than diversities of culture, religion, and language.[100] But, then, why did it classify 'Bantu' groups—which per Respondent differed by culture not 'race'—as distinct peoples? Elsewhere, Respondent submitted that 'cultural' divergence was 'more important' than variation in 'physical appearance'.[101] But, then, why did it classify as a 'separate population group' the 'Coloured people', which group Respondent admitted was linguistically as well as culturally Afrikaans?[102] Furthermore, if South Africa had in 1946 argued for Namibia's incorporation inter alia on the grounds that its 'native peoples spring from the same ethnological stem as the great mass of the native peoples of the Union', then, how could these 'native peoples' now be reckoned so essentially heterogeneous as to preclude their democratic co-existence in one polity—what in the intervening 15 years had changed, besides Respondent's political objectives?[103]

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99 Cf. James Summers, *Peoples and International Law: How Nationalism and Self-Determination Shape a Contemporary Law of Nations* (Brill, 2007), p. 47.

100 V.217. Cf. V.281.

101 V.434. Cf. X.93, 96.

102 VI.183. Cf. IV.317, 333. South Africa's legal team privately asked Verwoerd why, if 'separate development' was founded on cultural not racial difference, 'Coloured' people—who 'speak our language and share our culture'—were not classified 'White'. 'There is no logical reason', Verwoerd conceded. T. Dunbar Moodie, 'Separate Development as a Failed Project of Social Engineering: The Flawed Logic of Hendrik Verwoerd', *South African Historical Journal* 69.2 (2017), p. 155.

103 I.237. Cf. I.258. Government of South Africa (SAG), 'Memorandum on the Administration of South West Africa and on the Wishes of Its Peoples as to the Future Status of the Mandated Territory', UNGA A/123 (19 October 1946), pp. 3-5, 25, 56. Cf. ibid., pp. 21, 22-24, 39. In practice, South African authorities acted inconsistently with their 'ethnic' rationale when administratively or politically convenient. Dugard, *Confronting*, p. 86.

Insofar as national identity was rooted in cultural difference, Respondent's failure to specify which cultural differences were decisive rendered its demarcations arbitrary in terms of its ethnographic analysis.[104] For example, Respondent depicted the Okavango and Ovambo as not just 'racially' but also culturally similar. Both were 'Bantu-speaking', 'matrilineal', believers in 'spirits', engaged in subsistence agriculture as well as pastoralism, and organised in extended family units with all land owned by the chief or headman. They were also reputed by 'tradition' to have common origins. At the same time, in Respondent's usage, neither 'Okavango' nor 'Ovambo' designated a homogeneous unit but instead referred to diverse groups distinguished inter alia on the grounds of culture. Thus, by Respondent's account, the Okavango 'Peoples' comprised 'five mutually independent tribes', each with 'its own defined tribal area', one of which spoke 'a separate … language', while the Ovambo numbered eight tribes, each 'a separate political entit[y] … with its own system of rule', 'often at war with each other', harbouring between them 'traditional enmities', and speaking 'separate languages'. But if the Ovambo and Okavango were each differentiated internally along much the same lines as those cited elsewhere to distinguish one people from another, then, on what basis did Respondent draw national boundaries *between* rather than *through* or *around* them?[105]

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104 Apartheid in South Africa was based on a system of racial classification that was not just arbitrary but also internally inconsistent. John Dugard, *Human Rights and the South African Legal Order* (Princeton University Press, 1978), pp. 59-62.

105 II.317-19; III.119-20. (*Okavango*) II.319-25. III.114-19. (*Ovambo*) Cf. II.317. V.220, 280.

Respondent's positing of a discrete 'White' or 'European' nation was arbitrary in the same sense.[106] The principal 'White' communities or 'races'[107] in South Africa differed by descent, traditional patterns of settlement well as occupation, political alignment, and language. There was also a brutal history of conflict between them.[108] Meanwhile, the German minority in Namibia spoke German, carried on a Germanic cultural life, and often perceived Boer immigration whether from South Africa or Angola as an alien intrusion.[109] If cultural cohesiveness was the criterion for peoplehood, then, it was unclear why Afrikaners, English-speakers, and Germans should be amalgamated in a single 'White' nation.[110] Even were one to accept, for argument's sake, that salient cultural differences distinguished 'White' from 'non-White' groups in southern Africa, it would still need clarifying what fundamental

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106 Marion Wallace (with John Kinahan), *A History of Namibia: From the Beginning to 1990* (Columbia University Press, 2011), pp. 262, 380n67. William Beinart, *Twentieth-Century South Africa*, new ed. (Oxford University Press, 2001), pp. 162-63. Miller, *Volk*, pp. 55-56. Note 329 below.

107 South Africa Prime Minister Jan Smuts (1919), cit. II.415.

108 Indeed, Afrikaner nationalism primarily developed in opposition to the British Empire while until the mid-1920s discussion of 'racialism' had primarily concerned relations between Afrikaans- and English-speaking 'Whites'. Cf. II.415. Hermann Giliomee, 'The Growth of Afrikaner Identity' in Heribert Adam and Hermann Giliomee eds., *Ethnic Power Immobilized: Can South Africa Change?* (Yale University Press, 1979), pp. 103-14. Saul Dubow, 'Afrikaner Nationalism, Apartheid, and the Conceptualization of "Race"', *Journal of African History* 33 (1992), p. 210. Norval, *Deconstructing*, pp. 30, 107-8. Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton University Press, 2009), p. 51. Note 329 below.

109 I. Goldblatt, *History of South West Africa from the Beginning of the Nineteenth Century* (Juta and Company, 1971), pp. 170-74, 219-21, 229-37, 243-45. Richard Dale, 'Reconfiguring White Ethnic Power in Colonial Africa: The German Community in Namibia, 1923-50', *Nationalism & Ethnic Politics* 7.2 (2001), p. 82. Daniel J. Walther, *Creating Germans Abroad: Cultural Politics and National Identity in Namibia* (Ohio University Press, 2002), pp. 128, 163, 182.

110 Turning from rationalisation to reality, one authority reports that South Africa incorporated Namibian Germans in pursuit of 'white unity as a counterpoise to the numerical strength of the … African majority'. Dale, 'Reconfiguring', p. 80.

cleavages marked out 'White' South Africans from 'Whites' elsewhere—didn't Respondent designate this group 'Europeans', and hadn't Verwoerd extolled South Africa as a 'bulwark for White civilization in the world'?[111]

But if Respondent's explanation for a distinct 'White' identity could not bear scrutiny, what remained unchallenged was its assertion that this identity existed. The soft, but also hard, kernel of Respondent's argument was, 'Whites' in southern Africa were a people apart because they *felt themselves* a people apart.[112] Applicants conceded this premise, while international norms furnished no grounds on which to dispute the conclusion. The UN Charter, even as it endorsed the 'self-determination of peoples', had notoriously failed to define what was meant by 'people'. Peoples 'tend to be seen as national groups, possessing certain national characteristics', a recent international law survey clarifies. 'What those national characteristics are is left open'.[113] If Respondent's categories differentiating 'Whites' from 'non-Whites' were arbitrary—if 'White' subjectivity was grounded in nothing firmer than prejudice organised around historically contingent markers—then so were those uniting 'Parisians' with 'Alsatians' while distinguishing 'French' from 'Germans', or uniting residents of Perth and Sydney while dividing 'Australians' from 'New Zealanders'. The bottom line then was, Applicants could not prove 'Whites' *weren't* a people for the same reason Respondent's ethnographic-cum-sociological analysis could not prove they *were*, viz., that international law offered no general criteria by which to adjudge any particular assertion of national identity valid. If Respondent alleged that the various 'non-White' groups in southern

111 Cit. V.252. Cf. II.415. V.338.

112 Cf. II.487. X.141.

113 UN Charter (24 October 1945), Chap. I, Art. 1, para. 2. Summers, *Peoples*, pp. 1-2 ('open'). Cf. Koskenniemi, 'Self-Determination', pp. 260-61. Summers, *Peoples*, pp. 5, 24-28, 39, 45, 48, 82, 136, 307.

Africa harboured distinct corporate identities which they desired to maintain,[114] and if Applicants were moved to dispute this,[115] the implication was that both parties agreed on national self-identification as a critical, or even necessary, condition for peoplehood. But if 'White' peoplehood was derived merely from 'White' subjectivity, then, didn't that mean every collective which felt itself distinct should be recognised as an inassimilable or 'national' unit? This was the upshot of Applicants' argument ad absurdum in relation to Kenya and Nigeria; if every group harbouring a discrete corporate identity was accorded self-determination rights, political chaos would ensue.

It is striking that Respondent did not reply to Applicants' objection by defending its position as a universal principle. On the contrary, it denied it was propounding any general 'norm or dogma' to the effect that self-conscious national groups should be treated as such by others. Respondent instead retreated to the realm of contextual discretion. Applicants' 'fallacy', Respondent argued, 'lies in elevating a practical consideration relating to political stability into a universally applicable rule of logic'. The reality was that '[w]hether or not different tribes can live together is a question for determination' not by any general standard but in light of the circumstances 'in each particular case'. In particular, the decision to classify a self-conscious group as a 'people' (which conferred national rights) or merely a 'minority' (which did not) critically depended on *political* considerations:

> One would like to provide self-determination even for small groups, if they are inassimilable with the majority in a particular State. In practice this would, however, in

114 II.407-9, 422, 468. V.264-65. X.81, 126.

115 IV.316n3, 320-26, 357. X.481-82.

> many cases be impossible. Although minority status would probably be most unpleasant for members of the group concerned, the existence of such groups would not necessarily affect the political stability or effectiveness of the State. The latter would depend not so much on the existence of a minority, but on its relative size, power, resources, allies, relationship with the majority, etc., or, in other words, its *political effectiveness*.[116]

Thus, if 'Whites' were a 'people' entitled to self-determination, this was not merely because this is how 'Whites' felt. It was also because 'Whites' were sufficiently organised, well-resourced, and determined to impress their self-conception upon others—or so, at any rate, Respondent hoped.

Palestine

Just as Respondent's defence of a 'White State' was premised on 'White' peoplehood, so the case for a Jewish State was grounded in the 'conviction that the Jews are a nation'.[117] Zionist representatives testifying before international bodies consistently and emphatically affirmed Jews' status as a 'collectivity' (Chaim Weizmann former president of the World Zionist Organisation), 'nation' (Rabbi J.L. Fishman, Jewish Agency), or 'people' (Moshe Shertok, Jewish Agency), with Zionism their 'national movement' (Chaim Herzog, Ambassador of

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116 V.280-81. Emphasis added.

117 Israel Cohen, *The Progress of Zionism* (Zionist Organisation, 1929), p. 9. Cf. Theodor Herzl, *The Jews' State* (1896) in Arthur Hertzberg ed., *The Zionist Idea: A Historical Analysis and Reader*, 2nd ed. (Jewish Publication Society, 1997), p. 209. Emphasis in original. Norman G. Finkelstein, *From the Jewish Question to the Jewish State*, PhD dissertation (Princeton University, 1987), pp. 46-47, 57-66.

Israel to the UN).[118] This contention received international validation when Britain's wartime endorsement of 'a National Home for the Jewish people'[119] was incorporated in the 1922 Mandate for Palestine.[120] It subsequently formed a critical premise of arguments for Jewish statehood through partition. Britain's 1937 Royal Commission on Palestine (the Peel Commission) was the first official body to recommend partition. Its comprehensive analysis of the Mandate diagnosed a conflict in Palestine 'between Arab and Jewish Nationalism', 'two nations warring in the bosom of a single state'.[121] In 1947, the majority report of the UN Special Committee on Palestine (UNSCOP) recommended that Palestine be divided into independent Arab and Jewish States. Its 'plan of partition with economic union' was endorsed in amended form by the General Assembly.[122] The UNSCOP majority found that '[t]he basic conflict in Palestine is a clash of … intense nationalisms' between two 'peoples'.[123] In the UN debate which ensued, supporters of partition took as their point of departure that

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118 UN Special Committee on Palestine (UNSCOP), *Report to the General Assembly* (1947), vol. III, pp. 26 (Fishman, 4 July 1947), 73 (Weizmann, 8 July 1947). UN Ad Hoc Committee on the Palestine Question (UNAHC), A/AC.14/SR.17 (17 October 1946), p. 109 (Shertok). UNGA, A/C.3/SR.2121 (3 October 1975), p. 53 (Herzog). Cf. Vladimir [Ze'ev] Jabotinsky, *Evidence Submitted to the Palestine Royal Commission*… (New Zionist Press, 1937), pp. 11-12, 21. UNSCOP, *Report*, vol. III, pp. 2, 123. UNAHC, A/AC.14/SR.17 (17 October 1947), p. 111 (Herzog). UNGA, A/C.1/PV.54 (12 May 1947), p. 251 (Shertok); A/C.3/SR.2132 (16 October 1975), p. 104 (Israel); A/PV.2400 (10 November 1975), p. 774 (Israel).

119 UK Government, 'Balfour Declaration' (2 November 1917) reproduced in Palestine Royal [Peel] Commission, *Report*, Cmd. 5479 (H.M. Stationery Office, July 1937), p. 22.

120 League of Nations, 'Mandate for Palestine' (24 July 1922) reproduced as UNGA, A/292 (18 April 1947). Cf. Dvorah Barzilay-Yegar, *A National Home for the Jewish People: The Concept in British Political Thinking and Policy Making, 1917-1923* (Vallentine Mitchell, 2017), chap. 5. Susan Pedersen, 'Writing the Balfour Declaration into the Mandate for Palestine', *The International History Review* (2022).

121 Peel Commission, *Report*, p. 2. Cf. ibid., pp. 3, 28, 61-62, 67, 85, 136, 371.

122 UNSCOP, *Report*, vol. I. UNGA Resolution 181 (II) (29 November 1947). The UNSCOP minority recommended a federal framework.

123 UNSCOP, *Report* (1947), vol. I, p. 47. Cf. ibid., pp. 30, 43, 52.

Palestine harboured 'two peoples' or 'races', 'the Arab and the Jewish'.[124] And when the General Assembly considered in 1975 whether 'Zionism' was a 'form of racism and racial discrimination',[125] supporters of the Jewish State protested that Zionism was 'the authentic rebellion of a people' (Costa Rica), 'a people's feeling for unity' (Haiti), 'a nationalist movement of the Jewish People' (Fiji).[126]

Just as Respondent deployed ethnographic analysis to justify its national demarcations, so proponents of partition in Palestine distinguished Jews from Arabs in Palestine by 'religion', 'language', 'cultural and social life', 'ways of thought and conduct' (Peel Commission); 'outlook, languages, religion', 'ways of living' and 'cultural milieux' (UNSCOP); 'tradition', 'social outlook', 'achievements', 'organization', and 'stage of development' (Chaim Weizmann).[127] Indeed, the Peel Commission quoted with approval a 1922 Arab delegation to Britain's Colonial Office: 'Nature does not allow the creation of a spirit of co-operation

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124 UNAHC, A/AC.14/SR.6 (6 October 1947), p. 32 ('races'—Uruguay); A/AC.14/SR.10 (10 October 1947), p. 55 ('two peoples'—Guatemala); A/AC.14/SR.30 (24 November 1947), p. 184 ('Jewish'—Soviet Union). Yugoslavia preferred federation to partition but still acknowledged both 'Jewish and Arab peoples in Palestine'. Even as India opposed partition and did not use the locutions 'nation' or 'people' in respect of Jews, it did note the presence of 'two distinct entities' in Palestine. UNAHC, A/AC.14/SR.11 (11 October 1947), p. 61 (India); A/AC.14/SR.13 (14 October 1947), p. 84 (Yugoslavia).

125 UNGA, A/RES/3379 (10 November 1975). Cf. chapter 1 above.

126 UNGA, A/C.3/SR.2132 (16 October 1975), p. 100 (Haiti); A/PV.2400 (10 November 1975), pp. 778 (Costa Rica), 787 (Fiji).

127 Peel Commission, *Report*, p. 371. UNSCOP, *Report*, vol. I, pp. 41, 43. UNAHC, A/AC.14/SR.18 (18 October 1947), p. 124 (Weizmann). Cf. Commission of Inquiry into the Jaffa Riots [Haycraft Commission], *Report*, Cmd. 1540 (H.M. Stationery Office, 1921), p. 19. Commission on the Palestine Disturbances of August 1929 [Shaw Commission], *Report*, Cmd. 3530 (H.M. Stationery Office, 1930), p. 153. Peel Commission, *Report*, pp. 41, 46, 69, 116-17, 120, 271, 306. UNSCOP, *Report*, vol. I, pp. 45, 47, 52; vol. III, p. 17. UNAHC, A/AC.14/SR.6 (6 October 1947), pp. 32 (Uruguay), 108 (Guatemala).

between two peoples so different'.[128] But whereas Applicants in the *South West Africa Cases* did not directly challenge the notion of 'White' nationality, some opponents of Jewish statehood in Palestine did deny Jewish peoplehood. They argued, *first*, that Jews did not cohere as a 'race'. '[M]ost of the blue-eyed and blond Jews that I happened to see in Jerusalem appeared to be as much Aryans as any German', India's representative to UNSCOP recalled. 'Can brown-skinned Jews in Abyssinia and yellow-skinned Jews in China be regarded to be of the same race?'[129] *Second*, that Jews did not cohere as a culture. 'A Jew in England is even today as English as Anglo-Saxons living there', 'a Jew in the United States is just an American', while 'many persons in the Arab culture happened to be Jews'.[130] *Third*, that 'the term "Jew" … designate[d] … a religion' only, and whereas '[w]e in the Arab world … have nothing but reverence for Judaism as a faith', '[r]eligion did not constitute a nationality in itself'. Faith 'was simply one of the many factors and bonds which shaped a nation', which was why 'no one claimed' that 'Moslems in various part of the world … constituted a single nation'.[131]

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128 Peel Commission, *Report*, p. 62. However, both the Peel Commission and UNSCOP identified not cultural diversity but conflicting *aspirations* as the primary barrier to integration in Palestine. See notes 286 and 335 below.

129 UNSCOP, *Report*, vol. II, p. 41. Cf. UNAHC, A/AC.14/SR.5 (3 October 1947), pp. 20-21 (Lebanon); A/AC.14/SR.11 (11 October 1947), p. 66 (Syria). UNGA, A/PV.125 (26 November 1947), p. 1339 (Syria); A/C.3/SR.2133 (17 October 1975), p. 108 (Syria).

130 UNSCOP, *Report*, vol. II, pp. 41-42 ('England', 'United States'—India). UNGA, A/C.3/SR.2121 (3 October 1975), p. 53 ('Arab'—Saudi Arabia). Cf. UNSCOP, *Report*, vol. IV, p. 34 (Iraq). UNGA, A/C.3/SR.2120 (3 October 1975), p. 50 (Syria). A/PV.2400 (10 November 1975), p. 791 (Kuwait).

131 UNAHC, A/AC.14/SR.6 (6 October 1947), p. 31 ('designate'—Lebanon). UNGA, A/C.3/SR.2120 (3 October 1975), p. 50 ('nationality', 'factors', 'Moslems'—Syria). A/PV.2400 (10 November 1975), p. 791 ('reverence'—Kuwait). Cf. Palestine Royal [Peel] Commission, *Minutes of Evidence Heard at Public Sessions*, Colonial No. 134 (H.M. Stationery Office, 1937), pp. 357-58 (Archbishop of Galilee). UNSCOP, *Report*, vol. II, pp. 34-35, 42 (India). UNGA, A/C.3/SR.2133 (17 October 1975), pp. 108-9 (Syria).

These efforts to substantiate or else diminish Jewish peoplehood were all arbitrary in that—like both parties to the *South West Africa Cases*—none could refer to any generally accepted standard of nationality. On the one hand, any collective attribute said to unite all Jews while distinguishing them from all others was clearly vulnerable to empirical challenge. Indeed, Zionist representatives themselves did not converge upon a definition of 'Jew' and this would endure as a point of controversy in Israeli politics.[132] Meanwhile, if Jewish and Arab communities in Palestine diverged in one or another respect, this still did not explain why such differences had or ought to have become politically salient.[133] On the other hand, the assertion by opponents of Jewish statehood that a national community could not be defined merely by shared religious conviction lacked legal or logical foundation. *Why* couldn't it? One could dispute that Jewish nationalism was rooted in or an inevitable consequence of Jews' 'racial', cultural, historical, or economic particularities. But the fact of Jewish national consciousness (if fact it was) remained. One could also point to the recency of Jewish

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132 On 'Israel's inability to fully decipher the very meaning of it being a Jewish state', see Yaacov Yadgar, *Sovereign Jews: Israel, Zionism, and Judaism* (SUNY Press, 2017), pp. 164-74 (quote at 164). Ruth Gavison, *The Law of Return at Sixty Years: History, Ideology, Justification* (The Metzilah Center, 2010), pp. 61-85.

133 Indeed, UNSCOP concluded that Jews and Arabs together formed 'the sole remaining representatives of the Semitic race … There are no fundamental incompatibilities between them'. UNSCOP, *Report*, vol. I, p. 52. Cf. Peel Commission, *Report*, p. 8. Wallach, 'Racial', pp. 12-13, 16.

nationalism as discounting its significance.[134] But this argument could be deployed with no less facility against the Palestinians.[135]

In absence of any universal criteria by which to qualify or disqualify as a 'nation', the subjective factor was difficult to dismiss. UNSCOP considered that 'the main lines of conflict in Palestine are between Jews and Arabs *as conscious national groups*'. In the UN debate which ensued, delegates were struck by Jews' 'devotion … to the idea of a Jewish national home' and understood 'the concept of nationality' at issue in subjective terms as a 'sensibility', 'striving', 'spirit', 'feeling', or 'consciousness'.[136] 'It had been contended', the representative of Czechoslovakia noted in 1947, 'that the Jews were not a distinct nation, but a distinct religious group, and that as such they had no right to separate nationhood'. But '[i]n his view',

134 UNSCOP, *Report*, vol. II, p. 42 (India). Zionist representatives at times depicted Jewish national consciousness as longstanding yet elsewhere presented it as an unfolding project: '[t]he Jews of Palestine *had become* a nation'. UNSCOP, *Report*, vol. III, p. 123 (longstanding—Chief Rabbi Herzog). UNAHC, A/AC.14/SR.17 (17 October 1947), p. 111 ('*become*'—Shertok, Jewish Agency). Emphasis added. Cf. Peel Commission, *Minutes of Evidence Heard at Public Sessions*, Colonial No. 134 (H.M. Stationery Office, 1937), p. 200. UNSCOP, *Report*, vol. III, p. 3. UNAHC, A/AC.14/SR.4 (2 October 1947), p. 17; A/AC.14/SR.17 (17 October 1947), p. 113.

135 UNSCOP, *Report*, vol. I, p. 34.

136 UNSCOP, *Report*, vol. III, p. 178 ('concept', 'sensibility'—Mr. Rand, Canada). UNAHC, A/AC.14/SR.2 (26 September 1947), pp. 4-5 ('striving'—Mr. Sandström, UNSCOP Chairman); A/AC.14/SR.13 (14 October 1947), p. 83 ('consciousness'—Yugoslavia). UNGA, A/PV.124 (26 November 1947), p. 1318 ('devotion'—Canada); A/PV.125 (26 November 1947), p. 1381 (Guatemala); A/C.3/SR.2132 (16 October 1975), p. 100 (Haiti). Cf. UNGA, A/PV.125 (16 November 1947), p. 1332 (Poland).

> a judgment on that question must be determined primarily by the will of the people involved, and there could be no doubt of the unshakable will of the Jewish people in Palestine to live as a nation with all the attributes and rights of nationhood.[137]

On the other hand, in respect of the standards invoked in the deliberations over Palestine as well as the *South West Africa* litigation, the claim of Jewish peoplehood was questionable in two critical respects. First, whereas it could not be doubted that Jews resident *in Palestine* were determined 'to live as a nation',[138] this was not obviously true of Jews living elsewhere. When the 1917 Balfour Declaration and 1922 Mandate referred to 'the Jewish people', only the tiniest minority of Jews saw themselves as a discrete national unit.[139] 'The Balfour Declaration … was built on air', Weizmann later recalled. 'I trembled lest the British Government would call me and ask: "Tell us, what is this Zionist Organisation? Where are they, your Zionists?"'[140] Even after World War II, only a minority of Jews elected to live in the Jewish State.[141]

Second, it was highly unusual—indeed singular—for persons born, resident, and possessing citizenship in States across the world to be designated a self-determination unit. One legal commentator rightly notes that the principle of self-determination was in 1922 even more

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137 UNAHC, A/AC.14/SR.15 (16 October 1947), pp. 104-5.

138 See below.

139 David Vital, *The Origins of Zionism* (Clarendon Press, 1975), pp. 154, 158, 184.

140 Quoted in W.T. Mallison, Jr., 'The Zionist-Israel Juridical Claims to Constitute "The Jewish People" Nationality Entity and to Confer Membership in It: Appraisal in Public International Law', *George Washington Law Review* 32.5 (1964), p. 1004.

141 Vital, *Origins*, pp. 371-72.

flexible than it subsequently became. But for all the permutations in application as well as implementation he mentions, there was no precedent and remains no sequel for designating as a self-determination unit persons sharing no territorial base. The category 'Palestinian people' straightforwardly refers to individuals born in Palestine or (after 1947) expelled from it.[142] But as Lord Balfour noted in 1919, the Jewish National Home 'present[s] a *unique* situation. We are dealing not with the wishes of an existing community but are consciously seeking to reconstitute a new community'.[143] Indeed, the anomalous character of Jewish peoplehood was recognised by Zionist representatives who constantly reiterated that Jewish 'identity … is *sui generis* and not like the identity of other nations'.[144]

What appears ultimately to have impressed supporters of Jewish statehood was not any abstract criterion of peoplehood but rather the concrete historical and political factors before them. Foremost among these was the evident force of Palestinian Jewish national consciousness as a political as well as institutional reality. *Institutionally*, the British Government already in 1922 reported that

> [t]he Jews have recreated in Palestine a community… [with] its own political organs; an elected assembly… elected councils… an organisation for the control of its schools…

142 Zionist representatives argued that Jews, too, had been expelled from Palestine. This contention is addressed below.

143 Yuval Shany, 'Legal Entitlements, Changing Circumstances and Intertemporality: A Comment on the Creation of Israel and the Status of Palestine', *Israel Law Review* 49.3 (2016), pp. 398-99. Emphasis added.

144 Peel Commission, *Minutes*, pp. 33 (Weizmann). Cf. notes 182 and 208-210 below. An article disputing the 'uniqueness' of Jewish peoplehood concedes that '[w]hat distinguished the Jewish case was that almost the entire people were in the Diaspora … at the moment when the Jewish national movement emerged'. But this was a far from trivial distinction. Alexander Yakobson, 'Jewish Peoplehood and the Jewish State, How Unique?—A Comparative Survey', *Israel Studies* 13.2 (2008), p. 16.

> Its business is conducted in Hebrew as a vernacular language, and a Hebrew Press serves its needs. It has its distinctive intellectual life and displays considerable economic activity… This community, then, with its town and country population, its political, religious and social organizations, its own language, its own customs, its own life*, has in fact 'national' characteristics.*[145]

The Peel Commission found that, if '[t]welve years ago the National Home was an experiment: to-day it is a "going concern"'. Jewish urban development was 'spectacular', its political life 'intensely democratic and highly organized', its educational achievements 'remarkable', its 'music[al]' and 'literary output' 'striking'. The community 'displays so much energy and enterprise and devotion to a common cause'—that of 'Jewish nationalism'—that '[i]t is impossible … to see the National Home and not to wish it well'.[146] Indeed,

> [t]he Jewish National Home had practically grown into something like *a State within a State*. The Jewish community in Palestine now numbers 400,000 persons, with its capital, Tel Aviv, the largest town in Palestine, its national flag, its anthem, its cultural system, its network of social services, and its economy divided into an agricultural and industrial branch.[147]

UNSCOP similarly reported that the Yishuv 'is … a highly organized and closely-knit society' whose 'cultural activities and other indications of a diversified community life … cannot fail

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145 1922 Churchill White Paper, cit. Peel Commission, *Report*, p. 305. Emphasis added.

146 Peel Commission, *Report*, pp. 116-17 (political, literary, musical), 199 ('nationalism'), 124 ('enterprise', 'impossible') 305 (development), 336 (educational). Cf. Peel Commission, *Minutes*, p. 200.

147 Peel Commission, *Report*, pp. 305-6. Emphasis added.

to impress' and 'which, partly on the basis of communal effort, has *created a national life*'.[148] Meanwhile, the 1946 Anglo-American Committee noted that the main Jewish military force, the Haganah, had 'grown into a military organization of over 60,000 persons, fairly well-armed and disciplined'.[149] Put in Respondent's terms, the Jewish minority in Palestine had become 'effective'.[150]

Politically, the Peel Commission observed that 'the great majority' of Jews in the Yishuv 'were almost passionately conscious of a national mission'. 'Nowhere' was the 'spirit of nationalism … more intense than among the Jews in Palestine'. The Commission documented to exhaustion the Jewish community's separate life as well as separatist aspirations. Jews had migrated to Palestine 'to free themselves from all the drawbacks of "minority life"', so that 'to fuse their life and culture with Arab life and culture … would have been the direct negation of Zionism'. At every level, Jews and Arabs in Palestine were collectively at odds. Nationalist schools 'widen[ed] the gulf between the races', officials placed 'racial loyalty … before loyalty to Government', voting in 'mixed' municipalities was 'virtually communal', Jews 'restricted the employment of Arab labour on lands held by them', and, just as South African 'Whites' refused to work under 'non-White' supervision,[151] so it was 'difficult for

148 UNSCOP, *Report*, vol. I, p. 20. Emphasis added.

149 UNSCOP, *Working Documentation*, vol. III, A/AC.13/3 (20 May 1947), p. 32.

150 See note 116 above. Ernest Renan famously defined a nation as 'a daily plebiscite'. In such conditions as prevailed in Palestine, this might be amended to, a *fighting* daily plebiscite. Renan (1882) in Geoff Eley and Ronald Grigor Suny eds., *Becoming National: A Reader* (Oxford University Press, 1996), p. 53. Cf. Chaim Weizmann (1 July 1931) in Barnet Litvinoff ed., *The Letters and Papers of Chaim Weizmann* (Transaction, 1983), series B, vol. I, p. 617. Note 156 below.

151 See note 86 above.

Arab to work under Jewish or Jew to work under Arab superiors'.[152] UNSCOP, too, reported that Jewish and Arab pursuit of 'separate' 'aspirations' had engendered 'an atmosphere of great and increasing political and racial tension and conflicting nationalisms'.[153]

A final consideration weighing in favour of recognising the Jewish claim to nationhood was the protracted history and genocidal climax of anti-Jewish persecution in Europe. If South African 'White' claims to peoplehood could not be rejected on the basis of general standards, and if they were evidently buttressed by a formidable institutional apparatus, still, that was no reason to *sympathise* with them. By contrast, international observers consistently referred to Jewish hardship as grounds for sympathy with the Jewish claim to self-determination. Already before the War, the Peel Commission felt moved to note that the Jewish National Home 'has meant so much for the relief of unmerited suffering' while, in debates on the UNSCOP proposals, delegate after delegate acknowledged the catastrophe which had befallen the Jews. In a poignant intervention, Soviet Ambassador Andrei Gromyko recalled that, 'as a result of the war which was unleashed by Hitlerite Germany, the Jews, *as a people*, have suffered more than any other':

> The fact that no western European State has been able to ensure the defence of the elementary rights of the Jewish people … explains the aspirations of the Jews to establish their own State. It would be unjust not to take this into consideration and to deny the right of the Jewish people to realize this aspiration.

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152 Peel Commission, *Report*, pp. 49 ('passionately', 'intense'), 61-62 ('negation'), 158 ('superiors'), 159-60 ('loyalty'), 240 ('labour'), 344 (schools), 351-52 ('communal'). Cf. Peel Commission, *Minutes*, p. 200; *Report*, pp. 119-20, 137-38, 196, 333, 371.

153 UNSCOP, *Report*, vol. I, pp. 11 ('conscious'), 41 ('tension').

The representative of Uruguay, having been left nonplussed by the 'strange' arguments over Jewish 'unity' and continuity, returned to this bottom line. 'Race or people, race or religion, the same common denominator … has characterized the fate of this section of humanity': 'persecution and suffering'.[154] He might have quoted Sartre: 'it is the anti-Semite who creates the Jew'.[155]

Conclusion

It has been contended that to reject a Jewish while recognising a Palestinian right to self-determination through statehood in Palestine is hypocritical to the point of being antisemitic. The charge of hypocrisy presumes that clear legal standards exist by which to adjudicate self-determination claims. This section tested that presumption with respect to the first building block of any self-determination claim, viz., the identification of a self-determination unit. By examining how this issue was argued in international fora vis-à-vis Jews and 'Whites', respectively, it found the premise underpinning the New Antisemitism 'double standards' charge to be largely unsustainable.

The legal category 'people' does not correspond to any objective referent. Beyond the minimal criterion that a claimed self-determination unit should conceive of itself as such, no

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154 Peel Commission, *Report*, p. 124. UNGA, A/PV.77 (14 May 1947), p. 131 ('aspiration'—Gromyko); A/PV.125 (26 November 1947), pp. 1348 (Uruguay), 1360 ('suffered'—Gromyko). Emphasis added.

155 Jean-Paul Sartre, *Anti-Semite and Jew: An Exploration of the Etiology of Hate* (Schocken Books, 1948 [1944]), p. 103. Cf. W.E.B. Du Bois, *Dusk of Dawn: An Essay Toward an Autobiography of a Race Concept* (Oxford University Press, 2007 [1940]), p. 59.

clear legal standards were invoked in the debates analysed by which to definitively establish or delegitimise a novel claim to peoplehood. It is true that the Jewish claim to peoplehood was anomalous in critical respects: it was questionable to what extent Jews in fact identified as a nation at the time of the Balfour Declaration and even in 1947 outside Palestine, while in no other case were persons lacking a common territorial base designated a self-determination unit. The claim of Jewish peoplehood was accordingly more extravagant, and disputable, than was the analogous claim vis-à-vis Palestinians. Still, there was no clear legal principle debarring Jewish peoplehood while the 1922 Mandate and 1947 Partition Plan had to some degree—however ambiguously or incongruously—validated the concept. One can therefore make a tenable if not conclusive argument that, considered as a matter of abstract principle, selective denial of Jewish peoplehood is hypocritical.

In reality, however, claims to peoplehood are rarely (if ever) considered in abstraction from the political consequences liable to attend such recognition. Groups claiming national rights either *win* or *fail to win* international recognition through a historical and political process.[156] A British Foreign and Commonwealth Office (FCO) legal analysis found that, since 'there is no internationally accepted definition of what constitutes a "people"',

> [i]n practice endorsement of self-determination for a particular ethnic group or the inhabitants of a particular geographical area … has taken place on a case by case basis. It is difficult to find any generally applicable criteria … Historical accident, political

156 Cf. Judge Ammoun, Separate Opinion, *Namibia*, p. 69; Separate Opinion, *Western Sahara*, Advisory Opinion, ICJ Reports 1975, p. 100.

> considerations and the amount of trouble created by a particular group have tended to be uppermost in deciding whether or not they are entitled to self-determination.[157]

Such 'political considerations' evidently lay behind Respondent's 'national' classifications as well as Applicants' rejection of these categories. Similarly, when supporters of Jewish statehood denied that Palestinians were a distinct people, this plausibly reflected not 'anti-Palestinian' animus but the rational apprehension that recognising Palestinian national rights might delimit or delegitimise Jewish claims.[158] By the same token, if Palestinians denied the reality of Jewish peoplehood, this was plausibly motivated by their fear that recognising Jewish nationality would legitimise a Jewish State—and thus their own 'displacement and dispossession'.[159] Even if the double standard charge is on this count accepted, therefore, it need not be attributed to antisemitism.

Where?

The previous section investigated whether Jewish peoplehood is established by general legal standards of sufficient clarity as to warrant, from a selective rejection of Jewish peoplehood, an inference of hypocrisy or prejudice. The present section examines the same allegation

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157 W.R. Tomkys (NENAD-FCO), 'The Palestinians', FCO 93/2055 (7 August 1979), TNA ('internationally'). S. Wiseman (UN Department) to W.R. Tomkys (NENAD-FCO), 'The Palestinians', FCO 93/2055 (2 August 1979), TNA ('practice'). Cf. Robert McCorquodale, 'Negotiating Sovereignty: The Practice of the United Kingdom in Regard to the Right of Self-Determination', *British Yearbook of International Law* 66.1 (1995), pp. 288-89.

158 Peel Commission, *Minutes*, p. 289. UNSCOP, *Report*, vol. I, p. 34; vol. III, pp. 22 (Ben Gurion), 82 (Weizmann). UNAHC, A/AC.14/SR.17 (17 October 1947), p. 109 (Shertok).

159 Morris, *Righteous*, p. 37.

with respect to the second plank of any self-determination claim—territorial title. One might conceivably recognise the right of Jews to self-determination in the abstract but deny that this right should be realised in Palestine. As the Palestinian historian and diplomat Fayez Sayegh allowed, 'you can have a Jewish State on Mars without doing injustice to anybody'.[160] Is such a position defensible on the basis of general legal standards? To examine this question, contending arguments in the *South West Africa Cases* as well as international deliberations on the Palestine question are presented and appraised. The section finds that, whereas the invoked criteria establishing territorial title were not free of ambiguity, still, it was eminently questionable whether the Jewish claim to Palestine could be upheld on their basis. If someone were to find Palestinian territorial claims in Palestine more compelling than the claim of Jewish title, this need not indicate hypocrisy, still less anti-Jewish prejudice.

Respondent

If 'Whites' alongside neighbouring groups were a 'people' entitled to national self-determination, it did not follow that they were entitled to exercise that right in southern Africa. In his London address of April 1960, Verwoerd had referred to 'countries of Africa which undoubtedly belong to the black man by settlement and inheritance, although they were taken over, administered and developed by different white nations'. But other cases, Respondent argued, involved 'complications' as they engaged 'competing or conflicting [territorial] claims of comparable moral potency on the part of various peoples'.[161] Respondent put 'White' claims in southern Africa in the latter camp. This question of

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160 Episode 136, *Firing Line with William F. Buckley Jr.: Where Do We Go from Here in the Middle East?* (15 May 1974). For discussion see chapter 1 above.

161 II.449-50. Cf. II.466-67.

territorial title cropped up in the ICJ pleadings but did not figure prominently in them; Applicants targeted 'White' privilege, not presence. Still, it merits reviewing how the issue was discussed as similar arguments formed a central bone of contention in the dispute over Jewish statehood in Palestine.

Respondent founded 'White' title in southern Africa on the grounds that 'Whites' became an established presence through acceptable means (*legitimate arrival*) and that they had developed an authentic connection to the land (*vested interest*). 'White' arrival in South Africa was said to be legitimate because non-injurious; Respondent purported that the territory had been 'virtually uninhabited' when 'Whites' first settled.[162] In respect of Namibia, Respondent claimed 'White' immigration after 1920 had been both permitted and necessary in fulfilment of Respondent's duty under the Mandate to promote economic development. Without the capital as well as commercial experience of 'White' agriculturalists, Respondent argued, Namibia could not have been made solvent while the transition by Namibia's inhabitants from subsistence to modern commercial practices would have been prolonged.[163]

Respondent adduced a trio of factors in support of its contention that 'Whites' had developed a stake or vested interest in South Africa and Namibia respectively such as conferred political title there. *Longstanding presence.* Respondent pointed to the continuous residence of 'Whites' in South Africa over successive generations—'some have been' there

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162 V.469. Cf. II.462. III.234, 465-77. IV.350n1. V.466, 470-72, 476-77. Hendrik Verwoerd, 'Speech to The South African Club, London' (17 March 1961). SADI, *Progress Through Separate Development: South Africa in Peaceful Transition*, 4th ed. (Information Service of South Africa, 1973), pp. 12, 14.

163 II.410-411, 414, 419-21, 459. III.233. IV.336. V.182-83. VI.256, 261.

'for over 300 years'.[164] This argument was not advanced in respect of Namibia, where most 'Whites' had resided for a comparably brief period only. *Particular attachment*. By the 1970s, it had become a staple of South African public messaging that 'Whites' had transitioned from a 'settler' to a 'native' population, i.e., they had collectively developed a particular attachment to South Africa, having severed those ties that had bound their predecessors to Europe. 'They are no longer settlers', one pamphlet proclaimed, but 'a nation with a … South African culture, institutions, standards and values and with a total commitment to South Africa'. '[W]hite South Africans … do not think of themselves as a branch of the European family marooned, or exiled, in Africa', it insisted, but 'see themselves as one of the nations of Africa'.[165] Respondent similarly alleged that, for 'the European group', Namibia had 'by birth or adoption' become 'their only home'.[166] *Contribution*. Verwoerd had argued that 'Whites' acquired collective rights in South Africa by virtue of their economic investment there. 'The white man… [has] an undoubted stake in, and right to, the land which he developed into a modern industrial state from denuded veld and empty valleys and isolated mountains'.[167] Similarly, Respondent claimed 'Whites' had 'developed [Namibia] from a desert-like wilderness to its present stage of economic advancement'. 'Must the past and present

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164 Patrick Wall MP, former British representative to the UN, in 1963. Quoted by Respondent at V.384. Emphasis removed. Cf. II.415.

165 SADI, *Progress*, pp. 19 ('total commitment'), 113 ('marooned'—South Africa Minister of Foreign Affairs Hilgard Muller). In the late 1960s and 1970s, under the Vorster premiership, South Africa marketed itself an 'African rather than European entity' as it claimed 'the mantle of anticolonialism'. This was part of an ultimately unsuccessful 'outward' policy that sought a rapprochement with the independent African States. Miller, *Volk*, pp. 8-9 ('African'), 17 ('mantle'), 70 ('outward'). Cf. ibid., pp. 42, 71-77, 81-82. Deon Geldenhuys, *The Diplomacy of Isolation: South African Foreign Policy Making* (South African Institute of International Affairs, 1984), pp. 34, 38-39, 72-73.

166 II.472.

167 Verwoerd, 'The South African Club'. Cf. V.390 (Professor Wilhelm Röpke, cited by Respondent).

contributions of the White population group in regard to economic and other development of the Territory', Respondent rhetorically queried, 'count for nothing … ?'[168]

Applicants

Even as authorities quoted by Applicants demurred from Respondent's pristine history of European colonisation,[169] they did not dispute that 'Whites' had legitimate claim to residence with citizenship in South Africa:

> In the Republic of South Africa, it is argued *with some cogency* that the White inhabitants have lived there for some centuries and have nowhere else to go… (Philip Mason, Director Institute of Race Relations, London)

> The theory that the Europeans were the first settlers… has been disputed by many historians and *is of little relevance* at the present time as *the right of the people of European origin to live in South Africa has not been disputed*. (UN Special Committee on the Policies of *Apartheid* of the Government of the Republic of South Africa—UNSCRA)[170]

In Namibia, on the other hand, the argument from extended presence was more tenuous. Of the 75,000 'Whites' then inhabiting the Territory, fewer than one-third had been present

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168 II.459 ('nothing'), 472 ('wilderness').

169 See, e.g., IV.459. Current scholarship finds that Respondent's exculpatory account was back then arguable and by now 'preposterous'. Hermann Giliomee, *The Last Afrikaner Leaders: A Supreme Test of Power* (University of Virginia Press, 2013), pp. 57-58. Cf. T.R.H. Davenport and Christopher Saunders, *South Africa: A Modern History*, 5th ed. (Macmillan Press, 2000), pp. 8-13, 16. Burke, 'Safe', p. 329.

170 IV.329 (Mason, 1964), 350 (UNSCRA, 1963). Emphases added. Cf. note 172 below.

in 1920, when Respondent assumed the Mandate, and of those 'few over twenty-one can have been born in the Territory'. Mason argued that 'the recency of much of the ['White'] immigration does considerably weaken (if it does not destroy) in relation to' Namibia 'what in the Republic is one of the strongest arguments for separate development', viz., the 'White' group's 'right of national survival'. If, in South Africa, 'Whites' could credibly claim they had 'nowhere else to go', most 'White' settlers in Namibia still retained intimate national ties with their neighbouring country of origin. Respondent's argument accordingly placed more weight in respect of Namibia than in respect of South Africa on 'White' economic contributions. Mason accepted that, by 1962, 'Whites' in Namibia resided on some 5,500 farms encompassing nearly 40 million hectares—'a considerable vested interest'. Respondent seized on this admission: 'Once the "vested interest" of the Europeans is conceded, as Mr. Mason does, Respondent accepts that they have a *right* in the ultimate analysis to take the vital decisions on their own future'. But insofar as 'vested interest' here denoted mere *economic* investment, Mason insisted this didn't follow. 'The implication that political control should belong exclusively to the group which has supplied capital, skill and management for development'—not, of course, the bulk of the labour—'clearly does not command general acceptance in the world today'.[171]

Appraisal

Respondent's case that 'Whites' had acquired a *vested interest* was more compelling in respect of South Africa than Namibia. Howsoever 'Whites' had first arrived, they constituted by the

171 Mason, cit. IV.329 ('weaken', 'survival', 'nowhere'), 332 ('acceptance'), 336-37 ('considerable'). V.309 ('*right*'). Emphasis in original.

1960s a 'settled … population' that counted South Africa alone its homeland.[172] Respondent's claim that Namibia had 'become' the 'only home' of its European inhabitants was much harder to credit. If Respondent referred to the literal 'home[s]' of individuals, this was doubtless true, but could hardly be adduced in support of a policy (apartheid) that saw hundreds of thousands 'forcibly removed' from their residences in South Africa and whose planned implementation in Namibia would avowedly entail 'many' people 'moving to a new home'.[173] But if Respondent meant 'home' in the political sense, as in *homeland*, then its claim was untrue: 'Whites' in Namibia held South African citizenship and wished to be incorporated therein.[174] Mason had found credible the suggestion that 'White inhabitants' of South Africa 'have nowhere else to go'. The same could not be said of 'Whites' in Namibia. Indeed, Respondent's implication to the contrary was difficult to square with its simultaneous warning that any transition to majority rule would precipitate a 'White' exodus.[175]

But whereas Applicants and Respondent tended to agree on the broad standards by which a territorial claim could be evaluated, the precise content as well application of those standards were not unambiguous. If Applicants took the trouble to contest Respondent's historical account, for example, this presumably reflected a shared sense that *legitimate arrival* did bear on a group's territorial standing. But when Applicants nevertheless dismissed these arguments as being 'of little relevance at … present', this tacitly acknowledged that, beyond a certain point, passage of time created a fait accompli that in effect drew a line under prior

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172 II.438 ('settled').

173 IV.288 ('removed'—Colin Legum, South African journalist). V.246 ('moving'). Cf. IV.227, 342-43, 346. V.258. Dugard, *Human Rights*, pp. 79, 320.

174 See notes 86 and 110 above.

175 II.472. V.245. VI.301. VIII.639.

disputes. The location of this 'certain point' was, however, nowhere stipulated in law; it came down to political or prudential judgment. Then again, even as Applicants and Respondent agreed that *longstanding presence* was a factor weighing in favour of a territorial claim, neither could point to any generally accepted threshold beyond which a community qualified as established. Mason considered that the 'recency' of 'White' residence in Namibia 'weakened' any territorial claim based on it. But 'weakened' to what degree, and when would this objection dissolve? Finally, it is of note that each of the above criteria could be combined or set off one against the other in an attempt to transform a clear verdict in respect of one variable into a weighing-up of potentially conflicting considerations. Thus, apparently recognising that it lacked a convincing claim in Namibia under the criterion of *longstanding presence*, Respondent attempted to compensate by combining the argument from economic *contribution* with those from *legitimate arrival*—

> …[m]ust the *past and present contributions* of the White population group in regard to economic and other development of the Territory, under circumstances where *their presence for such purposes was necessary and encouraged*, count for nothing…

—and *particular attachment*:

> …a country which has become *their only home*, by birth or adoption, which they and their forebears have *developed from a desert-like wilderness* to its present stage of economic advancement.[176]

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176 II.459 ('nothing'), 472 ('wilderness'). Emphases added.

The Court did not engage with these manoeuvres. But such multi-factorial reasoning, and the political flexibility it enabled, was certainly manifest in deliberations over Palestine.

Palestine

That Jews had title in Palestine was a critical premise of the Zionist case for Jewish statehood elaborated before international tribunals. Jewish Agency chairman David Ben Gurion, addressing UNSCOP '[o]n behalf of the Jewish people', presented as the Zionist objective '*re*constitut[ing] … our national home *in our ancient homeland*'. 'Of course, if we are invaders', Ben Gurion allowed, 'then we have no right'.[177] 'Invade[rs]', 'aliens', 'foreigners' was exactly how Arab representatives saw them.[178] But many observers found the claimed Jewish association with Palestine compelling. UNSCOP considered 'that both Arabs and Jews advance strong claims to rights and interests in Palestine'. The United States designated 'Arabs and Jews alike' as 'the peoples of Palestine'. The Soviet Union dismissed Arab complaints that partitioning Palestine 'would be an historic injustice', 'if only because … the

177 UNSCOP, *Report*, vol. III, pp. 10 ('ancient'), 53 ('invaders'). Emphases added.

178 UNSCOP, *Report*, vol. I, p. 42 ('strong'—UNSCOP). UNAHC, A/AC.14/SR.11 (11 October 1947), p. 66 ('aliens'—Syria); A/AC.14/SR.28 (22 November 1947) ('foreigners'—Iraq). UNGA, A/C.3/SR.2132 (16 October 1975), p. 105 ('invade[rs]'—Jordan). Cf., e.g., Shaw Commission, *Report*, pp. 99-100. Peel Commission, *Report*, pp. 54, 83, 147. UNAHC, A/AC.14/SR.3 (20 September 1947), p. 6 (Arab Higher Committee); A/AC.14/SR.5 (3 October 1947), p. 23 (Lebanon); A/AC/SR.6 (6 October 1947), pp. 27-28 (Iraq); A/AC.14/SR.15 (16 October 1947), p. 104 (Egypt); A/AC.14/SR.30 (25 November 1947), p. 186 (Egypt). UNGA, A/PV.71 (1 May 1947), p. 36 (Syria); A/PV.125 (27 November 1947), p. 1389 (Iraq); A/C.3/SR.2132 (16 October 1975), p. 106 (Saudi Arabia). See also UNGA, A/PV.125 (27 November 1947), p. 1384 (Cuba). Certain Zionist representatives granted that the Arab perception was reasonable. Ze'ev Jabotinsky, 'Parliament', *Ha'aretz* (21 May 1925) ('civilization') and 'Address before British Members of Parliament' (13 July 1937) ('quarrel') in Mordechai Sarig ed., *The Political and Social Philosophy of Ze'ev Jabotinsky—Selected Writings* (Vallentine Mitchell, 1999), pp. 102-3. Cf. UNSCOP, *Report*, vol. III, pp. 171, 186 (testimony of Professor Judah Magnes for Ihud, 14 July 1947).

Jewish people has been closely linked with Palestine for a considerable period in history'. And Norway supported partition 'in the first place because of the unchallengeable ties of the Jewish people to Palestine'.[179]

These judgments were remarkable inasmuch as the majority of Jews had never set foot in Palestine while most Yishuv members had arrived 'in the course of less than fifteen years'.[180] How, on the basis of general standards, could relative or absolute strangers be accorded a stake in Palestine comparable to that possessed by the territory's longstanding inhabitants? The case turned on two questions. When was a vested interest established? And when did a vested interest expire?

When did a vested interest expire?

International commissions recommending Jewish statehood expressly recognised that the 1922 Mandate's presumption of Jewish title in Palestine had stood athwart the general norm of self-determination:

> [T]he forcible conversion of Palestine into a Jewish State against the will of the Arabs … would *clearly violate the spirit and intention of the Mandate System*. It would mean that *national*

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179 UNAHC, A/AC.14/SR.16 (16 October 1947), pp. 107-8 (Norway). UNGA, A/PV.124 (26 November 1947), p. 1328 (United States); A/PV.125 (26 November 1947), p. 1360 (Soviet Union). Cf. UNAHC, A/AC.14/SR.13 (14 October 1947), p. 83 (Yugoslavia). UNGA, A/PV.77 (14 May 1947), p. 134 (Soviet Union); A/PV.125 (26 November 1947), p. 1335 (Poland). Arthur Asseraf, '"A New Israel": Colonial Comparisons and the Algerian Partition that Never Happened', *French Historical Studies* 41.1 (2018), p. 116.

180 UNAHC, A/AC.14/SR.31 (24 November 1947), p. 196 (Lebanon). Cf. UNAHC, A/AC.14/SR.30 (24 November 1947), p. 186.

> *self-determination had been withheld* when the Arabs were a majority in Palestine and only conceded when the Jews were a majority … The Balfour Declaration and the Mandate under which it was to be implemented involved the *denial of national independence* at the outset. (Peel Commission)[181]

> With regard to the principle of self-determination, although international recognition was extended to this principle at the end of the First World War and it was adhered to with regard to the other Arab territories, at the time of the creation of the "A" Mandates, *it was not applied to Palestine*, obviously because of the intention to make possible the creation of the Jewish National Home there. Actually, it may well be said that the Jewish National Home and the *sui generis* Mandate for Palestine *run counter to that principle*. (UNSCOP)[182]

This 'difference of treatment' was justified on two main grounds.[183] The first pointed to Palestine's sacred stature in Jewish, Christian, and Islamic tradition. The 1919 King-Crane Commission opposed Jewish statehood in Palestine but still allowed that, 'as the "Holy Land" for Jews and Christians and Moslems alike', Palestine's 'situation is unique, and might more readily justify unique treatment, if such treatment were justified anywhere'.[184] The Peel Commission noted that the Mandate System implied eventual self-determination for the 'existing population[s]' of former Turkish provinces, but insisted that 'Palestine was different':

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181 Peel Commission, *Report*, pp. 42 ('conversion'), 111 ('denial'). Emphases added.

182 UNSCOP, *Report*, vol. I, p. 35. Emphases added, except for 'sui generis'.

183 Peel Commission, *Report*, p. 38. Cf. UNSCOP, *Report*, vol. I, p. 35.

184 Inter-Allied [King-Crane] Commission on Mandates in Turkey, *Report*, p. 34.

> It was, indeed, *unique* … as *the Holy Land* of the three world-religions … The Arabs had lived in it for centuries, but they had long ceased to rule it, and in view of *its peculiar character* they could not now claim to possess it in the same way as they could claim possession of Syria or 'Iraq.

As 'justification for combining the general obligations of the Mandates System with the specific obligations' to the Jewish National Home—more accurately, for qualifying the former by the latter—the Peel Commission quoted Lord Milner's June 1923 address to Britain's House of Lords:

> Palestine can never be regarded as a country on the same footing as the other Arab countries. *You cannot ignore all history and tradition in the matter*. You cannot ignore the fact that this is the cradle of two of the great religions of the world. *It is a sacred land* to the Arabs, but it is also a sacred land to the Jew and the Christian; and the future of Palestine cannot possibly be left to be determined by the temporary impressions and feelings of the Arab majority in the country of the present day.[185]

That the 'future' of a territory should be 'determined by' the 'majority' of its 'present day' inhabitants was precisely what the norm of national self-determination stipulated.[186] But sacred 'history and tradition' were appealed to as warrant for the suspension of this standard. Finally, if the Anglo-American Committee of Inquiry concluded that Palestine should be neither a Jewish *nor an Arab* State, this was in part because

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185 Peel Commission, *Report*, pp. 40-41. Cf. Peel Commission, *Minutes*, p. 37.

186 Note 182 above.

> Palestine is a Holy Land, sacred to Christian, to Jew and to Moslem alike; and because it is a Holy Land, Palestine is not, and can never become, a land which any race or religion can justly claim as its very own. We further, in the same emphatic way, affirm that *the fact that it is the Holy Land, sets Palestine completely apart* from other lands, and dedicates it to the precepts and practices of the Brotherhood of Man, not those of narrow nationalism.[187]

The second and primary justification for suspending the principle of self-determination to recognise Jewish title in Palestine was historical. According to the Bible, Jews had resided en masse in Eretz Yisrael between c. 1100 BCE and 135 AD and exercised sovereignty there during the Iron (c. 1010 BCE-586 BCE) as well as Axial ages (c. 150 BCE-c. 63 BCE).[188] The re-establishment of a Jewish State in Palestine was thus said to realise the 'historic title' (Zionist leaders to 1919 Paris Peace Conference) and 'historic right' (Weizmann) of the Jewish people to its 'historic home' (Jewish Agency).[189] Like the notion of Jewish peoplehood, this historical claim received a measure of international validation in 1922 when the British Government rested Jewish rights in Palestine upon 'ancient historic connection' while the Mandate determined that 'recognition has … been given to the historical

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187 Anglo-American Committee of Inquiry, *Report to the United States Government and His Majesty's Government in the United Kingdom* (20 April 1946), chap. 1.

188 Peel Commission, *Report*, pp. 2-5.

189 Cohen, *Progress*, p. 10 (Zionist leaders). Weizmann, *Case*, p. 11. UNAHC, A/AC.14/SR.14 (2 October 1947), p. 18 (Jewish Agency). Cf. Peel Commission, *Minutes*, pp. 288-89 (Ben Gurion). UNSCOP, *Report*, vol. III, pp. 10 (Ben Gurion), 23-26 (Fishman), 74 (Weizmann), 88-89 (Ben Gurion), 104 (Yitzhak Ben-Zvi, President of the Va'ad Leumi), 105 (M. Eliash, Va'ad Leumi), 171 (Magnes). UNAHC, A/AC.14/SR.17 (17 October 1947), p. 112 (Jewish Agency). UNGA, A/C.3/SR.2129 (14 October 1975), p. 91 (Israel); A/C.3/SR.2132 (16 October 1975), p. 104 (Israel); A/PV.2400 (10 November 1975), pp. 773-74 (Israel).

connection of the Jewish people with Palestine'.[190] This 'historical connection' was also cited by international observers in support of Jewish territorial rights. The Peel Commission found that Palestine was 'unique' as 'the old historic homeland of the Jews' while, 'in the light of history', 'Jewish rule over Palestine could not be regarded as foreign rule in the same sense as Turkish' domination had been.[191] The Anglo-American Committee considered that 'Palestine cannot be regarded as either a purely Arab or a purely Jewish land' because '[t]he Jews have a historic connection with the country'.[192] UNSCOP's majority (partition) and minority (federal) plans both recognised that Jews as well as Arabs had 'their historic roots in Palestine'. '[I]n order correctly to apply' the 'basic principles' for 'dealing with peoples and their territories', Yugoslavia explained, it was 'essential' to

> ascertain whether only one people has its historical roots in this territory, or whether there is a second people which also has its historical roots in this territory and lives there. What we have here is the latter case.[193]

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190 Peel Commission, *Report*, pp. 33-34. Zionist representatives had pushed for the stronger formulation 'historic title'. Barzilay-Yegar, *National*, pp. 167-70, 173-74. Cf. King-Crane Commission, *Report*, p. 37. Note 201 below.

191 Peel Commission, *Report*, pp. 40-42.

192 Anglo-American Committee of Inquiry, *Report*, chap. 1.

193 UNSCOP, vol. I, p. 47 ('roots'). UNSCOP, *Report*, vol. III, p. 63. (Yugoslavia). Cf. UNSCOP, *Report*, vol. I, pp. 42, 52, 59, 64; vol. II, p. 63.

And in the course of UN deliberations, supporters of Jewish statehood affirmed that Jews as well as Arabs had 'deeply rooted historical ties' (Soviet Union) or, put otherwise, 'a long and proud history' (United States) with what 'once, at least, was a Jewish land' (Canada).[194]

Neither the religious nor the historical rationale for excepting Palestine from the general norm of self-determination was itself firmly grounded in general standards. Indeed, opponents of Jewish statehood recognised and rejected both arguments as special pleading. India's representative to UNSCOP insisted '[i]t would be entirely wrong for the people of Palestine to regard that country as being in some way peculiar politically' while a delegate from the Arab Higher Committee protested against 'the easy assumption that, because of the exceptional character of the problem, their basic rights could be sacrificed'.[195] If the religious or historical arguments for Jewish exceptionalism in Palestine were applied generally, 'the world would be overwhelmed with similar problems and chaos would prevail'.[196] The argument that the norm of self-determination was inapplicable to the Holy Land rested on the implication that '[r]eligious sentiment' conferred 'political rights'. But, then, couldn't 'the Moslems scattered throughout the world who turn their faces to the Caaba five times a day when they say their prayers claim … political rights in Mecca', and, couldn't 'all the Moslems

194 UNGA, A/PV.124 (26 November 1947), p. 1318 (Canada); A/PV.125 (26 November 1947), p. 1359 (Soviet Union); A/C.3/SR.2121 (3 October 1975), p. 54 (United States). Cf. UNGA, A/PV.77 (14 May 1947), p. 133 (Soviet Union); A/PV.125 (26 November 1947), p. 1381 (Guatemala).

195 UNSCOP, *Report*, vol. II, p. 45 (India). UNAHC, A/AC.14/SR.31 (24 November 1947), p. 200 (Arab Higher Committee).

196 UNAHC, A/AC.14/SR.14 (15 October 1947), p. 91 (Yemen).

and all the Christians … come and settle down in Palestine'?[197] In fact, most Zionist leaders were avowedly secular and did not rest their territorial claim upon this religious foundation. Nor, in the end, did UNSCOP endorse Jewish territorial rights on this basis.[198]

This left the historical argument. But if Jews were considered to have retained a vested interest in Palestine nearly two millennia after their expulsion from it, 'could this be accepted as a universal principle?' Should it be granted, for example, that 'the Arabs' had claim to 'Spain or parts of France, Turkey, Russia or Afghanistan'?[199] In response to this argument ad absurdum, supporters of Jewish territorial claims emphasised not merely that Jews had been dispersed from Palestine but that they had 'never acquiesced' in this dispersal. Jews 'had never forgotten Palestine', never assimilated elsewhere, 'never abandoned' or 'ceased' their 'yearning' and 'efforts to return'. It was this 'tenacious historical memory', this passionate

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197 UNSCOP, *Report*, vol. II, p. 40 ('Mecca'—Sir Abdur Rahman, India); vol. III, p. 88 ('Palestine'—Rahman). Cf. UNSCOP, *Report*, vol. II, pp. 41, 45. UNAHC, A/AC.14/SR.3 (29 September 1947), pp. 6-7 (Arab Higher Committee); A/AC.14/SR.6 (6 October 1947), p. 29 (Iraq).

198 UNSCOP did assert that 'Palestine, as the Holy Land, occupies a unique position in the world' such that any 'solution of the Palestine question should take into consideration' the 'religious interests' of 'Christian, Jew and Moslem alike'. But it construed these 'religious interests' narrowly in terms of access to and safeguarding religious sites. UNSCOP, *Report*, vol. I, p. 44. Cf. Quigley, *Legality*, p. 176.

199 UNAHC, A/AC.14/SR.3 (29 September 1947), p. 6 ('Arabs'—Arab Higher Committee). UNGA, A/PV.125 (26 November 1947), p. 1387 ('universal'—Iraq). Cf. Peel Commission, *Minutes*, p. 314 (Arab Higher Committee). UNSCOP, *Report*, vol. II, pp. 40-41 (Rahman). UNAHC, A/AC.14/SR.5 (3 October 1947), pp. 20, 24 (Lebanon); A/AC.14/SR.6 (6 October 1947), p. 29 (Iraq); A/AC.14/SR.13 (14 October 1947), p. 78 (Haiti). UNGA, A/C.1/PV.52 (9 May 1947), p. 197 (Arab Higher Committee); A/C.1/PV.54 (12 May 1947), p. 261 (Iraq); A/PV.125 (26 November 1947), p. 1384 (Cuba); A/PV.2400 (10 November 1975), p. 777 (Dahomey). In addition to arguing that passage of time had nullified Jews' historical claim, some Arab delegations claimed that European Jews were not descended from the Israelites of antiquity but were instead 'purely of Russian Khazar origin'. This claim was dismissed by Rabbi Abba Silver of the Jewish Agency as 'a story out of the *Arabian Nights*'. UNAHC, A/AC.14/SR.4 (2 October 1947), p. 12 (Silver). UNGA, A/PV.125 (26 November 1947), p. 1339 ('Khazar'—Syria).

devotion to Eretz Yisrael from afar that had—it was said—kept the Jewish people's historical title alive.[200]

There was, it should be acknowledged, a penumbra of normative ambiguity within which this argument could find shelter. British historian Arnold Toynbee famously dismissed the historical case for Jewish statehood in Palestine on the 'almost universally accepted principle' of 'the statute of limitations'. This entailed that 'ancient rights, even if valid originally, lose their validity in course of time if they have fallen into desuetude and have consequently been superseded by other rights that have been validated by a long period of usage'.[201] But when did this statute of limitations take effect? No general standard specified precisely when an exiled people's vested interest in its homeland expired.[202] Still, even allowing for this element of uncertainty, the Jewish historical claim was tenuous. *First*, if it was unclear when exactly the 'statute of limitations' took effect, that threshold surely fell short of 2,000 years. To

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200 Court of Inquiry [Palin Commission], *Report* (1920), p. 8. ('tenacious'). Peel Commission, *Report*, p. 11 ('forgotten'). UNSCOP, *Report*, vol. III, p. 10 ('acquiesced'—Ben Gurion). UNAHC, A/AC.14/SR.14 (2 October 1947), p. 13 ('abandoned', 'return'—Jewish Agency); A/AC.14/SR.17 (17 October 1949), p. 111 ('ceased'—Jewish Agency). UNGA, A/PV.2400 (10 November 1975), p. 774 ('yearning'—Israel). Cf. Peel Commission, *Minutes*, p. 33. Peel Commission, *Report*, pp. 12, 304. Weizmann, *Case*, pp. 8, 10-11. UNGA, A/C.1/PV.54 (12 May 1947), p. 253 (Shertok).

201 Arnold J. Toynbee, 'Jewish Rights in Palestine', *The Jewish Quarterly Review* 52.1 (July 1961), p. 8. Cf. Philip Marshall Brown, 'Jewish Nationalism', *The American Journal of International Law* 13.4 (1919), p. 757. UNSCOP, *Report*, vol. II, p. 40 (Rahman).

202 This issue arose after 1948 in respect of Palestinians expelled in the Nakba. In that context, human rights organisations affirmed the 'right of return' for expelled persons, their immediate families, and those of their descendants who have maintained 'close and enduring connections' (Amnesty International) or 'appropriate links' (HRW) with the land. What constitutes 'close', 'enduring', and 'appropriate' is, however, open to interpretation. Amnesty International, 'The Right of Return: The Case of the Palestinians', MDE 15/013/2001 (March 2001), p. 2 ('enduring'—quoting the Human Rights Committee). HRW, 'Human Rights Watch Policy on the Right to Return', *hrw.org* (23 April 2002) ('appropriate').

maintain otherwise would require retrospectively applying a modern international law framework to events that by epochs predated its development. *Second*, whereas Zion figured centrally in Jewish religious tradition, the claim that Jews had collectively strained to 'return' there was nationalist mythology, and, 'while the Jews … never ceased to identify themselves … as members of a special people', 'at no stage' between the return from Babylon and the late-nineteenth century had this implied 'a serious desire for a Jewish political' or 'territorial state'.[203] Indeed, Zionism 'had been a minority movement among Jews' prior to World War II, while even after the Nazi holocaust had appeared to vindicate the Zionist contention that the non-Jewish world would never accept Jews, most Jews in the displaced persons camps preferred to settle in countries other than Israel.[204] *Third*, the Zionist 'historical' argument arguably *negated* history as it denied or hollowed out the rights accumulated by Palestine's inhabitants as well as Jews elsewhere over fully one and one-half millennia.[205]

Zionist representatives themselves seemed to recognise the shakiness of their historical case. For one thing, they tended to switch between rationales when challenged on each of them. When it was put to him that Christians and Muslims as well as Jews could assert *religious* interests in Palestine, Ben Gurion countered with *history*: '[t]here is a difference … [T]he Jews

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203 Boas Evron, *Jewish State or Israeli Nation?* (Indiana University Press, 1995 [1988]), pp. 54-55 (mythology). Eric J. Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality*, 2nd ed. (Cambridge University Press, 1992), p. 47 ('no stage').

204 Tom Segev, *One Palestine, Complete: Jews and Arabs under the British Mandate* (Abacus, 2001), p. 491 and Yosef Grodzynski, *In the Shadow of the Holocaust: The Struggle between Jews and Zionists in the Aftermath of World War II* (Common Courage Press, 2004), pp. 225-26 (camps). Nathan Glazer, 'Anti-Zionism—A Global Phenomenon' in Michael Curtis ed., *Antisemitism in the Contemporary World* (Westview, 1986), p. 156 ('minority'). Anita Shapira, 'Israeli Perceptions of Anti-Semitism and Anti-Zionism', *Journal of Israeli History* 25.1 (2006), p. 247 ('minority').

205 Cf. UNGA, A/PV.125 (26 November 1947), p. 1339 (Syria).

are coming to Palestine because … it has been our homeland for 3,500 years'. When it was objected that the *historical* claim had surely lapsed, Shertok countered that, whereas 'it was true that historical associations alone could not decide a burning political issue', Jews 'were striving to regain their cherished land'. But, on the one hand, when stripped of the inaccurate contention that Jews had 'throughout history' endeavoured to found a State in Palestine, this 'cherish[ing]' had for centuries been *religious* not political. And, on the other hand, when it was objected that such 'striving' did not establish political title, Abba Silver of the Jewish Agency conceded that '[m]ere desire did not create a right' but argued that Jews' desire had caused the 'right' to be 'created by the Balfour Declaration and the Mandate'. But the Mandate had founded this 'right' upon… Jewish *history*. In other words, it appeared that no single argument withstood scrutiny in light of general categories; at most, these 'organic facts of history' amounted to a case by accretion and in the round.[206]

If Zionist representatives recognised that Jews lacked convincing title on the basis of general categories, this would also explain why they consistently emphasised that the Jewish people's historical association with Palestine was 'unique', 'sui generis', and without 'precedent' or 'parallel', such that it could not be apprehended by the application of wider norms.[207] For Chief Rabbi Yitzhak HaLevi Herzog,

> [t]he survival of the Jewish people represents a case which is *sui generis*. There is no parallel to a people preserving its law and institutions, its language and traditions, its attachment

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206 UNAHC, A/AC.14/SR.4 (2 October 1947) (Silver), p. 15; A/AC.14/SR.17 (17 October 1947) (Shertok, 'organic'), p. 111. UNSCOP, *Report*, vol. III, p. 88 (Ben Gurion, 'throughout').

207 UNSCOP, *Report*, vol. III, pp. 10 ('unique'—Ben Gurion), 52 ('parallel'—Ben Gurion). Notes 208 and 209 below.

> to the land of its origin, and the hope of its eventual return and restoration during more than eighteen centuries of dispersal all over the globe.[208]

Shertok accordingly dismissed the analogy with Arab ties to Spain:

> [T]he Arabs were settled in their own countries and had no tie with Spain, whereas the Jews were striving to regain their cherished land. The so-called analogy served merely to stress the *uniqueness* of the Jewish attachment to Palestine.[209]

And when confronted by UNSCOP's chairman with the fact of 'Arab possession of the land for a considerable period of time', which possession would normally confer 'the right to self-government', Ben Gurion underlined the singularity of the case:

> [Y]ou cannot judge this country which has a special history and special conditions which cannot be found anywhere else, and *the relations of the Jews of this country cannot be judged by a rule applied to other countries* not having the same unique conditions. Really, *it is a unique case*…. You cannot compare it with Spain and the Arabs. Can you find a single Arab in the world who cares to go back to Spain? Can you find a single Arab in the world who dreams of Spain? … [H]ere you have *a unique case without any parallel in history*. Here is a people who for many centuries were dreaming of this country.

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208 UNSCOP, *Report*, vol. III, pp. 123. Emphasis in original. Cf. Peel Commission, *Minutes*, pp. 33, 289.

209 UNAHC, A/AC.14/SR.17 (17 October 1947), pp. 111-12 (Shertok). Emphasis added. Cf. UNGA, A/C.1/PV.54 (12 May 1947), p. 252 (Shertok). UNSCOP, *Report*, vol. III, p. 165 (Magnes).

Pressed whether 'a thousand years' possession' by Palestinians was not 'enough to oust the [Jewish] claim', Ben Gurion took refuge in contingency:

> Sir, *I do not lay down general rules*. I say on *this* occasion, under *this* historic and geographic position, no it is not.[210]

When was a vested interest established?

The 1922 Mandate's recognition of Jewish title in Palestine was a departure from the principle of self-determination that could not be convincingly justified based on other general norms. But by 1947, when the UN deliberated over the future of Palestine, a Jewish community of more than 600,000 members had been established on the ground.[211] Did this population have a stake in the territory comparable to that of the indigenous inhabitants? In support of this claim, several rationales familiar from our analysis of the *South West Africa Cases* were advanced. First, the Jewish National Home had developed into a sizeable proposition with a vibrant political, cultural, and economic life; it had, as it were, *taken root*. Second, Jews as well as Arabs made 'vital *contributions* to the economic and cultural life of the country'.[212] Third, Palestinian Jews had developed a *particular attachment* to what they passionately regarded as their country. Zionist representatives underscored that 'the Jews who lived in Palestine felt themselves to be as deep-rooted in the soil of Palestine as their

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210 UNSCOP, *Report*, vol. III, p. 52. Emphases added.

211 UNSCOP, *Report*, vol. III, p. 2. Cf. UNGA, A/C.1/PV.54 (12 May 1947), p. 253 (Shertok).

212 UNSCOP, *Report*, vol. I, p. 47. Cf. ibid., p. 59; vol. II, p. 63.

Arab neighbours'[213] while international observers were struck by this 'deep and indomitable national spirit'.[214] In respect of these criteria, the case for Jewish rights in Palestine was broadly similar to Respondent's brief for 'White' title in southern Africa. Both could point to economic as well as cultural achievements; both were open to the objection that such contributions were not generally considered to confer political rights.[215] 'Whites' had a stronger claim on the basis of *longstanding presence* in South Africa; the Yishuv's case was in this respect comparable to that of 'Whites' in Namibia, the 'recency' of whose arrival was considered by Mason to have 'weakened' Respondent's defence.[216] On the other hand, the claim that Jews in Palestine had nowhere else to go—that they were committed to the Yishuv having severed connections elsewhere—was more compelling than Respondent's submission that 'Whites' saw Namibia as their 'only home'. Namibia's 'White' inhabitants were citizens of South Africa and could expect fair treatment upon moving there. For European Jews, 'the countries of their birth', background, or citizenship had become 'a graveyard'.[217] As in southern Africa, so in Palestine, the weighing of these considerations

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213 UNAHC, A/AC.14/SR.31 (24 November 1947), p. 197. Cf. UNAHC, A/AC.14/SR.17 (17 October 1947), p. 115.

214 UNGA, A/PV.125 (26 November 1947), p. 1381 (Guatemala).

215 UNSCOP, *Report*, vol. II, p. 41. UNGA, A/C.1/PV.52 (9 May 1947), p. 196 (Arab Higher Committee). UNAHC, A/AC.14/SR.6 (6 October 1947), p. 29 (Iraq); A/AC.14/SR.7 (7 October 1947), pp. 38 (Pakistan) and 74 (Egypt); A/AC.14/SR.18 (18 October 1947), p. 121-22 (Arab Higher Committee). The Jewish Agency insisted in response to such objections that 'Jews had never based their claim on benefits conferred'. But this was disingenuous; it proceeded to stake a claim to the Negev on the basis that only by its incorporation into the Jewish State could the desert be irrigated. UNAHC, A/AC.14/SR.17 (17 October 1947), pp. 112-13. Cf. UNGA, A/PV.125 (26 November 1947), p. 1340.

216 See note 171 above.

217 UNSCOP, *Report*, vol. III, p. 15 (Ben Gurion). Cf. UNGA, A/C.1/PV.54 (12 May 1947), p. 254 (Shertok). Cf. note 231 below.

required context-specific judgments as international norms did not specify just when a 'vested interest' could be considered as established.

But perhaps the most critical contention in respect of Jews already in Palestine was that their *arrival* had been *legitimate* under the 1922 Mandate. Opponents of Jewish statehood considered the Mandate illegal precisely because, by imposing mass Jewish immigration against the consistently expressed opposition of Palestine's majority population, it had violated Palestinians' internationally validated right of self-determination.[218] If Jews had settled illegitimately,[219] then, it was arguable that neither their presence in, contributions to, nor feelings for Eretz Yisrael/Palestine could be adduced in support of a territorial claim.[220] In fact, international commissions recommending Jewish statehood contended that the Mandate was legally valid.[221] But they also recognised that the Mandate's presumption of Jewish title in Palestine had contravened the general norm of self-determination.[222] If the '*sui generis* Mandate'[223] had legally authorised Jewish immigration, then, this did not prove that

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218 E.g., UNGA, A/C.1/PV.46 (6 May 1947), p. 8 (Arab Higher Committee); A/C.1/PV.52 (9 May 1947), p. 195 (Arab Higher Committee). Cf. King-Crane Commission, *Report*, pp. 18, 19, 25, 36. Haycraft Commission, *Report*, pp. 45, 51. Shaw Commission, *Report*, pp. 97-100, 112. Peel Commission, *Report*, pp. 50-51, 54-55, 69, 89, 97, 99, 102-3, 130, 147, 365.

219 By all accounts, a significant proportion of Jewish immigrants had arrived illegally even under the terms of the Mandate.

220 Per the standard international law principle that ex injuria jus non oritur, i.e., no right may be derived from a wrong.

221 Peel Commission, *Report*, p. 38. UNSCOP, *Report*, vol. I, p. 35.

222 Notes 181-182 above.

223 Note 182 above.

Jewish title in Palestine was defensible in terms of general standards; it simply meant the League of Nations Council had been entitled to act inconsistently.[224]

If the Mandate was illegitimate, it could still be argued that Jewish immigrants should not be penalised for British Government and League of Nations errors; 'two wrongs don't make a right'.[225] Supporters of Jewish claims in Palestine also reasoned that, irrespective of the Mandate's legality, the Jewish National Home had become a fait accompli:

> [T]he *actual circumstances of to-day* are as compelling in themselves as any previous commitments. There are 400,000 Jews in Palestine… (Peel Commission)[226]

> Some may think that [the Balfour] Declaration was wrong and should not have been made; some that it was a conception on a grand scale… *Controversy as to which view is right is fruitless. The National Home is there.* Its roots are deep in the soil of Palestine. It cannot be argued out of existence… (Anglo-American Committee of Inquiry)[227]

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224 Crawford, *Creation*, pp. 429-30.

225 Peel Commission, *Report*, p. 142. Cf. Anglo-American Commission of Inquiry, *Report*, chap. 1. UNSCOP, *Report*, vol. I, p. 30 (summarising the 'Jewish case'); vol. II, p. 38 (Rahman, who opposed partition). This consideration arguably distinguished 'White' settlement in Namibia and Jewish settlement under the Mandate from Israel's settlement of the Occupied Palestinian Territory after 1967. Only in the last instance was settlement recognised as illegal from the outset. Theodor Meron, 'The West Bank and International Humanitarian Law on the Eve of the Fiftieth Anniversary of the Six-Day War', *American Journal of International Law* 111.2 (2017), pp. 357-75.

226 Peel Commission, *Report*, p. 142.

227 Anglo-American Commission of Inquiry, *Report*, chap. 1.

> Every practicable solution today, even the most extreme, is *confronted with the actual fact* that there are now in Palestine more than 1,200,000 Arabs and 600,000 Jews… *[r]egardless of the historical origins of the conflict, the rights and wrongs* of the promises and counter-promises… (UNSCOP)[228]

Indeed, even as most Arab delegations considered that 'Jewish immigrants have had no legal right to enter the country during the period of the Mandate', they expressed a willingness to acquiesce in Jews' '*de facto*' presence.[229] But pragmatic acceptance of a fait accompli or de facto reality reflected the application of prudential judgment, not legal principle.

Conclusion

New Antisemitism writers have argued that to recognise a Palestinian self-determination right while rejecting the claimed self-determination right of Jews is so flagrantly hypocritical as to warrant an inference of bigotry. This implies that the legal standards for adjudicating self-determination claims are comprehensive and unambiguous; to the extent that those standards leave room for interpretive discretion in particular cases, then, divergent judgments in those cases might reflect, not hypocrisy, but good faith disagreement in the weighing of multiple considerations. This section assessed the presumption of legal clarity with respect to the second critical building block in any self-determination claim, viz., establishing that a

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228 UNSCOP, *Report*, vol. I, pp. 41, 47.

229 UNSCOP, *Report*, vol. I, p. 33. Emphasis in original. Cf., e.g., UNAHC, A/AC.14/SR.13 (14 October 1947), p. 80 (Syria). UNGA, A/C.1/PV.54 (12 May 1947), p. 262 (Iraq); A/PV.124 (26 November 1947), p. 1316 (Yemen). But cf. Peel Commission, *Minutes*, pp. 298, 314; *Report*, p. 141. UNAHC, A/AC.14/SR.6 (6 October 1947), p. 28 (Iraq).

given people has title in a given territory. It found that a degree of legal clarity did attend the issue of territorial title—but that, in light of these standards, the position condemned as 'antisemitic' was in truth defensible.

The claim that Jews had title in Palestine comparable to, if not superseding, that of the territory's existing population was eminently contestable. It may be granted that the norms invoked to establish or dispute territorial title were not free of ambiguity. It was unclear precisely when arrivals qualified as settled or when refugees lost their right to return. It was also a matter for political judgment, not legal formulae, when to draw a line under previous disputes and acquiesce in faits accomplis.[230] But such grey areas were perhaps not so expansive as to render plausible the argument that European Jews who had never resided in Palestine, and whose ancestors going back centuries had maintained no concrete relationship with Palestine, nevertheless possessed rights in Palestine comparable in force to those of its inhabitants, whose families had lived there for generations. Indeed, in respect of the compelling criterion of *longstanding presence*, Jewish rights in Palestine were less firmly grounded than those of 'Whites' in South Africa; the Yishuv's claim was more akin to that of the 'White' group in Namibia, as most inhabitants of both communities were first-generation settlers.

The Zionist argument from *particular attachment*, on the other hand, was more compelling than Respondent's suggestion that 'Whites' in Namibia or South Africa had nowhere else to go. This was less on account of the purported Jewish bond with Palestine than of the vicious

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230 The representative of Iraq to the UN was moved, at one point, to justify the *Arab* claim to Palestine on the basis that passage of time had naturalised its seventh-century conquest. UNAHC, A/AC.14/SR.6 (6 October 1947), p. 29.

severing of Jewish ties to Europe. After the Nazi holocaust, and in the dismal light of the discrimination and violence which long preceded it, Weizmann's protest that 'to advise us to turn again to live among the hatreds of the present and the tombstones of the past is asking too much from flesh and blood' struck a chord.[231] But morally compelling as the Jewish case for refuge was, it did not, by any general convention, confer collective *political* title to a land inhabited by others not responsible for European Jewry's plight.[232] That Jewish claims in Palestine could not be sustained on general principles was reflected in the acknowledgement by the Peel Commission and UNSCOP that support for the Jewish National Home violated the norm of self-determination as well as the frequent assertion by supporters of partition that the Palestine question was 'unique' or 'sui generis'. It was and remains open to supporters of the Jewish State to argue that exceptional conditions warranted deviating in this case from general principles. But one can hardly characterise rejection of a plea for special treatment as evincing a double standard.

It may finally be contended that, if the Jewish claim in Palestine was debatable in 1917 or even still in 1947, that dispute has long since been resolved. It is now 75 years since Israel was established and multiple generations of Israeli Jews know no other home. Shouldn't they be accepted as an authentic presence? In terms of the standards invoked in the *South West*

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231 UNSCOP, *Report*, vol. III, p. 79. Cf. UNAHC, A/AC.14/SR.18 (18 October 1947), p. 125 (Weizmann). Note 217 above.

232 UNSCOP, *Report*, vol. III, pp. 41-42, 47 (Rahman), 245 (Lebanon Foreign Minister Hamid Frangie). UNAHC, A/AC.14/SR.3 (29 September 1947), p. 10 (Arab Higher Committee); A/AC.14/SR.5 (3 October 1947), p. 22 (Lebanon); A/AC.14/SR.7 (7 October 1947), p. 38 (Pakistan); A/AC.14/SR.13 (14 October 1947), p. 78 (Haiti); A/AC.14/SR.15 (16 October 1947), p. 94 (Iraq); *Report of Sub-Committee 2*, A/AC.14/32 (11 November 1947), pp. 25-35. UNGA, A/PV.126 (28 November 1947), p. 1369 (Pakistan).

Africa litigation as well as the deliberations over Palestine, this argument is compelling. The question whether and when to acquiesce in a fait accompli is a matter for prudential judgment, not abstract formulae—but only to a point. As the date of Israel's establishment recedes, the rights of Israeli Jews in the territory consolidate. Conversely, it must also be contemplated that Palestinian refugee rights will attenuate with the passage of time. In 1947, India's representative to UNSCOP rhetorically queried whether a dispersed people's 'connexion, however long, with the land which they had once conquered' could 'provide them with any' title 'after the lapse of even one century'.[233] This was directed against the Zionist contention that Jews were entitled to 'return' to Eretz Yisrael. Seven decades on from the Palestinian Nakba, such questions are more typically posed by Israel's defenders. Some Palestinian refugees expelled in 1947-48 are still alive; there remains a qualitative gulf separating three-quarters of a century from two millennia. Still, the 'statute of limitations' must eventually cut both ways.

How?

The last critical element in any self-determination claim concerns the *political framework* through which the asserted right is to be exercised. In the era of decolonisation, the default solution was independent statehood within and across the inherited colonial boundaries. But where multiple self-determination claims conflicted, the issue could become controversial and other dispensations were on occasion resorted to. In the case of Palestine, one might recognise Jewish peoplehood in principle, and accept that Jews have territorial title, yet still reject the legitimacy of a Jewish State in favour of an alternative self-determination

233 UNSCOP, *Report*, vol. II, p. 40.

framework. Is such a position defensible on the basis of general legal standards, or need it reflect hypocrisy motivated by prejudice? The present section investigates this question in the manner followed above.

The section argues that, if it was conceded that Jews as well as Arabs possessed self-determination rights in Palestine, the question of how to reconcile those rights entailed a weighing of competing claims and interests. The appropriate balance could not be identified by recourse to general legal formulae but instead required the application of judgment to the case at hand. In Palestine, more than in southern Africa, the considerations involved were by 1947 sufficiently complex as to leave considerable room for good faith disagreement. Opposition to a Jewish State could fall within this scope for interpretive discretion. In particular, there were and remain reasonable concerns that partition would so infringe the rights of Palestinian Arabs as to render said framework unacceptable. There is accordingly no basis for assuming that opposition to Jewish statehood in Palestine necessarily amounts to hypocrisy motived by anti-Jewish prejudice.

Respondent

If 'Whites' alongside neighbouring groups constituted a 'people' entitled to national self-determination in southern Africa, the final issue to be resolved was *how* this self-determination right might legitimately be exercised. What form(s) could 'White' self-determination in southern Africa legitimately take?

Respondent argued that, where a territory was 'inhabited by a homogeneous people, self-determination could appropriately take the form of an act by or on behalf of *all the inhabitants*

and with reference to *the whole territory*'.[234] But where a territory's rightful 'inhabitants belong to separate and divergent population groups', a 'balance' had 'to be struck … between competing or conflicting claims of comparable moral potency on the part of various peoples'. Otherwise, 'the situation' could 'arise' of 'an emancipated people governing not only itself but other peoples as well'.[235] Such was the case in southern Africa, whose 'political boundaries'—'drawn by statesmen' who lacked 'knowledge of local topographical and ethnic conditions'—bore 'no relation to the borders of areas inhabited by particular ethnic groups'.[236] If these political boundaries were not revised, then, for minorities, majority rule meant *alien* rule: 'What moral justification could there be for the Ovambo people, by virtue of their superiority of numbers, to be able to determine the future of the Nama, living in a part of the country which the Ovambo had never occupied or attempted to occupy, and to which they had never laid claim'?[237]

For the 'White' minority, a unitary democratic State would amount to 'political domination by numerically stronger but generally less advanced population groups, with an outlook completely different from its own'—a 'form of "self-determination"' that would 'flood',

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234 IV.71. Emphases in original. Cf. II.449-50. V.184.

235 II.467 ('emancipated'), 449-50 ('balance'). For apartheid presented as an attempt to 'balance between the legitimate aspirations of various groups', see II.466. III.233, 241, 253, 266, 297, 529. V.243. IX.75, 516, 518-19, 521. Cf. IX.306. Notes 247-250 below.

236 II.289-90. Cf. II.450. V.216.

237 II.458-59. Cf. II.472-74. IV.337. V.246. X.113. The Ovambo comprised some 45 percent of Namibia's population. Thus, in 'co-operation with even a relatively minor group' such as the Okavango, 'they would have an over-all majority *vis-á-vis* all the other population groups combined'. This train of thought terminated in the claim that universal adult suffrage across Namibia would 'in effect mean aggrandisement or colonization' by the Ovambo. II.473 ('colonization'), 473n1 ('majority'). For a view that apartheid, not majority rule, was 'colonialism', see IV.593 (Leo Marquard).

'swamp', 'immerse', and 'submers[e]' its 'wishes and interests in a sea of African nationalism' as it relegated 'Whites' to 'an impotent minority in a Black State'.[238] This prospect was viewed by most 'Whites' as tantamount to 'national suicide'.[239]

In practice, Respondent warned (or threatened), imposed integration would 'without doubt evoke serious and violent resistance' in Namibia as well as 'White resistance' throughout southern Africa.[240] In the end, 'Whites' in a unified democratic State would 'probably' face either expulsion or exodus.[241] This prophesy was supported by precedent: wherever 'political control has been handed to an African Native majority', Respondent alleged, 'the tendency has been for any settled White population to leave'. In some cases, 'Whites' had been expelled or fled inter-communal 'disorder, chaos and bloodshed'. Otherwise, 'the reasons' for 'White' exodus 'may largely be sought in the vast differences in outlook, attitude and standards of development' separating them from 'African Native populations in general'.[242] In particular, post-independence administrative decline[243] and economic depression,[244] together with the 'development of black despotisms',[245] had 'induced many White people to depart'.[246]

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238 II.438 ('domination'), 486 ('form', 'impotent'—Sir Penderal Moon, former British colonial administrator, July 1962), 459 ('flood'). V.245 ('swamp'), 338 ('immerse'—Professor L.P. du Plessis), 358 ('submers[e]'—H. Maclear Bate). Cf. II.454, 458. IV.198, 213. V.243, 280, 310, 327. VI.3. IX.99.

239 National Party (1947), cit. II.463. Cf. II.464. IV.264, 352. V.200, 252, 338, 358, 383, 384, 387, 391.

240 V.269-70 ('White'), 421 ('violent'). Cf. V.423.

241 VI.301. Cf. II.472. V.245. VIII.639. IX.99-100. But cf. II.468.

242 II.454-56 ('chaos'). V.200 ('differences'). Cf. II.456, 472. V.227.

243 II.455-56. IV.329. V.188-89, 201, 204, 227, 310.

244 II.456. V.200.

245 V.200. Cf. note 281 below.

246 V.200, 202, 213.

Respondent conceded that the League of Nations Covenant and Namibia Mandate had 'probably' envisaged 'the political advancement' of Namibia's population toward the 'ideal' of '*ultimate* self-determination'.[247] It accepted that if, 'upon reaching' political 'maturity', Namibia's inhabitants 'strongly desire self-government and independence, there can be no question about a moral right on their part to attain such ideal'.[248] It acknowledged that 'an increasing number of members of Native groups' in Namibia had experienced an 'awakened political consciousness' such that they showed interest in central government and did not 'accept as natural their rule by the White man'.[249] And it professed its 'general agreement' with Applicants on the soundness of progressively increasing the 'rights of suffrage of the Native peoples' as well as their 'participation in government and administration'.[250] But if Respondent accepted that the extant 'White' monopoly on central government could be justified on a temporary basis only,[251] and if it rejected majority rule with territorial integrity as unworkable and unjust, then, how could the admitted 'moral right' of 'Native' groups to self-determination in southern Africa be effectuated? Respondent offered as the only feasible

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247 IV.70—'but only in a qualified sense of being something that would be desirable to such extent and in such manner as might prove to be practicable and equitable'. Ibid. Emphasis in original. Cf. IV.71, 73. VI.419. Ben Gurion similarly argued before UNSCOP that the right of self-determination 'is not always absolute'; in Palestine, he asserted, it was subordinate to the 'over-riding right' of the Jewish people to a State. UNSCOP, *Report*, vol. III, pp. 92-93.

248 II.449—'subject', however, 'to due consideration of adjustments to be made, and of a balance to be struck, between competing or conflicting claims of comparable moral potency on the part of various peoples'. Ibid. Cf. note 235 above.

249 II.457.

250 V.193—even as it denied 'that such principles amount to legal norms by which its obligations should be measured'. V.193n2. Cf. V.189, 192.

251 V.309.

resolution of this dilemma its policy of territorial apartheid.[252] This would see 'each of the major ethnic groups' advance toward 'self-government and, eventually, full independence in their own homelands' while maintaining 'economic interdependence' with the 'White areas'.[253] Only in a southern Africa partitioned along ethno-national lines could each group 'develop towards possible self-determination without, in the process, preventing self-determination by others'.[254] And only through partition could each group progress without provoking communal suspicion, rivalry, conflict, and—ultimately—'the human tragedies which have occurred … in African territories such as the Congo, the Sudan, [and] Rwanda'.[255]

Applicants

Applicants objected to Respondent's 'racial … partition'[256] plan on three main grounds. First, *any* partition of Namibia would violate the international norms of territorial integrity and non-discrimination. *Territorial integrity*. Applicants contended that it was irrelevant whether Respondent considered that Namibia's inhabitants would benefit more from the territory's division than from its democratic integration. The UN had developed through its consistent practice 'generally accepted norms by which the obligations' in the Mandate 'should be measured'. 'These include the institution of universal adult suffrage … within the framework

252 Respondent rejected as unfeasible any middle path between integration and partition as merely a temporary waystation en route to majority rule. II.454, 468-71. V.200, 231-34, 243, 245.

253 II.460 ('major'). III.528 ('independence'). Cf. II.487. V.309.

254 III.131 ('preventing'). Cf. V.242.

255 V.246.

256 IV.282 (Doxey).

of a single territorial unit'.[257] Applicants identified these alleged norms in the recommendations of the UN Trusteeship Council regarding Trust Territories. The Trusteeship Council had, according to Applicants, consistently 'require[d]' an 'integrated political unit for each Territory' through application of 'direct, universal adult suffrage to the whole … Territory'. UN support for 'territorial integrity, with identical political rights for all' had obtained even in respect of Trust Territories that harboured diverse populations, such as the French Cameroons, Ruanda-Urundi, and Tanganyika.[258] *Non-Discrimination.* Applicants argued that 'there has evolved over the years … a generally accepted international human rights norm of non-discrimination or non-separation' which prohibited 'governmental policies or actions which allot status, rights, duties, privileges or burdens on the basis of membership in a group, class or race rather than on the basis of individual merit, capacity or potential'. Territorial apartheid infringed this norm as it allotted rights, duties, etc., 'based upon membership in a "group"' rather than individual 'qualities and capacities', 'merit or need'. The illegitimacy of such distinctions constituted 'the decisive major premise upon which Applicants rest[ed] their case'. Rejecting Respondent's distinction between differentiation and discrimination, Applicants cited the decision of the US Supreme Court in *Brown v. Board of Education* (1954) to argue that any policy which 'distinguishes as to race, color, national and tribal origin' inherently 'implies not only that some "groups" are inferior, but that individual members thereof are "permanently and irremediably inferior"'.[259]

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257 IV.441. Cf. IV.414, 442, 444, 445.

258 IV.451 ('suffrage'—UN Trusteeship Council referring to the Trust Territory of Togoland, 1954), 453 ('require[d]', 'integrity', Ruanda-Urundi), 455 (Cameroons). Applicants' emphases removed. Cf. IV.452, 454, 456-57.

259 IV.269 ('need'), 305-6 ('inferior'—internal quotes from Mason), 307 (*Brown*), 440 ('qualities'), 493 ('non-separation'). Cf. IV.270-71, 274, 276, 321n5, 338-39, 440, 458, 468-70, 475. VI.6, 11-13, 16-17, 20, 24-25.

Second, Respondent's *specific* partition plan was iniquitous both procedurally and in substance. *Procedure.* Whereas 'all civilized societies' accept as 'an essential prerequisite of a valid and viable political system' the 'consent of the governed', Respondent's policy 'is predetermined and the method of its application is pre-fabricated'. Apartheid was necessarily '*imposed* … upon the non-White sections of the population' as '[n]o line of partition could be established by agreement'.[260] *Substance.* Respondent's partition plans were *unviable* because they were *unequal.* In South Africa, the territorial 'division at present proposed … is quantitatively unfair' as it allocated just 13 percent of the land for fully three-quarters of the population. It was also 'qualitatively unfair' as the 'Bantu homelands' were 'off the main lines of communication and badly placed for industrial development' whereas the 'main wealth of the country is the mining area of the Rand, which is White'. In Namibia, too, Respondent's policy allotted fully 70 percent of the land to the 'White' minority. Furthermore, 'Whites' were to be allocated 'the richer and better developed portion' of Namibia while the areas assigned to 'Native' homelands were 'smaller', 'poorer and less well developed'.[261] The proposed 'homelands' were thus 'economically unviable'.[262] They were also demographically unworkable as 'non-Whites' would outnumber 'Whites' in the designated 'White' areas of South Africa as well as Namibia while, in Namibia's southern Police Zone, most 'non-

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260 IV.290 ('imposed'—Professor Z.K. Matthews), 319 ('line'—UN Group of Experts, 1963), 320 ('pre-fabricated'). Emphasis added. Cf. IV.284, 318-19, 321-25, 331, 596.

261 I.109 ('richer'). IV.331 (South Africa—Mason), 466-67 (Namibia). Cf. I.112. IV.335-37, 347, 357, 458, 466-67.

262 IV.272. Cf. IV.286, 319, 347, 351, 357-58. Cf. William Beinart, 'Beyond "Homelands": Some Ideas about the History of African Rural Areas in South Africa', *South African Historical Journal* 64.1 (2012), pp. 8-9.

Europeans' would reside outside their designated 'homelands'.[263] The 'homelands' policy therefore 'presuppose[d] … a system of migratory labour, in which men whose homes are in such areas spend long periods of labour in distant urban centres or on farms in so-called "White areas"'. Yet 'no stable, civilized community can be built upon a system which deliberately separates men from their families during substantial periods of their working lives'.[264]

Finally, partition was *unnecessary*. As noted, Applicants accepted that Namibia was inhabited by diverse groups and did not contest that 'Whites', at any rate, considered themselves a discrete unit. But they denied that such distinctions were immutable or precluded common citizenship. For one thing, Respondent had not passively adapted to the exogeneous fact of group differences but actively '*foster[ed]* … such differences' by allotting rights, burdens, etc., on their basis.[265] For another, 'inasmuch as attitudes of prejudice, discrimination and fear are generated by individuals through their social structure and processes, such attitudes likewise can be modified through the social structure and processes'—'in particular, through governmental action'.[266] The 'African nationalist organizations in South Africa' as elsewhere 'opposed tribalism' and instead sought, in the words of the African National Congress (ANC), 'to bring together into common action as *one political people* all tribes and clans or races … to defend their freedom, rights and privileges'.[267] The Trusteeship Council had endorsed

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263 IV.343 (Namibia—UN Secretariat Working Paper, 1964), 351 (South Africa—UNSCRA). Cf. IV.317, 332n1, 336-37, 460n3.

264 IV.262. Cf. IV.284, 288, 357, 407n4, 408, 458-59, 464, 467-68, 470, 473, 596, 598.

265 IV.261-62. Emphasis in original. Cf. III.174. IV.271, 273, 316, 335, 357-58, 375, 412-13, 467, 469. V.297.

266 IV.308. Cf. IV.309-12.

267 IV.357n2. Emphasis in original.

this integrative programme; in the French Cameroons, for instance, the Council recommended that a 'sense of territorial unity … and common identity' be 'foster[ed] … by all possible means' notwithstanding 'the artificiality of the boundaries and the heterogeneity of the inhabitants'. The historical record showed this task was not only 'incumbent' on Respondent but also feasible. 'Achievement of independence of all the Trust Territories in Africa by 1962 demonstrates the [possibility of] peaceful transition from the status of administered territories to one of democratic majority rule with full franchise'.[268] Applicants cited the experience of desegregation in the United States as further evidence discounting Respondent's claim that imposed integration in southern Africa would inevitably precipitate intercommunal strife.[269]

Respondent

Respondent flatly denied that there existed any 'norm or standard' obliging it 'to treat the Territory as a single integrated unit with one centralized government'.[270] Whereas the Trusteeship Council had 'in general … advocated the development of a "territorial consciousness" among the inhabitants of trust territories', this was not a 'universally applicable principle' but had always been rooted in 'the circumstances of particular territories'.[271] On the one hand, Applicants had failed to establish that 'relevant circumstances in Namibia' were 'identical or closely analogous' to those that prevailed where the

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268 IV.452 ('peaceful'), 455 (French Cameroons), 582 ('incumbent'). Cf. IV.451, 453-54.

269 IV.307-12.

270 V.193. Cf. V.201.

271 V.193 ('circumstances'), 194 ('universally').

Trusteeship Council had recommended integration.[272] On the other hand, Applicants' 'alleged standards of non-separation and attempted integration were not even uniformly applied in regard to trust territories', the UN having recognised the partition of Ruanda-Urundi (into Rwanda and Burundi) and the British Cameroons (between the Federation of Nigeria and the Federal Republic of Cameroon) as well as the amalgamation of British Togoland with Ghana.[273] Further afield, partitions had been effected with international recognition in India, Ireland, and Palestine.[274]

Respondent also rejected the charge that its policy breached a general norm of 'non-discrimination or non-separation'. If this norm was understood narrowly as prohibiting *discrimination*, i.e., oppression, then Respondent denied apartheid violated it. Respondent insisted that 'separate development' was 'not based on a concept of superiority or inferiority, but merely on the fact of people being different'; that the group restrictions it imposed were overwhelmingly 'reciprocal'; and that the policy's purported object was not the exploitation or domination of one group by another but rather the 'upliftment' of all by enabling each to exercise self-determination free of inter-communal strife.[275] If Applicants' norm was expanded to disallow mere *differentiation*, then Respondent admitted apartheid would be illegitimate.[276] But Respondent denied that any such prohibition existed. On the contrary, it argued that differentiation between groups had been not just permitted but required under

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272 V.194 ('*signally*'). VI.8 ('analogous'). Emphasis in original. Cf. V.186-87.

273 V.194 (UN). VI.8 ('uniformly'). Cf. II.451-53.

274 II.487. IV.331, 334. For India, cf. II.450. V.194-95, 236, 340.

275 III.243 ('superiority'), 267 ('reciprocal'). VIII.273 ('upliftment'). Cf. II.471. III.105, 267. V.111, 194, 243-45, 409-19, 423. VIII.660. IX.99-101, 483.

276 III.105. V.119, 175, 183. VI.28-30, 166, 424. VIII.661.

League of Nations minorities treaties as well as the 1920 Namibia Mandate—Article 3, for instance, having prohibited 'supply of intoxicating spirits and beverages *to the natives*'.[277] Such differentiation was also commonplace around the world in, for instance, provision of separate language schooling, 'special public conveniences for women', and policies that distinguished minors from adults.[278] In short, then, international standards neither prescribed one democratic State nor proscribed apartheid.

In practice, Respondent argued that when Applicants' proposed 'norm' of territorial integrity had been applied in territories analogous to Namibia, the results had 'often been calamitous'. In conditions of national diversity, 'the forced preservation of "territorial integrity"' had led 'frequently' to 'bloodshed, disorder and chaos'.[279] Respondent ridiculed Applicants' claim that implementation of Trusteeship Council policy had achieved peaceful transition to democratic rule across Africa. When Applicants cited Ruanda-Urundi in support, they appeared 'completely unaware that the results of Trusteeship Council policy in Rwanda can be measured in tens of thousands of deaths and hundreds of thousands of refugees'.[280] Meanwhile, 'democratic majority rule' had frequently translated in practice to 'one man, one vote, *once*': in 'at least 15 of the independent States in Africa south of the Sahara'—including one of the Applicants, Liberia—'there is at present no parliamentary opposition'.[281] Respondent attributed much of the political instability faced by new African States to their

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277 I.202. (*Article 3*) II.414-18. III.106. IV.71. V.124-29, 133-34, 141, 317. VI.7, 238-39. VIII.669-73. (*Mandate*) V.124, 128. VIII.668-69. (*League*) Emphasis added.

278 V.131. Cf. IX.542. X.62.

279 V.194 ('calamitous', 'chaos').

280 V.190 (mocked), 198 ('Rwanda'). Cf. V.191-92, 195, 199, 201, 203, 225-26, 229-30, 237-38, 246.

281 II.455. Cf. II.458, 472. V.190-91, 200, 203, 225, 228, 234, 243, 245, 246, 330. On Liberia, cf. V.302.

population diversity and explained authoritarian rule as, in part, an attempt to contain the resultant centrifugal dynamics.[282] Respondent accepted that group attitudes could be 'unlearned' through legislation but insisted that 'attitude modifiability' was limited in situations perceived as impinging on group 'survival'.[283] Respondent accordingly discounted the relevance to southern Africa of the African-American experience on the grounds, inter alia, that African-Americans were merely a racial and not a national minority[284] while their integration did not threaten to overwhelm the 'White' group as they comprised little more than one-tenth of the population.[285] Even in those relatively favourable conditions, Respondent argued, the jury was still out on whether integration would succeed.[286]

Appraisal

Applicants' case was hamstrung by, on the one hand, the broad discretion arguably conferred on Respondent by the Mandate and, on the other hand, the legally defensible position that Respondent was not bound by normative developments that occurred after it assumed the Mandate and to which it had not assented. But if these jurisdictional issues are set aside, the fundamental normative question remains: What was it that rendered territorial apartheid—

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282 II.450-51, 454, 468, 470. V.195, 199-200, 206, 208-11, 231-34, 245-46, 280.

283 V.453-54. Cf. V.455.

284 V.427, 432-34. Respondent suggested that the 'non-White' peoples of Namibia were more akin, in this respect, to the 'American Indians'. V.433-34.

285 V.431-35. Cf. IV.337, 466-67. V.453.

286 V.427, 430-61. Whereas Respondent emphasised 'cultural' or 'ethnic' conflicts, the most plausible obstacle to peaceful integration in southern Africa was arguably the clashing *interests* which attended Respondent's system of stratified labour. As Mason put it in respect of South Africa, '[t]he division of the population is much more one of class than of territory; *it is a group of landowners and managers against a group of labourers*'. IV.332. Emphasis added. Cf. IV.460. V.454.

racial partition—a distinctive wrong in terms of general legal categories? The essence of Respondent's defence was that apartheid merely applied in southern Africa the principles which underpinned the system of nation-states in general. Verwoerd had drawn this parallel explicitly:

> We prefer each of our population groups to be controlled and governed by themselves, as nations are. Then they can co-operate as in a Commonwealth or in an economic association of nations where necessary … South Africa will proceed … by following the model of the nations which in this modern world means *political independence coupled with economic interdependence*.[287]

If self-determination claims elsewhere in Africa had been satisfied through the continent's partition into multiple States, why shouldn't this approach be pursued in southern Africa as well? Applicants struggled to counter this reasoning on the basis of general standards because its critical premises were consonant with the broader international order.

Applicants' claim that partition inherently breached international norms was difficult to sustain given that the UN had elsewhere endorsed it. Meanwhile, Applicants' proposed norm of 'non-discrimination and non-separation' did not fare well under scrutiny.[288] Applicants

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287 Verwoerd (1959), cit. II.466. Emphasis by Respondent. Cf. II.468, 473, 487. IV.265, 312, 316, 335. V.272. On combining political independence with economic interdependence, cf. II.486-87. III.174. IV.330. V.278-79.

288 Applicants initially accused Respondent of oppressive discrimination but switched mid-way through the pleadings from an empirical to a strictly legal argument. It was apparently to effect this strategic shift that Applicants introduced their norm of 'non-discrimination and non-separation'; this was defined broadly to prohibit *any* group differentiation so as to preclude the need for empirical investigation into the effects of Respondent's policies. But Applicants were brought through argumentation to concede that *some* group

first alleged that this norm prohibited all differentiation between groups—but, the Mandate and minorities treaties were evidently premised on such differentiation.[289] Applicants then argued that group 'protection' was permitted whereas group 'coercion' was not—but, these were not 'exclusive concepts' as policies often coerced in order to protect.[290] Or Applicants argued that only groups whose membership was voluntary could be differentially treated—but, minors, women, religious adherents, and minorities were not 'normally free to quit their group' yet had frequently been the objects of 'differentiating measures'.[291] More fundamentally, if it was objected that apartheid differentiated on the basis of criteria (e.g., 'race') that were arbitrary in respect of individual capacity, want or need,[292] couldn't the same be said of all nationalisms—or, did 'Frenchness' correlate with different individual attributes than did 'Germanness'?[293]

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differentiation was permissible; they then struggled to distinguish legitimate from illegitimate forms of differentiation except on grounds that reintroduced the need for factual inquiry. Respondent analysed these shifts at V.105-6, 119. VI.28. VIII.634, 639, 642, 654-65, 667, 675. IX.78-79, 484, 528, 531-34. Applicants denied their case had changed. VIII.254. IX.283-84, 301. Cf. Slonim, *South West Africa*, pp. 267-68, 271-75.

289 Cf. Judge Tanaka, Dissenting Opinion, *South West Africa* (Second Phase, Judgment), ICJ Reports 1966, p. 309.

290 VIII.263 ('protection'), 665 ('exclusive'). Cf. VIII.262, 664-67, 673-74. IX.45, 247, 330-31, 338, 538-39.

291 VIII.262-63. IX.247-48, 536. (*voluntary*). IX.542. ('*quit*') Cf. X.56, 62.

292 Judge Tanaka, Dissenting Opinion, *South West Africa* (Second Phase, Judgment), ICJ Reports 1966, pp. 305-10.

293 D'Amato considers that 'South Africa might have argued (but apparently never thought of it) that international law itself allots rights and duties on the basis of membership in groups—called "States"—and thus the Applicants' suggested norm of non-separation, pressed to the limit of its logic, would result in international law being a violation of international law'. This argument was, however, implicit in Respondent's entire defence of apartheid as an exercise in self-determination. Dugard, *Dispute*, p. 284 (D'Amato). Cf. XI.618-19.

If international norms did not preclude partition in principle, it could still be objected that the terms of Respondent's partition plans were unjust.[294] Indeed, notwithstanding Respondent's protestations to the contrary, its proposals were manifestly unfair in procedure as well as substance. Meanwhile, the fact that Respondent contested Applicants' charges empirically implied a recognition on its part of the normative principles which underpinned them; if Respondent took the trouble to dispute that its proposed boundaries were unequal, for instance, this implicitly acknowledged it would be a problem if they were.[295] But if Applicants were right to criticise Respondent's terms, it is also true that their implementation would not, in most respects, have resulted in a situation that was internationally anomalous. On the contrary, the resulting inequities would, for the most part, be similar in kind and even degree to those endured by many in States whose political legitimacy had not been called into question.

Consider, first, the charge that Respondent's partition policy was *unilateral*. If Respondent's decision to separate out 'non-Whites' into discrete 'homelands' was an imposition, it was at least a purportedly temporary one, as Respondent claimed it would not object if the various

294 Merle Lipton, 'Independent Bantustans?' *International Affairs* 48.1 (1972), pp. 1-19.

295 Respondent acknowledged as 'a very real problem' for 'separate development' that many 'South African Bantu' as well as Namibian 'Natives' resided in 'White areas' (it held out that economic development of the 'homelands' would eventually resolve this). Meanwhile, Respondent contended that its proposed boundaries were quantitatively as well as qualitatively fair, that the 'homelands' would be economically viable, that 'non-White' groups had been consulted over and supported 'separate development', and that 'Whites' might well abandon 'petty' apartheid laws once partition had nullified their fears of 'domination'. V.261 ('Bantu'), 265 ('Natives'), 308 ('domination'). Cf. II.400, 402, 474-75, 485. III.125, 232. IV.198-99, 210, 213. V.250, 254n1, 258, 273-77. VI.256-61, 264, 266. (*Boundaries*) V.260, 278. (*Viable*) II.480-82. III.242. V.270-71, 319, 390. VI.184. (*Consulted*) V.308. (*Petty*)

'non-White' polities opted in the end to 'amalgamate'.[296] The nub of Respondent's policy was, instead, its refusal ever to subject the self-determination right of the 'White' nation to a plebiscite in which 'non-Whites' also participated. This was difficult to reject in principle given the premise that 'Whites' had self-determination rights in southern Africa. If 'Whites' were a discrete national entity, then, allowing the Ovambo or Herero to vote on their future would be akin to asking French nationals to determine the fate of Germany. Put differently, if 'the White group is opposed to integration', then 'a policy of integration' would amount to a unilateral imposition on *them*.[297] It was doubtless true that the boundaries of the proposed 'homelands' had been unilaterally determined by Respondent, rather than resulting from meaningful negotiations. But every political agreement reflects the balance of power between contending parties and is to that extent imposed. In the early 1990s, the ANC moderated its claims on 'White' capital to defuse 'White' resistance to democracy.[298] Did this pragmatic concession to force render illegitimate the agreement to end apartheid?

Substantively, it could hardly be doubted that Respondent's territorial allocations were grossly unequal. But the disparity in land and resource endowments was scarcely greater between South Africa and Transkei than it was between South Africa and Lesotho. Why should only the former boundaries have been considered disqualifying?[299] It was also plain

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296 V.280. Cf. V.184, 246, 268, 271, 316. X.126-28.

297 V.269-70. Cf. V.271, 283.

298 Hein Marais, *South Africa Pushed to the Limit: The Political Economy of Change* (Bloomsbury, 2011), pp. 75-76. John S. Saul, *A Flawed Freedom: Rethinking Southern African Liberation* (Pluto Press, 2014), chap. 4.

299 South Africa frequently sought to legitimise the 'homelands' by analogy with the former British High Commission Territories of Bechuanaland (after independence in 1966, Botswana), Basutoland (after independence in 1966, Lesotho), and Swaziland (granted independence in 1968; renamed Eswatini in 2018). See, e.g., IV.597. V.262. Laurent C.W. Kaela, *The Question of Namibia* (Macmillan, 1996), p. 77.

that the 'homelands' would struggle economically.[300] But many States relied upon remittances or aid from abroad. A 1967 analysis predicted that, at least 'in the short run', Lesotho 'has virtually no hope of becoming economically viable or independent of South Africa and foreign aid'. An appraisal 15 years on concluded that this assessment had been 'very accurate' while in the interim Lesotho's 'dependence had become' on almost every count 'more severe'.[301] If 'unviability' did not delegitimise Lesotho, why did it delegitimise the 'homelands'?[302] Philip Mason's objection—

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300 Applicants argued they would be unviable. But if by 'viability' was meant sufficiency, then as Respondent pointed out, 'economic independence is to be found' almost 'nowhere in the world'. V.278.

301 Michael Ward, 'Economic Independence for Lesotho?' *The Journal of Modern African Studies* 5.3 (1967), p. 368 ('no hope'). James Cobbe, 'The Changing Nature of Dependence: Economic Problems in Lesotho', *The Journal of Modern African Studies* 21.2 (1983), pp. 293 ('accurate'), 297 ('severe'). Cf. Ward, 'Independence', p. 363. Cobbe, 'Changing', p. 296 (Table I). James H. Cobbe, 'Economic Aspects of Lesotho's Relations with South Africa', *The Journal of Modern African Studies* 26.1 (1988), pp. 71-89. 'Lesotho, Swaziland, and parts of Botswana were essentially part of the same colonial domain'; 'Lesotho, especially, … served as a "homeland" of [a] kind'. Indeed, 'if Lesotho were incorporated (or had been long ago) into South Africa as a Bantustan' then, '[a]t a stroke, there would be no more "ties" with South Africa, no more "national dependence", no more labour leaving "the country"'—but 'economically, very little indeed would be changed'. Beinart, 'Beyond', p. 7 ('domain'). James Ferguson, *The Anti-Politics Machine: 'Development', Depoliticization and Bureaucratic Power in Lesotho* (Cambridge University Press, 1990), p. 63 ('stroke'). Cf. Laura Evans, *Survival in the 'Dumping Grounds': A Social History of Apartheid Relocation* (Brill, 2019), pp. 67-68. Evans, 'Dynamics', pp. 122-23. Jakob Zollman, 'Negotiated Partition of South Africa—An Idea and Its History (1920s-1980s)', *South African Historical Journal* 73.2 (2021), p. 426. Moodie, 'Failed', p. 159. Anticolonial nationalists looked to regional federations and transnational economic structures to mitigate the dependencies that would otherwise render de jure sovereignty hollow. Getachew argues that, under various pressures, they 'gave up' on these radical objectives; many consequently became ensnared in the 'quasi-state' trap. Robert H. Jackson, *Quasi-States: Sovereignty, International Relations and the Third World* (Cambridge University Press, 1991). Getachew, *Worldmaking*, p. 29 ('gave up').

302 To be sure, Respondent was poorly placed to make this argument. At the 1919 Paris Peace Conference, Smuts staked a claim to Namibia on the basis that it was a barren 'desert'. It was in concession to South Africa along with other Dominions that Article 22 of the League of Nations Covenant distinguished the former German colonies on account of 'the sparseness of their population', 'their small size, or their remoteness from the centres of civilisation', i.e., their viability. At the 1945 San Francisco Conference, South Africa's representative argued that Namibia 'should be incorporated' inter alia because it is

> [N]ationalism surely means more than being allowed to speak one's own language. It means belonging to a group big enough to exercise sovereignty and to be represented abroad. The Okavango are a group of less than 30,000; the Herero are less than 40,000; the Damara less than 50,000; even the Ovambo are only a quarter of a million. To split up half a million people into twelve groups and encourage them in separatism is in the long run the surest way to bar them from the self-realisation that they seek[303]

—was vulnerable to the same retort: such 'homelands' would be territorially as well as demographically larger than recognised UN member States.[304] Similarly, if the 'homelands' were destined to depend on migrant labour, this would not make them unique.[305] Respondent quoted an International Labour Organisation (ILO) estimate that, across southern, East, and Central Africa, fully five million out of 12-13 million adult males were 'absent from their tribal homes, engaged on wage labour', while the UN Committee on Information from Non-Self-Governing Territories had concluded in 1961 that, '[h]owever undesirable extensive

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'economically dependent' such that '[t]here is no prospect of the territory ever existing as a separate state'. It reiterated this reasoning before the UN General Assembly in 1946. But if the economic 'dependence' of Namibia as a whole precluded its political independence, this reasoning surely applied a fortiori to 'homelands' within Namibia. I.35 (Article 22), 237-38 (San Francisco). SAG, 'Memorandum', pp. 4, 40. Dugard, *Dispute*, p. 38 ('desert'). Cf. I.258. II.54. IV.72. V.262. X.127-28. SAG, 'Memorandum', pp. 5, 9, 12, 50, 56. UNGA, A/C.4/SR.16 (7 November 1946), p. 78 (China). Dugard, *Dispute*, pp. 89-90. Slonim, *South West Africa*, p. 22. Giliomee, *Last*, pp. 100, 103.

303 IV.338-39.

304 Dugard, *Failure*, p. 19n62. McCorquodale, 'Negotiating', pp. 289-90. Crawford, *Creation*, pp. 46-47.

305 V.306. VI.186, 192-99.

labour migration may be, it can be viewed as an unavoidable stage in the economic development of these Territories'.[306]

Finally, Applicants distinguished Respondent's plan from previous partitions on the grounds that 'non-Whites' residing in the 'White' area would remain subject to racial segregation.[307] To this objection Respondent offered no convincing response. Insofar as the measures in question differentiated without discriminating, then, this argument was circular: if separation was legitimate *between* nation-states, why not also between different groups *within* a State? Insofar as those measures did not merely differentiate but outright discriminated, as certain apartheid laws expressly did,[308] they clearly contravened international norms. Most, however, could in principle be abandoned without dismantling apartheid as such.[309] To this there was, however, one fundamental exception. Even if territorial apartheid was otherwise, potentially, and in theory defensible on the basis of international legal norms, the reality was, a sizeable 'non-White' population had already settled in the 'White' areas. Many had lost any real link to their purported 'homelands'.[310] There were only two possible 'solutions' to this 'problem' within the apartheid framework. Either such individuals would remain permanent residents of the 'White' areas, in which case they would be permanently stripped of political rights in

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306 UNGA, 'Report of the Committee on Information from Non-Self-Governing Territories', A/4785 (1961), p. 53 ('stage'). VI.193 (ILO). Cf. VI.192.

307 IV.332-33.

308 South Africa admitted that certain of its laws discriminated; it mispresented these as merely a historical inheritance and argued that territorial apartheid would create the conditions allowing for their repeal. Dugard, *Human Rights*, pp. 54-55.

309 In his comprehensive human rights analysis of apartheid, Dugard identifies explicitly discriminatory laws but notes that many other legal instruments did not 'on their face … discriminate unequally'. Of course, they were still unequal in their effects. Dugard, *Human Rights*, pp. 67-68. Cf. ibid., pp. 63, 72, 102.

310 Helen Suzman, *A Digest of the Fagan Report* (South African Institute of Race Relations, 1948), pp. 4-5, 8.

their de facto country. Or they would be expelled to a 'homeland'. In practice, Respondent pursued both policies: '[d]eprivation of nationality … and forced population removals were the hallmarks of the Bantustan policy'.[311] If apartheid could not in practice be implemented without either permanent political discrimination or ethnic cleansing, this was compelling grounds for its repudiation even by those who accepted that 'Whites' were entitled to self-determination in southern Africa.[312]

Palestine

Supporters of a Jewish State in Palestine rejected democratic integration on the same grounds as Respondent. *First*, this would infringe the right of Jews to national self-determination. 'A separate national community', Weizmann argued, 'could not be forcibly subjected to another people in the name of majority rule'. The Jewish Agency had on this basis long opposed the establishment of a representative Legislative Council in Palestine 'in which the Jews would be hopelessly outnumbered'.[313] *Second*, majority rule would place Jewish immigration as well as security 'at the mercy of the Arabs' at whose hands their fate might recall that which 'befell the Greeks at Smyrna or the Assyrians in 'Iraq'. 'Could anyone', demanded the representative of Guatemala to the UN, 'think of placing that flourishing community' under the hostile administration of the Arab Higher Committee, which had 'already … inflicted … death and

311 Dugard, *Confronting*, p. 81 ('hallmarks'). Cf. Dugard, *Human Rights*, pp. 73, 97; *Failure*, pp. 6, 9-10.

312 Dugard, *Failure*, p. 6. Giliomee, *Last*, p. 79.

313 Leonard Stein (Jewish Agency), *The Palestine White Paper of October 1930—Memorandum* (Jewish Agency for Palestine, 1930), p. 31 ('outnumbered'). UNAHC, A/AC.14/SR.18 (18 October 1947), p. 124 (Weizmann). Cf. Weizmann, *Case*, pp. 7, 9, 12. Peel Commission, *Report*, pp. 123, 146. UNSCOP, *Report*, vol. I, p. 30. UNAHC, A/AC.14/SR.12 (13 October 1947), pp. 69-70 (Soviet Union); A/AC.14/SR.17 (17 October 1947), p. 114 (Weizmann); A/AC.14/SR.30 (24 November 1947), p. 184 (Soviet Union).

destruction' upon the Yishuv and whose leadership 'had shown Nazi leanings throughout the war'? 'The fate of the Jewish minority in Palestine will not differ from the fate of the Jewish minority in any other country', Ben Gurion warned, 'except that here it might be much worse'.[314]

As in the *South West Africa Cases*, partition was defended as an alternative framework by which to reconcile valid but conflicting self-determination rights. The relevant principle was articulated by the Peel Commission in terms Respondent would not have hesitated to endorse:

> [T]he successful working of representative government requires that the population concerned should be sufficiently homogeneous. Unless there is common ground enough between its different groups or classes to enable the minority to acquiesce in the rule of the majority and to make it possible for the balance of power to readjust itself from time to time, the working basis of parliamentary government or democracy as we understand it is not there.[315]

Confronted by 'a conflict of right with right' (Peel), proceeding from the 'basic premise' that 'the claims to Palestine of the Arabs and Jews, both possessing validity, are irreconcilable'

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314 Weizmann, *Case*, p. 9 ('mercy'). Peel Commission, *Report*, p. 136 ('Assyrians'). UNAHC, A/AC.14/SR.10 (10 October 1947), p. 57 (Guatemala). UNSCOP, *Report*, vol. III, p. 22 (Ben Gurion). Cf. Peel Commission, *Report*, p. 141. UNSCOP, *Report*, vol. II, p. 53 (Vladimir Simic, Yugoslavia); vol. III, pp. 105 (Ben-Zvi), 179 (Magnes). UNAHC, A/AC.14/SR.18 (18 October 1947), p. 124 (Weizmann). UNGA, A/C.1/PV.54 (12 May 1947), pp. 257-58 (Shertok); A/PV.126 (28 November 1947), pp. 1380-81 (Guatemala); A/C.3/SR.2129 (14 October 1975), p. 92 (Israel).

315 Peel Commission, *Report*, p. 361.

(UNSCOP),[316] and ruling out half-way houses such as bi-nationalism or parity as unworkable,[317] partition emerged as the only 'compromise' that would allow the 'rights of the two peoples' to 'equally be respected' (Uruguay). Given the profound hostility between Jewish and Arab nationalism, the same self-determination 'principles which the Arabs had invoked for the whole of Palestine' should instead 'apply to part[s] of it'.[318]

Just as Applicants rejected the depiction of apartheid as an attempt to 'balance' competing interests,[319] so opponents of Jewish statehood denied that 'right' was pitted against 'right' in Palestine. The Arab Higher Committee regarded 'as a profound error' the Peel Commission's presumption that 'the Arabs and the Jews of Palestine stand as opposed litigants with equal rights' while critics of UNSCOP's 'partition proposal' rejected its 'basic premise' that 'the claims to Palestine of the Arabs and the Jews both possess validity' as 'demonstrably against the weight of all available evidence'.[320] They argued that partition, in *principle*, violated

316 Peel Commission, *Report*, p. 3. UNSCOP, *Report*, vol. I, p. 47.

317 UNSCOP, *Report*, vol. I, p. 47; vol. II, p. 44 (Sir Abdur Rahman, India); vol. III, p. 58 (Jewish Agency). Cf. Jabotinsky, *Evidence*, pp. 32-33 and note 252 above.

318 UNAHC, A/AC.14/SR.2 (26 September 1947), p. 5 ('compromise'—UNSCOP Chairman Mr. Sandström, Sweden); A/AC.14/SR.6 (6 October 1947), p. 33 (Uruguay); A/AC.14/SR.17 (17 October 1947), p. 115 ('part'—Shertok, Jewish Agency). Cf. Peel Commission, *Report*, p. 375. UNSCOP, *Report*, vol. I, pp. 41-42, 47. UNAHC, A/AC.14/SR.10 (10 October 1947), p. 55 (Guatemala), A/AC.14/SR.16 (16 October 1947), p. 107 (Norway). UNGA, A/C.1/PV.54 (12 May 1947), pp. 247-48 (Poland).

319 See note 235 above.

320 Arab Higher Committee, 'Memorandum to the Permanent Mandates Commission and the Secretary of State for the Colonies (23 July 1937)' in UNSCOP, *Working Documentation*, vol. II, A/AC.13/2 (19 May 1947), p. 225 ('litigants'). *Sub-Committee 2*, p. 5 ('evidence'). Cf. UNGA, A/C.1/PV.55 (12 May 1947), pp. 292 (India), 295 (Iraq). UNAHC, A/AC.14/5 (3 October 1947), p. 24 (Arab Higher Committee); A/AC.14/15 (16 October 1947), p. 102 (Iraq); A/AC.14/31 (24 November 1947), p. 200 (Arab Higher Committee).

Palestinian self-determination as it breached the integrity of Palestine. The right of self-determination 'has been given to the country as a whole' and should accordingly be effected through 'the democratic method of consulting all the people':

> In a land shaped by geography and history, there can be no separate consultation first of one group alone, and then of the other. All the citizens of that land should be consulted, and the majority … should determine the future.[321]

Partition was also condemned as discriminatory. Lebanon argued that partition would breach the 'principle of the illegitimacy of States created by means of racial or religious discrimination'. Egypt contended that, as Article 13 of the UN Charter 'forbade any distinction as to race or religion', it was 'a violation of the Charter to speak of a Jewish problem or of an Arab problem'—there was only 'a Palestinian problem'—while the 'Jewish people, whether as a race or as a religious group, could not claim any international rights'. In place of an approach based on 'racial discrimination', 'racial exclusiveness', and 'exclusivism', opponents of partition recommended 'a divorce of race and religion from politics'. '[T]here must in future be only a Palestinian State and a Palestinian people' in accord 'with the modern trend towards inter-racial co-operation and secular democracy'.[322] This presumed, of course,

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321 UNSCOP, *Report*, vol. II, p. 44 ('whole'—Rahman). UNGA, A/PV.124 (26 November 1947), pp. 1342 ('geography'—Lebanon), 1383 ('democratic'—Cuba). Cf. King-Crane Commission, *Report*, p. 33. UNAHC, *Sub-Committee 2*, pp. 16-17, 38. UNGA, A/PV.70 (1 May 1947), p. 17 (Syria); A/C.1/PV.55 (12 May 1947), p. 269 (Arab Higher Committee); A/PV.124 (26 November 1947), pp. 1313, 1315 (Philippines); 1364 (Belgium); A/PV.126 (28 November 1947), p. 1382 (Cuba).

322 UNSCOP, *Report*, vol. III, pp. 45-46 ('divorce', 'future'—Rahman). UNAHC, A/AC.14/SR.5 (3 October 1947), p. 22 ('illegitimacy'—Lebanon); A/AC.14/SR.13 (14 October 1947), pp. 80-81 ('racial discrimination'—Syria); A/AC.14/SR.15 (16 October 1947), p. 103 (Egypt). UNGA, A/PV.124 (26 November 1947), p. 1315 ('exclusiveness', 'modern'—Philippines); A/C.3/SR.2129 (14 October 1975),

that Jews and Arabs in Palestine could be induced to share power in a common polity.[323] Finally, the 1947 Partition Plan was condemned concretely as undemocratic (most Palestinians rejected it),[324] unequal (the Jewish minority comprised approximately one-third of the population yet was allocated some 55 percent of the area),[325] economically unviable,[326] and demographically unworkable: Arabs would comprise nearly half the initial population of the 'Jewish' State.[327]

If the premises were accepted that Jews had national rights in Palestine, then, many of the arguments levelled against Jewish statehood encountered the same difficulties as the effort

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p. 92 ('exclusivism'—Lebanon). Cf. UNAHC, A/AC.14/SR.3 (29 September 1947), p. 9 (Arab Higher Committee). UNGA, A/C.1/PV.53 (10 May 1947), p. 220 (Syria). A/PV.126 (28 November 1947), p. 1421 (Egypt). For its part, Jewish Agency representatives denounced the prohibition on Jewish land purchase in Palestine as discriminatory. UNSCOP, *Report*, vol. III, p. 14 (Ben Gurion). Cf. UNSCOP, *Report*, vol. III, p. 92 (Ben Gurion). UNGA, A/C.1/PV.55 (12 May 1947), p. 274 (Ben Gurion). Ritchie Ovendale, *The Origins of the Arab-Israeli Wars*, 4th ed. (Routledge, 2013 [2004]), p. 117.

323 UNSCOP, *Report*, vol. I, pp. 59-60. UNAHC, A/AC.14/SR.29 (22 November 1947), p. 178 (Yugoslavia). UNGA, A/PV.126 (28 November 1947), pp. 1393-94 (Iraq). Cf. King-Crane Commission, *Report*, p. 34. Secretary of State for the Colonies, *Statement of Policy by His Majesty's Government in the United Kingdom (Passfield White Paper)*, Cmd. 3692 (H.M. Stationery Office, 1930), para. 29.

324 UNAHC, A/AC.14/SR.12 (13 October 1947), p. 75 (Egypt); A/AC.14/SR.14 (15 October 1947), pp. 87-88, 90 (Lebanon); *Sub-Committee 2*, pp. 13-14, 17-20.

325 UNGA, A/PV.126 (29 November 1947), pp. 1374-76 (Pakistan).

326 UNSCOP, *Report*, vol. I, p. 59. UNAHC, A/AC.14/SR.7 (7 October 1947), p. 38 (Pakistan); A/AC.14/SR.11 (11 October 1947), p. 69 (Iran); A/AC.14/SR.15 (16 October 1947), p. 103 (Iraq); *Sub-Committee 2*, pp. 49-52. UNGA, A/PV.126 (28 November 1947), p. 1373.

327 UNSCOP, *Report*, vol. I, pp. 53-54; vol. II, p. 44 (Rahman). UNAHC, A/AC.14/SR.7 (7 October 1947), p. 38-39 (Pakistan); A/AC.14/SR.15 (16 October 1947), p. 102 (Iraq); *Sub-Committee 2*, pp. 39-45; A/AC.14/SR.31 (24 November 1947), pp. 192-93 (Pakistan). UNGA, A/PV.126 (28 November 1947), p. 1374 (Pakistan). Arabs would have comprised a majority in the proposed Jewish State were it not for last-minute amendments to the UNSCOP boundaries. Cohen, *Palestine*, pp. 273n31, 290.

to indict apartheid in southern Africa. It was hard to argue that partition was *inherently* illegitimate as it had been effected elsewhere.[328] As regards the charge of discrimination: Jewish Agency representatives were unapologetic in their support for segregation,[329] but if this was by definition 'exclusivist', wasn't every nationalism?[330] Put otherwise, it was unclear why the cosmopolitan maxims of 'co-existence' and 'Brotherhood' should require integration only within and up to—but not beyond—the borders of Mandate Palestine.[331] In *practice*, those advocating democratic integration as an alternative to partition had to stake their vision on a factual premise which Britain, as Mandatory, had come decisively to reject, viz., that Arab and Jewish national communities in Palestine could find the common ground necessary to share a polity.[332] One could always hold out for—in the despairing phrase of the Peel Commission—a 'miracle of reconciliation' that would see 'politics' in Palestine no longer

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328 UNAHC, A/AC.14/SR.17 (17 October 1947), p. 115 (Jewish Agency). UNGA, A/PV.124 (26 November 1947), p. 1347 (Uruguay).

329 To the allegation that the Jewish National Home had 'prevented the assimilation of the culture of the Jewish community with that of the Arab population', Ben Gurion pled 'guilty': 'We are Jewish and we are determined to remain so'. Shertok explained that the Jewish 'national movement' promoted assimilation among Jews 'as a people re-united and rebuilt' but was 'against Jews assimilating with the nations of the world and losing their distinct identity'. In 1917, Smuts had similarly declared that '[w]e want to create a blend out of the various nationalities and … a new South African nation' embodying 'white racial unity' while at the same time prohibiting 'intermixture of blood between the two colours'. UNSCOP, *Report*, vol. III, pp. 2 ('losing'), 18 (Ben Gurion). Mazower, *Enchanted*, pp. 47-48 (Smuts). Cf. UNGA, A/C.1/PV.54 (12 May 1947), p. 258. Norval, *Deconstructing*, p. 184.

330 It might be objected that, whereas no 'non-White' in South Africa could ever become 'White', the category 'Jewish' was more permeable. But Amnesty International notes that, 'while Israel recognizes conversion to Judaism … in practice the state rejects all applications by Palestinian citizens of Israel on the basis of "ethnicity" or "security"'. Amnesty, *Apartheid*, p. 73. Cf. UNSCOP, *Report*, vol. III, pp. 4, 178, 180. X.56.

331 Anglo-American Committee of Inquiry, *Report*, chap. 1 ('Brotherhood'). UNGA, A/C.3/SR.2129 (14 October 1975), p. 92 ('co-existence'—Lebanon). Cf. UNGA, A/PV.79 (15 May 1947), p. 163 (India).

332 Peel Commission, *Report*, pp. 41-42, 55, 61-62, 77-78, 85, 87-88, 120, 136, 159, 174, 309, 360, 363, 370-71. UNSCOP, *Report,* vol. I, p. 47.

'conducted on lines of race'.[333] But there were plausible grounds for pessimism as the contending parties were divided, not merely by prejudice, suspicion, or resentment, but also a real conflict of *objectives*.[334] On the salient political questions of immigration and land purchase, Jews and Arabs in Palestine were fundamentally at odds.[335]

Finally, whereas Arab representatives pledged to respect Jewish minority rights in a unitary State,[336] Jewish inhabitants of Palestine did have rational grounds for apprehension. Arab opposition to Jewish encroachment had repeatedly erupted in indiscriminate anti-Jewish violence,[337] Palestinian Arab officials had previously been as sceptical as their Jewish counterparts about the prospects for civil co-existence,[338] and the deep-rooted, authentic, mass commitment to a non-sectarian future cultivated by the ANC had no equivalent in

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333 Peel Commission, *Report*, p. 362.

334 Cf. note 286 above.

335 Haycraft Commission, *Report*, p. 45. Secretary of State for the Colonies, *Passfield White Paper*, para. 2. Shaw Commission, *Report*, pp. 97-100, 112-13, 123. Peel Commission, *Report*, pp. 375, 378. UNSCOP, *Report*, vol. I, pp. 23-25, 29, 47, 64; vol. III, pp. 6, 20. UNGA, A/PV.126 (28 November 1947), p. 1414. Jabotinsky was the Zionist leader who most forthrightly recognised this conflict. See, alongside 'The Iron Wall' (1923), his 'Letter to Colonel Kish (4 July 1925)', 'Parliament (21 May 1925)', 'Address before British Members of Parliament (13 July 1937)', and 'Foolish Vanity (12 February 1938)' in Sarig ed., *Selected Writings*, pp. 102-3, 106-7.

336 UNSCOP, *Report*, vol. II, p. 45 (Rahman); vol. IV, p. 36 (Lebanon). UNAHC, A/AC.14/SR.3 (29 September 1947), p. 11 (Arab Higher Committee); A/AC.14/SR.5 (3 October 1947), p. 25 (Lebanon); A/AC.14/SR.13 (14 October 1947), p. 80 (Syria); A/AC.14/SR.14 (15 October 1947), p. 90 (Lebanon); *Sub-Committee 2*, pp. 47, 53-54; A/AC.14/SR.31 (24 November 1947), p. 201 (Arab Higher Committee). UNGA, A/C.1/PV.54 (12 May 1947), p. 242 (Syria); A/PV.124 (26 November 1947), p. 1316 (Yemen).

337 Haycraft Commission, *Report*, p. 50. Shaw Commission, *Report*, pp. 150, 168. Peel Commission, *Report*, pp. 50-52, 67-68. Cf. UNGA, A/PV.126 (28 November 1947), pp. 1380-81 (Guatemala).

338 Peel Commission, *Minutes*, pp. 298, 358. Peel Commission, *Report*, pp. 61-62.

Palestine.[339] More generally, the position of Jews as well as other minorities had often been threatened by enflamed nationalism, while any confidence in the pluralism of a unified Palestine must have been shaken by its frequent depiction as an exclusively or predominantly *Arab* patrimony.[340]

The terms of the 1947 Partition Plan, like Respondent's 'homelands', were clearly imbalanced in respect of the population on the ground.[341] But had the plan been faithfully implemented, the resulting inequities would not have been internationally anomalous. Whereas Respondent's policy necessarily entailed the permanent disenfranchisement as well as dispersal of 'non-Whites' resident in 'White' areas, and whereas the 1937 Peel Commission plan had been predicated on the 'transfer' of Palestinian Arabs,[342] the 1947 Partition Plan did not call for expulsions and stipulated that Jewish and Arab minorities should enjoy equal rights with minority protections.[343] In this respect, the 1947 Partition Plan was more

339 Chomsky, 'Israel', p.430n2. Sparks, *Mind*, pp. 31n18, 146.

340 E.g., UNGA, A/C.1/PV.54 (12 May 1947), p. 261 (Iraq). UNAHC, A/AC.14/SR.3 (29 September 1947), p. 10 (Arab Higher Committee). UNSCOP, *Report*, vol. III, p. 244 (Frangie).

341 *Sub-Committee 2*, pp. 39-46, 49-52. Walid Khalidi, 'Revisiting the UNGA Partition Resolution', *Journal of Palestine Studies* 27.1 (1997), pp. 11-15. UNSCOP factored 'the claims of the Jews to receive immigrants' into its boundary proposal. UNSCOP, *Report*, vol. I, p. 53.

342 Peel Commission, *Report*, pp. 389-91.

343 The Partition Plan stipulated inter alia that both Jewish and Arab States would be governed by 'universal suffrage', that each would guarantee to all persons 'equal and non-discriminatory rights in civil, political, economic and religious matters', and that all inhabitants shall 'become citizens of the State in which they are resident and enjoy full civil and political rights'. UNGA Resolution 181 (II), pp. 134-35, 138. Cf. ibid., pp. 137, 149. Zionist representatives pledged to respect Arab minority rights. Jabotinsky, *Evidence*, pp. 8-10, 13. Peel Commission, *Minutes*, p. 289. UNSCOP, *Report*, vol. I, p. 30; vol. III, pp. 50, 54.

defensible than apartheid on the basis of international standards.[344] Nevertheless, the terms of partition would still have left approximately 400,000 Arabs as a minority in a State that would, per Zionist ideology, *belong* to a group from which they were by definition and in perpetuity excluded. If Jews could not prosper as a minority, why should that status be imposed on Palestinian Arabs?[345] Rejection of this inevitable consequence offered a non-hypocritical basis on which to oppose partition, even if Jewish national claims in Palestine as well as the legitimacy of partition were in principle accepted.

It merits considering, finally, a particularity of the case for a Jewish State which had no counterpart in the *South West Africa* pleadings: the argument from *humanitarian need* or *suffering*. This expressed itself most concretely in the attempt to establish linkage between resolution of the Palestine question and the fate of Jewish refugees interned in European displaced

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344 But if 'the history of the past generation has taught us that the safeguarding of minority rights is just nothing but words', as Magnes testified, then, wouldn't the protective provisions of the Partition Plan likewise amount to 'pious phrases'? There were solid grounds for scepticism whether the Jewish State would adhere to stipulated prohibitions on land and population transfer as, in the absence of such measures, it was doubtful the plan could have yielded a stable Jewish majority. In fact, Zionist endorsement of the UN proposal 'was essentially a tactical move' that did not signal fealty to its terms. UNSCOP, *Report*, vol. III, p. 179 (Magnes). Sami Hadawi and Walter Lehn, 'Zionism and the Lands of Palestine', in The International Organization for the Elimination of All Forms of Racial Discrimination, *Zionism & Racism: Proceedings of an International Symposium* (North American, 1979), p. 69 ('pious'). Shlomo Ben-Ami, *Scars of War, Wounds of Peace: The Israeli-Arab Tragedy* (Oxford University Press, 2006), p. 34 ('tactical'). Cf. UNAHC, A/AC.14/SR.7 (7 October 1947), p. 39. Tom Segev, *One Palestine, Complete: Jews and Arabs under the British Mandate* (Abacus, 2001), pp. 496-97.

345 UNGA, A/PV.126 (28 November 1947), p. 1374 (Pakistan). Zionist representatives argued that, whereas Jews 'in a unitary State' would 'feel crushed by an Arab majority' because Jews would not constitute a majority anywhere else, 'the Arab minority in the Jewish State would find a guarantee for security among the neighbouring Arab States'. In the event, it would be hard to argue that proximity to Egypt and Jordan has 'guarantee[d]' the 'security' of Palestinians in the West Bank and Gaza. UNAHC, A/AC.14/SR.17 (17 October 1947), p. 114 (Shertok).

persons camps. More generally, and throughout the UN deliberations, representatives recalled 'the sufferings of the Jewish people', 'Jewish suffering in the ghettos and the gas-chambers', 'a people whose sufferings had been indescribable'. In 1937, Weizmann had testified before the Peel Commission that 'there are in' Central and Eastern Europe 'six million people doomed'. In his presentation to UNSCOP in 1947, Weizmann recalled this 'sombre prophecy' as he urged that 'the survival of the Jews as a people' be secured 'through independence in a Jewish State in this country'.[346] Guatemala proclaimed that 'the creation of a Jewish State is a reparation owed by humanity to an innocent and defenceless people which has suffered humiliation and martyrdom for two thousand years'. Norway supported partition inter alia 'because of the wrongs which the Jews had suffered at the hands of mankind'. The Soviet Union insisted '[i]t was necessary to take into consideration all the sufferings and needs of the Jewish people'. It was on account of this suffering that '[t]he Jewish people were … striving to create a State of their own and it would be unjust to deny them that right'. 'Why is it necessary that there should be a Jewish State?' asked the delegate from Uruguay.

> Precisely to put an end to that form of discrimination and alienation, that persecution of a section of humanity. And what a burden of suffering they have borne! No one in our day has endured such a burden … [O]f those millions of Europe's Jews whom [N]azism exterminated, a million and a half were children. I repeat this figure: a million and a half children, sacrificed, exterminated in the gas chambers and the crematoria of the [N]azi regime … Must we look on idly, allowing conditions to prevail which would lead to the

346 Peel Commission, *Minutes*, p. 33 ('doomed'). UNSCOP, *Report*, vol. III, p. 79 ('prophecy'). Cf. Peel Commission, *Minutes*, p. 39 (Weizmann). UNAHC, *Report*, vol. III, p. 21 (Ben Gurion). Segev, *Complete*, p. 414.

> repetition of these holocausts only because in the political treatment of this problem, sentiments of humanity are obscured by arid logic?[347]

The juxtaposing of humane 'sentiments' to 'arid logic' illustrates the bind in which opponents of Jewish statehood were caught. Arguing from legal standards could be denigrated as prioritising technicalities over humanitarian imperatives. But on the alternative terrain of comparative suffering, Palestinians would struggle to compete with the overwhelming catastrophe which had already befallen the Jews.[348] Opponents of partition expressed sympathy for Jewish suffering but insisted that relief and restitution—whether by asylum or statehood—should be addressed internationally and in a manner consistent with international law.[349] They also pointed to the hypocrisy of 'those who talk of humanitarian principles' and who 'are ready … to be most generous at the expense of the Arab' yet had 'done the least at their own expense to alleviate' the plight of Jewish refugees.[350] But the insistence of Zionist representatives that only statehood in

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347 UNAHC, A/AC.14/SR.6 (6 October 1947), p. 26 ('sufferings of'—Panama); A/AC.14/SR.8 (8 October 1947), p. 45 ('ghettos'—Czechoslovakia); A/AC.14/SR.12 (13 October 1947), p. 69 (Soviet Union); A/AC.14/SR.16 (16 October 1947), pp. 107-8 (Norway); A/AC.14/SR.29 (22 November 1947), p. 175 ('indescribable'—Chile). UNGA, A/PV.125 (26 November 1947), pp. 1348-49 (Uruguay); A/PV.126 (28 November 1947), p. 1381 (Guatemala). Cf. UNAHC, A/AC.14/SR.6 (6 October 1947), p. 33 (Uruguay); A/AC.14/SR.31 (24 November 1947), p. 194 (Uruguay). UNGA, A/PV.73 (3 May 1947), p. 84 (Dominican Republic); A/PV.74 (5 May 1947), pp. 88 (Yugoslavia), 110 (Czechoslovakia); A/C.1/PV.53 (10 May 1947), p. 210 (Yugoslavia); A/PV.78 (14 May 1947), p. 153 (China); A/PV.125 (26 November 1947), p. 1348 (Uruguay). On the delegate from Guatemala, Jorge García-Granados, whose fierce opposition to British colonialism segued into staunch Zionism, see Louis, *Empire*, pp. 468-70.

348 It should be borne in mind that UN member States did not envisage that hundreds of thousands of Palestinians would be expelled. Cf. Jabotinsky, *Evidence*, pp. 13, 40. Weizmann, *Case*, p. 13. UNSCOP, *Working Documentation*, vol. II, pp. 307-8. UNSCOP, *Report*, vol. III, pp. 17, 22. UNAHC, A/AC.14/SR.10 (10 October 1947), p. 58. Cf. Lori Allen, *A History of False Hope: Investigative Commissions in Palestine* (Stanford University Press, 2021), chap. 3.

349 See note 232 above.

350 UNGA, A/PV.126 (28 November 1947), p. 1369 (Pakistan).

Palestine could resolve this plight gave others an alibi.[351] The upshot was, once it was determined that the future of Palestine would be decided by political compromise rather than the application of legal standards, the gravity of Jewish suffering weighed powerfully in favour of partition. Respondent could point to no comparable humanitarian imperative or humane consideration operating in favour of 'White' statehood in southern Africa.

Conclusion

Proponents of the New Antisemitism have alleged that to reject Jewish statehood in Palestine while simultaneously endorsing a State of Palestine represents an egregious—to the point of sinister—double standard. This presumes that the legal standards pertaining to self-determination are sufficiently precise as to unambiguously exclude endorsing Palestinian while rejecting Jewish claims. This section scrutinised that presumption with respect to the third building block in any self-determination claim, viz., that a people with title in a territory must perforce be permitted to establish a national State there. It found that, where multiple self-determination claims came into conflict, such that establishing a State would place in jeopardy the rights of others, legal standards were neither unambiguous nor decisive. Instead, political judgment was required to weigh competing rights and interests and endeavour pragmatically to reconcile them. This left ample scope for good faith disagreement in the negotiation between multiple considerations. Within this ambit, recognising Palestinian while rejecting Jewish claims to statehood was defensible given the distinct consequences likely to attend these respective frameworks. To characterise this position as necessarily hypocritical is accordingly unwarranted.

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351 UNAHC, A/AC.14/SR.18 (18 October 1947), p. 125 (Weizmann).

If it was accepted that 'Whites' and Jews had national rights in southern Africa and Palestine, respectively, the question of how to reconcile those rights with the corresponding self-determination rights of others came down to political judgment. International norms neither mandated nor proscribed either one democratic State or partition. The specific terms of partition could be contested on standards of equity that evidently commanded broad support. In respect of most of these, there was no clear unfairness threshold beyond which a proposal became illegitimate. But the 'homelands' were denied international recognition as they necessarily entailed expulsion and/or permanent disenfranchisement, while the UN endorsed partition in Palestine only on terms that formally excluded these outcomes. Most States that approved the 1947 Partition Plan did not present it as the inevitable product of applying general norms but rather as a pragmatic framework by which to reconcile valid but conflicting claims in difficult circumstances. It was a *judgment call*, whose critical premises—that alternative federal or unitary frameworks were infeasible; that it would be more unjust to render the Yishuv a minority in an Arab State than to render 400,000 Arabs a minority in a Jewish State; that the historical right of Jews to statehood outweighed the natural right of Arabs to self-determination across Mandatory Palestine—could legitimately be questioned.

If supporters of Palestinian self-determination believe this judgment call was wrong—if, for instance, they consider that bi-nationalism or majority rule across Mandatory Palestine is workable and would safeguard Jewish as well as Arab rights—this would not breach any general principle of law or equity. It would just represent a different compromise between rights in conflict. Meanwhile, whereas the 1947 Partition Plan was more defensible than apartheid because it ruled out population transfer and provided for full minority rights, neither stipulation was honoured in practice. Between 1947 and 1949, Jewish and Israeli

forces expelled upwards of 700,000 Palestinians from their homes and homeland. Israel's Arab minority was then subjected to 'stark discrimination'.[352] Those who still deny the legitimacy of the Jewish State, because this has been defined by Israel in terms which preclude refugee return and/or equal rights, can therefore ground their position on the very standards embodied in the 1947 Partition Plan and accepted by Zionist representatives at the time. Indeed, given the overwhelming international repudiation of apartheid, what appears as anomalous is not rejection of the Palestinian expulsion but the international community's tacit acquiescence in it.[353]

Conclusion

In light of international deliberations over apartheid in southern Africa and partition in Palestine, how persuasive is the New Antisemitism-inspired allegation that BDS evinces antisemitic double standards when it implicitly rejects Israel's constitution as a Jewish State?

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352 Benny Morris, *The Birth of the Palestinian Refugee Problem Revisited* (Cambridge University Press, 2004) and Ben-Ami, *Scars*, pp. 25-26, 42-47 (expelled). Amnesty, *Apartheid*, p. 83 ('discrimination').

353 Whereas the League of Nations endorsed a 'national home for the Jewish people' and the UN General Assembly approved a 'Jewish State', neither body spelled out precisely what these phrases designated. The Partition Plan ruled out expulsions and discrimination while the General Assembly resolved by its Resolution 194 (III) of 11 December 1948 that Palestinian 'refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date'. On the other hand, the caveats placed on refugee return ('wishing to … live at peace', 'earliest practicable') afforded Israel room for manoeuvre. More importantly, the General Assembly's subsequent endorsement of the two-State solution tacitly presumed that most Palestinian refugees would not return. Otherwise, Israel would not retain its Jewish majority and the rationale for partition would dissolve.

- *The premise that self-determination claims are judicable on the basis of clear legal standards is inaccurate.*

  Respondent accepted it would breach its obligations as Mandatory[354] if it administered Namibia in 'bad faith', i.e., in pursuit of objectives other than those stipulated by the Mandate. Such 'bad faith' could be inferred from policies that 'no reasonable person or body could have arrived at' and about which there was no 'scope for honest difference of opinion'.[355] The charge of antisemitic double standards amounts precisely to an allegation of bad faith. To substantiate it requires establishing not merely that a judgment is in this or that respect hypocritical, but that it is so *flagrantly* and *manifestly* hypocritical that only prejudice can account for it. The preceding analysis has found, however, that self-determination claims turn on ambiguous categories while their practical resolution may require balancing between conflicting rights and aspirations. If differing judgments are reached in respect of particular cases, then, this need reflect neither hypocrisy nor prejudice. It could just represent good faith disagreement in the weighing of complex and contested considerations. Appraising the case for Jewish statehood requires that antecedent conclusions be reached in respect of the historical record, the situation on the ground, the implications of alternative political frameworks, the proper application of indeterminate legal categories, and the scope for reasonable compromise between contending claims. To stipulate that prima facie selective opposition to Jewish

354 Respondent denied the Mandate was still in force; its argumentation as reviewed in this chapter was presented in the alternative.

355 V.172 ('scope'). IX.500 ('reasonable'). Cf. V.160. IX.491, 494-508, 518.

statehood is illegitimate, because antisemitic, is to impose peremptorily and by fiat one set of answers in these contentious domains.

- *Selective rejection of Jewish statehood in Palestine need not be hypocritical.*

  The case for Jewish statehood in Palestine was and remains contestable within the parameters set by legal standards pertaining to self-determination. Up to 1947, establishing 'a unitary Arab State' in Palestine 'would have been the normal and natural' course 'to pursue'.[356] None of the justifications then cited for deviating from this standard were persuasive on the basis of general principles. This perhaps explains why it was *opponents* of partition who insisted the dispute 'had … more a legal than a political aspect',[357] who urged that it be adjudicated 'based not upon aspirations and unprecedented claims but on … principles of justice and equity, and on the Charter',[358] who proposed that it be referred to the ICJ,[359] and who argued on the

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356 UNGA, A/PV.124 (26 November 1947), p. 1318 (Canada, which endorsed partition). A legal commentator sympathetic to Jewish statehood nevertheless concedes that 'the Palestine Mandate was very exceptional' as it 'deviated from the general post-First World War practice of according preference to the political aspirations of the majority of the local population'. Shany, 'Entitlements', p. 398.

357 UNAHC, A/AC.14/SR.11 (11 October 1947), pp. 66-67 (Syria). Cf. UNAHC, A/AC.14/SR.13 (14 October 1947), p. 81 (Syria); A/AC.14/SR.32 (24 November 1947), p. 202. UNGA, A/PV.70 (1 May 1947), p. 27 (Syria); A/PV.124 (26 November 1947), p. 1338 (Syria).

358 UNAHC, A/AC.14/SR.18 (18 October 1947), p. 122 (Arab Higher Committee). Cf. UNAHC, A/AC.14/SR.14 (15 October 1947), pp. 87-88 (Lebanon). UNGA, A/PV.71 (1 May 1947), pp. 41-42 (Iraq).

359 UNAHC, *Sub-Committee 2*, pp. 21-24, 57-58. The proposal was rejected by 21 to 20 with 13 abstentions. UNAHC, A/AC.14/SR.32 (24 November 1947), p. 203.

basis of precedent: '[i]f a minority had the right to form a State within a State or to secede, most countries would be torn asunder'.[360]

By contrast, supporters of partition tended to depict the case as 'sui generis' or without 'direct precedent'[361] while denying or downplaying its legal dimensions. The UNSCOP majority characterised the Palestine problem as 'mainly one of human relationships and political rights' whose 'solution may be reached only through a correct appreciation of the situation as a whole and an endeavour to find a human settlement'. The Rapporteur of the General Assembly First Committee advised that 'the problem which confronts us is not a purely legal problem; it is, above all, a problem of human relations'. Guatemala opposed referral to the ICJ because 'the Palestinian question was essentially political'; France similarly objected that the question of 'the inherent right of the indigenous population of Palestine' to determine the future of that territory was 'a political or philosophical issue, not a legal one'. The Soviet Union favoured 'clearing away the historical and juridical superstructure and adopting a broad political outlook'. South Africa dismissed the 'historical aspects' as 'superfluous' because 'the United Nations should deal' instead

360 UNAHC, A/AC.14/SR.6 (6 October 1947), p. 30 (Iraq). Cf. UNAHC, A/AC.14/SR.14 (15 October 1947), pp. 90 (Lebanon), 91 (Yemen); A/AC.14/SR.15 (16 October 1947), p. 94 (Saudi Arabia); *Sub-Committee 2*, p. 47; A/AC.14/SR.28 (22 November 1947), pp. 171-72 (Yemen); A/AC.14/31 (24 November 1947), p. 192 (Pakistan). UNGA, A/PV.70 (1 May 1947), pp. 21-22 (Iraq); A/PV.124 (26 November 1947), pp. 1342-44 (Lebanon); A/PV.126 (28 November 1947), pp. 1385 (Cuba), 1393 (Iraq). Cf. Quigley, *Legality*, pp. 13-20.

361 UNGA, A/PV.124 (26 November 1947), p. 1327 ('direct'—US). For 'sui generis' claims, see notes 182 and 208-210 above.

'with the *de facto* position'. Weizmann agreed that 'historical and legal considerations were secondary as compared with immediate realities'.[362]

Few if any States argued that a federal or majority rule framework for Palestine would be illegitimate. Many just concluded that it was 'impossible' and 'cannot be achieved' given 'the tenseness of the two nationalisms prevailing there' and so 'reluctantly' endorsed partition as the 'least objectionable' and hopefully 'temporary' path forward.[363] This judgment could be tentative, hesitant, unsure. 'We are not certain that it is completely just; we doubt whether it is practical; and we are afraid that it involves great risks', Belgium said of partition. 'But what is the alternative?' Meanwhile, Bolivia entered the explicit caveat that, since the 'Palestine problem was unique', 'its solution could not be taken as precedent for future problems'.[364] If even supporters of the 1947 Partition Plan did not straightforwardly defend it on general standards, but on the contrary tended to depict the situation as anomalous and

362 UNSCOP, *Report*, vol. I, p. iv (majority). UNGA, A/PV.77 (14 May 1947), p. 125 (Rapporteur). UNAHC, A/AC.14/SR.12 (13 October 1947), pp. 69-70 (Soviet Union); A/AC.14/SR.15 (16 October 1947), p. 98 (South Africa); A/AC.14/SR.18 (18 October 1947), p. 124 (Weizmann); A/AC.14/SR.30 (24 November 1974), p. 187 (Guatemala); A/AC.14/SR.32 (24 November 1947), p. 202 (France). Cf. UNAHC, A/AC.14/9 (9 October 1947), pp. 49-50 (Sweden); A/AC.14/SR.13 (14 October 1947), p. 85 (Canada); A/AC.14/SR.28 (22 November 1947), p. 180 (Dominican Republic). For a counterexample, cf. UNGA, A/PV.78 (14 May 1947), p. 153 (China).

363 UNAHC, A/AC.14/SR.12 (13 October 1947), p. 70 ('impossible'—Soviet Union); A/AC. 14/SR.13 (14 October 1947), p. 85 ('reluctantly'—Canada). UNGA, A/PV.124 (26 November 1947), p. 1319 ('least'—Canada); A/PV.124 (26 November 1947), p. 1322 ('tenseness', 'temporary'—Brazil). Cf. UNAHC, A/AC.14/SR.5 (3 October 1947), p. 19 (Czechoslovakia); A/AC.14/SR.15 (16 October 1947), p. 100 (New Zealand); A/AC.14/SR.16 (16 October 1947), p. 108 (Guatemala); A/AC.14/SR.29 (22 November 1947), p. 175 (Chile). UNGA, A/PV.77 (15 May 1947), p. 134 (Soviet Union).

364 UNAHC, A/AC.14/SR.28 (22 November 1947), p. 173.

requiring special treatment, it follows that opposition to this plan could not be ascribed to double standards, still less antisemitic ones.[365] Meanwhile, 75 years on from Israel's independence, certain arguments against the legitimacy of Jewish statehood have lost their force. In particular, many Israeli Jews have evidently developed an authentic attachment to the country. On the other hand, Israeli forces expelled the bulk of the Palestinian population while Israel still obstructs their return precisely on the grounds that this would jeopardise its Jewish character. Given the overwhelming international rejection of apartheid inter alia because it entailed population transfer, it is arguable that, by tacitly acquiescing in Palestinian dispossession, the international community has applied a double standard in Israel's *favour*. In this respect, a refusal by BDS to follow suit would not be hypocritical but instead amount to a call for consistency.

- *Hypocrisy need not reflect prejudice.*

  Almost the entire international community was united in condemning apartheid. 'No country' was 'more consistently and soundly condemned' as, '[o]ver and over again', States 'that disagreed on almost every major international issue' came together on that.[366] The verdict of History has been no less unequivocal. Yet even in respect of this most uncontroversial of disputes, many of the arguments that were advanced to delegitimise territorial apartheid did contain an element of hypocrisy. In particular, the claim that racial differentiation was *inherently* illegitimate was difficult to reconcile

365 On this tension, cf. Abba Eban, *Israel Digest* 18.26 (19 December 1975), p. 6.

366 Richard A. Falk, 'The South West Africa Cases: The Limits of Adjudication' in Ernest A. Gross et al., *Ethiopia and Liberia vs. South Africa: The South West Africa Cases*, Occasional Paper No. 5 (University of California, 1968), p. 32 ('over'). Lauren, *Prejudice*, p. 254 ('condemned').

> with the structure of the international order itself, predicated as it was upon Humanity's separation into arbitrarily demarcated and defined nation-states. Yet whereas South Africa and its publicists protested such hypocrisies, real and contrived, they typically ascribed them not to bigotry but rather to political manoeuvring, ignorance, or Communism.[367] Even where South Africa partisans did blame criticism on 'anti-White racism',[368] few, then or now, considered this credible. By the same token, even were it true that BDS applied double standards in its treatment of Israel, this would not necessarily betoken antisemitism; it could just reflect political opportunism, a pervasive phenomenon.

The New Antisemitism critique of BDS 'double standards' was, for these reasons, unpersuasive. It amounted to an assertion of the traditional nationalist case for Zionism, embellished with the gloss that Zionism was so patently consistent with the right of peoples to self-determination that only bigotry could account for its selective repudiation. In truth, however, the international law principle of self-determination was itself ambiguous, while the Zionist case for self-determination was in critical respects more disputable than others. But if the New Antisemitism critique of BDS was unsustainable, how, then, should scholars account for its political salience and enduring resonance? This chapter concludes with two suggestions on that score, one relating to the structure of the Israel-Palestine legitimation contest and the other to its political context.

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367 Director of Information—South Africa House, 'The Ambassador's Review', *Reports on the State of South Africa* 20 (August 1961), p. 3. Mulder, *Plural*, p. 2. Geldenhuys, *Diplomacy*, pp. 209-10. Bueckert, *Boycotts*, pp. 171-72n30.

368 J.A. Marais, 'Behind the "Boerehaat"' in H.M. Moolman, *How They Hate Us: A Review of the Role of the English Press, as Revealed by the Press Commission in 1965* (Voortrekkerpers, 1965), pp. 17-20. Brown, *Against*, p. 212. Vorster et al., *South Africa*, pp. 15, 23. Mulder, *Plural*, pp. 2, 19.

It bears notice, first, that Zionist claims to Jewish exceptionalism based on suffering meant that the Zionist-Arab legitimacy war was structurally amenable to a New Antisemitism-inspired reading of anti-Zionism. The chapter has shown that Jewish and Afrikaner self-determination claims, as these were advanced in international political and legal fora, unfolded along remarkably similar lines. The main difference was that Zionist advocates could point to a compelling record of anti-Jewish persecution, culminating in genocide, as providing historical warrant for a Jewish State. Such reasoning could not be fully captured in the idiom of international law, any more than could the especial odiousness of apartheid. The Zionist claim to *sympathy*, grounded in exceptional Jewish *suffering*, was the main rhetorical counterweight presented to offset and ultimately override the Palestinian Arab right of self-determination. Insofar as international observers admitted this mode of reasoning, and resonated with it, the terms of the legitimation debate then shifted from the consistent application of legal norms to the weighing of comparative claims to empathy.[369] Once the legitimation contest was grounded in this affective terrain, it became easier to interpret the rejection of Zionist claims as evidence of, if not outright bigotry, than at any rate callousness toward the history of Jewish suffering and the existential fears it bequeathed.

Second, if the New Antisemitism critique of BDS was mobilised notwithstanding its conceptual incoherence, this also reflected the ideological utility of New Antisemitism discourse as an intervention in the Israel-Palestine legitimacy war. By conflating opposition to Jewish statehood in Palestine with animus toward Jews, the double standards accusation enabled Israel's advocates to appropriate the fight against antisemitism and conscript its

369 Cf. Allen, *False*, p. 10 and chap. 3.

moral authority as a shield to insulate Israel from critical scrutiny. But even as this aspect of New Antisemitism discourse rested upon and incorporated the conventional international legal defence of Zionism, dating back to the Mandate period, it also reflected the same ambiguity that was discussed in Chapter 1 in respect of the mid-1970s debate over UNGA Resolution 3379. The BDS platform was equivocal on Israel's fundamental legitimacy. On the one hand, it omitted any recognition of Israel's validity as a State and, by analogising Israel to apartheid South Africa, implicitly classified it among those regimes that were delegitimised in the decolonization period. On the other hand, the BDS platform was avowedly anchored in 'the precepts of international law' which, per the UN and ICJ, recognised Israel as a State.[370] The broader political context was similarly complex. On the one hand, claims that BDS posed an existential threat to Israel were misleading.[371] BDS did not jeopardise Israel's economy[372] while, politically, whereas Israel *did* face a growing international legitimacy challenge in the decade after BDS's establishment, such criticism was

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370 UNSC Resolution 1397 (2002). UNGA Resolution 57/110 (2003). *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Rep. 2004, p. 201. BDS, 'Call'.

371 Israeli Prime Minister Benjamin Netanyahu, 'At the Weekly Cabinet Meeting', *gov.il* (31 May 2015). Michael Schaeffer Omer-Man, 'BDS-Mania Takes Over Israel—For a Week', *+972 Magazine* (5 June 2015). For a study of 'BDS' in Israeli discourse, focused on its depiction as a strategic threat, see Jamie Stern-Weiner, *The Politics of Israel's 'Existential Threats': BDS in Israeli Discourse*, MPhil thesis (University of Oxford, 2018).

372 Assaf Sharon et al., *Alliance in Crisis: Israel's Standing in the World and the Question of Isolation* (Molad, 2013), p. 37. Eyal Kufman, *Analysis of the Possible Implications of an Economic Boycott of Israel* (Knesset Research and Information Centre—Budget Supervision Department, 2014), pp. 13-15 [Hebrew]. Israel Ministry of Finance, *The Israeli Economy in the Shadow of the Delegitimization Campaign—Developments in Recent Years* (State of Israel, 2015), pp. 3, 21 [Hebrew]. RAND Corporation, *The Costs of the Israeli-Palestinian Conflict* (2015), p. xlii. Carrie Sheffield, 'Boycott Israel Movement Stunts the Palestinian Economy', *Forbes* (22 February 2015). Sangwon Yoon, 'The Boycott Israel Movement May Be Failing', *Bloomberg* (2 June 2016). David Rosenberg, 'Eek! It's the BDS Mouse, Get Me My Uzi', *Ha'aretz* (6 June 2016). Dany Bahar and Natan Sachs, 'How Much Does BDS Threaten Israel's Economy?' *Brookings Institution* (26 January 2018).

primarily driven by opposition to Israel's occupation and human rights violations, not its existence as a State.[373] In this political context, 'opposition to the BDS Movement' was 'leverage[d]' by Israel and its supporters to 'shut down activism against settlements'; '[t]he fight against "the new antisemitism" became a weapon wielded not only to fight BDS, but also to normalize pro-settlement, anti-two-state Israeli policies'.[374] On the other hand, BDS gained traction in a period characterised by growing despair over the prospects for partition and, in consequence, a gradual reopening by Western scholars and activists of the fundamental questions that had underpinned the conflict from the start.[375] The New Antisemitism critique of BDS, understood as an ideological intervention in the Israel-Palestine legitimacy war, reflected this tangled conjuncture. Primarily directed against criticism of Israel's occupation, the New Antisemitism also registered growing doubts about the legitimacy of the Zionist project itself.

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373 Reut Institute, *Building a Political Firewall Against Israel's Delegitimization: Conceptual Framework* (March 2010), pp. 48, 63-64. Omar Barghouti, 'Lighting a Torch Within: Anti-Colonial Israeli Support for BDS' in Lim, *Sanctions*, p. 25; 'Palestine's South Africa Moment Has Finally Arrived' in Rich Wiles ed., *Generation Palestine: Voices from the Boycott, Divestment and Sanctions Movement* (Pluto Press, 2013), pp. 219-20. Stern-Weiner, *BDS*, pp. 30, 36-40.

374 Lara Friedman, 'Targeting Free Speech & Redefining Antisemitism: How Pro-Israel Actors Are Using US Laws to Attack Palestinian Activism & Solidarity', *University of the Pacific Law Review* 54.4 (2023), pp. 615 ('weapon'), 617 ('leverage[d]'). Cf. ibid., pp. 618-26.

375 See Conclusion below.

Chapter 3.

Demonisation

'For the most part we do not first see, and then define, we define first and then see'[1]

—Walter Lippmann

New Antisemitism writers have contended that it is antisemitic to 'demonise' Israel.[2] Demonisation in this context denotes criticism so single-minded or 'out of … proportion' as to betray an irrational anti-Jewish animus or worldview.[3] In practice, the concept has frequently been deployed to characterise allegations that Israel has committed war crimes against Palestinians or neighbouring populations as well as comparisons between Israel and pariah regimes.[4] The reality of Israel's egregious human rights record has been authoritatively

1 Walter Lippmann, *Public Opinion* (Transaction, 1991 [1922]), p. 81.

2 See Introduction above.

3 Natan Sharansky, '3D Test of Anti-Semitism: Demonization, Double-Standards, Delegitimization', *Jewish Political Studies Review* 16.3-4 (2004).

4 E.g., Gerald Steinberg (NGO Monitor), 'Uncivil Society: Tackling the Funders and Enablers of the Demonization of Israel', *Israel Studies* 24.2 (2019), pp. 182-205.

documented elsewhere;[5] this chapter accordingly evaluates the New Antisemitism notion of 'demonisation' from a different vantage point. In May 2016, the International Holocaust Remembrance Alliance (IHRA) adopted a Working Definition of Antisemitism that incorporated tenets of the New Antisemitism.[6] Prominent supporters of the IHRA Working Definition allege that it is a sine qua non in order to insulate Israel from illegitimate demonisation. In other words, it establishes clear boundaries distinguishing fair from unfair criticism of Israel, while only those intent on demonising Israel would oppose this definition.

Part I of the present chapter appraises this claim. It finds that the stated rationales for the definition do not persuade, that its text confounds more than clarifies, and that it lacks robust safeguards protecting legitimate, accurate criticism of Israel. These findings may reasonably be doubted given the definition's global prominence and wide official backing. Indeed, were the definition truly so inadequate, how could it have become an international benchmark? Part II of the chapter takes up this challenge. It presents an original diplomatic history of the Working Definition based inter alia on documentation secured through requests under Freedom of Information legislation. This record demonstrates the critical role of pro-Israel advocacy organisations in drafting, promoting, and securing international support for the definition. If the Working Definition has gained traction, this points less to the demonising agenda of Israel's critics than to the political effectiveness of Israel's advocates. They

5 Norman G. Finkelstein, *Beyond Chutzpah: On the Misuse of Antisemitism and the Abuse of History*, updated ed. (University of California Press, 2008). Norman G. Finkelstein, *Gaza: An Inquest into Its Martyrdom* (University of California Press, 2018).

6 IHRA, 'The Working Definition of Antisemitism', *holocaustremembrance.com* (26 May 2016).

succeeded not in pre-empting criticism that demonises Israel but, on the contrary, in foisting a definition designed to immunise Israel from criticism.[7]

By showing that the IHRA Working Definition was anchored in the New Antisemitism, demonstrating the definition's conceptual as well as practical inadequacy, and then documenting the definition's genesis in the world of pro-Israel advocacy, the chapter positions the IHRA Working Definition—which crystallised decades of New Antisemitism writing and sought to mobilise that framework as a tool of governance—as an ideological intervention to defend an Israel whose stock in Western public opinion was in decline.

I. Definition

Part I of this chapter assesses two claims made in defence of the Working Definition. First, that it supplies a clear standard by which to distinguish legitimate criticism from antisemitic demonisation of Israel. Second, that the definition is an essential tool in the fight against antisemitism. Before proceeding to these issues, a note on terminology. As part II will explain, the Working Definition has appeared in multiple variants over time. In this chapter,

- *EUMC Working Definition* denotes the version published by the European Monitoring Centre on Racism and Xenophobia (EUMC) in March 2005[8]

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7 This chapter revises and develops Jamie Stern-Weiner, *IHRA: The Politics of a Definition* (Free Speech on Israel, April 2021).

8 EUMC, 'Working Definition of Antisemitism', *eumc.eu.int* (28 January 2005; accessed via the WayBack Machine).

- *IHRA Working Definition* denotes the version adopted by IHRA in 2016[9]
- *Working Definition* refers generally to both versions.

The Working Definition has also been said to comprise either one or both of two elements: a two-sentence definition of antisemitism (the *core definition*); a list of 11 examples of antisemitic acts or expressions (the *examples*). As part II will show, it became a matter of political controversy whether the examples were in fact an integral component of the Working Definition or instead a separate element that merely accompanied and could be detached from it. For presentational convenience, however, the analysis in part I will treat the core definition and examples together as constituent parts of the same text.

A 'gold standard'?

Supporters of the Working Definition have presented it as an 'easily understood', 'unambiguous', 'non-ideological', international 'gold standard' codifying 'the difference between legitimate criticism of Israel and … demonisation'.[10] This section of the chapter

9 IHRA, 'Working Definition'.

10 Kenneth S. Stern, 'The Working Definition of Antisemitism—A Reappraisal' in *The Working Definition of Antisemitism—Six Years After* (Stephen Roth Institute, 2010), p. 3 ('non-ideological'). Alan Johnson (Britain Israel Communications and Research Centre—BICOM), 'Antisemitic Anti-Zionism Is on the Rise and Is a Threat to UK Jewry', UK Parliament Home Affairs Select Committee Inquiry into Antisemitism (2016)', Written Evidence SEM0007, *data.parliament.uk* (n.d.), para 5.1 ('difference'). Dina Porat, 'The Working Definition of Antisemitism—A 2018 Perception' in Armin Lange et al. eds., *Comprehending and Confronting Antisemitism—A Multi-Faceted Approach*, vol. I of *An End to Antisemitism!* (De Gruyter, 2020), p. 475 ('unambiguous'). Andrew Baker, 'Combating Antisemitism in Europe: Is the OSCE Up to the Challenge?' in Institute for Peace Research and Security Policy at the University of Hamburg ed., *OSCE Insights 2020: Corona, War, Leadership Crisis* (Nomos, 2020), p. 35 ('understood'). World Jewish Congress, 'Antisemitism

parses the definition and finds these characterisations to be unsupported. It concurs instead with criticisms levelled against the Working Definition by an array of scholars, jurists, and civil liberties campaigners.[11]

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The Working Definition begins by defining 'antisemitism' as 'a certain perception of Jews, which may be expressed as hatred toward Jews'. This formulation is 'bewilderingly imprecise'; indeed, it 'fails the first test of any definition: it is indefinite'. To say that antisemitism is 'a certain perception of Jews' does little use without clarifying what kind of 'perception', while if this unspecified perception only '*may* be expressed as hatred toward Jews', that knowledge is 'of little value' as it leaves open that antisemitism may also be expressed in any number of other ways.[12] In fact, this definition is near meaningless as it excludes from the category 'antisemitism' only the complete absence of any 'perception of Jews'.

Defined: Why Opposing the Jewish People's Right to Self-Determination Is Antisemitic', *worldjewishcongress.org* (12 May 2022) ('gold standard').

11 Foundation for Middle East Peace, 'Challenging the IHRA Definition of Antisemitism', *fmep.org* (5 April 2023; regularly updated).

12 David Feldman, 'Will Britain's New Definition of Antisemitism Help Jewish People? I'm Sceptical', *Guardian* (28 December 2016) ('imprecise'). Hugh Tomlinson QC, *In the Matter of the Adoption and Potential Application of the International Holocaust Remembrance Alliance Working Definition of Anti-Semitism* (8 March 2017), para. 7 ('value'). Stephen Sedley, 'Defining Anti-Semitism', *London Review of Books* 39.9 (4 May 2017) ('indefinite'). Cf. Geoffrey Robertson QC, 'Anti-Semitism: The IHRA Definition and Its Consequences for Freedom of Expression', *prc.org.uk* (3 September 2018), para. 11. Peter Ullrich, *Expert Opinion on the 'Working Definition of Antisemitism' of the International Holocaust Remembrance Alliance* (Rosa Luxemburg Stiftung, October 2019), pp. 10-15.

The Working Definition then stipulates that 'manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property'—in other words, anyone and everyone—as well as 'Jewish community institutions', 'religious facilities', and 'the state of Israel, conceived as a Jewish collectivity'. '[N]on-Jewish individuals' were presumably included to cover cases of mistaken identity, but on this rationale, why weren't 'non-Jewish … institutions' and non-Jewish States included as well? The text then enters a caveat: 'criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic'. But why can it not be so regarded in cases where such criticism reflects 'a certain perception of Jews'? These refinements and qualifications are arbitrary in respect of the underlying notion of antisemitism as 'a certain perception of Jews'.

The Working Definition then lists 11 'examples' of acts or expressions that 'could, taking into account the overall context', constitute antisemitism. But *any* utterance 'could' in some contexts reflect 'a certain perception of Jews'. This caveat therefore does not resolve but merely internalises interpretive disagreement since it provides no guidance as to what 'overall context' should be considered qualifying. Four of the 11 examples designate acts or expressions relating to Israel:

1. 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.
2. Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
3. Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.

4. Drawing comparisons of contemporary Israeli policy to that of the Nazis.[13]

This chapter does not present a detailed assessment of these examples, for whose inclusion the definition offers no rationale. As already established in chapters 1 and 2 of this thesis, the New Antisemitism tenet that delegitimisation (corresponding to example 1 above) and double standards (corresponding to example 2) are inherently antisemitic is unpersuasive and liable to misdiagnose reasonable positions as mere expressions of bigotry. Suffice it to say that, if the contextual caveat noted above is taken seriously, the examples are rendered near meaningless, as it is unclear when they do or when they don't constitute antisemitism. If the caveat is ignored, the examples—which 'bristle … with contentious assumptions'—can easily be construed to encompass legitimate, accurate criticism of Israel.[14]

Prominent advocates of the Working Definition have rejected concerns that it poses a threat to legitimate political speech. They point to three textual safeguards that allegedly mitigate this risk. First, *the proviso that statements encompassed by the 11 examples should only be designated antisemitic after consideration of 'the overall context'*. But there is strong incentive to overlook this contextual caveat so as to avoid rendering the definition vacuous. Furthermore, whereas the Working Definition states that the 11 examples only 'could' be antisemitic, it strongly implies that they *frequently*, *probably*, or almost certainly *are* antisemitic; otherwise, why were they

13 A further three examples refer to Israel. The examples are enumerated differently in the original.

14 Sedley, 'Defining'. Cf. Maya Hertig Randall and Catherine Imbeck, *The IHRA Working Definition of Antisemitism: A Legal Analysis* (Switzerland Federal Department of Home Affairs, 6 November 2020), paras. 78-84, 89-90.

selected for inclusion in the text? Finally, and in consequence, the contextual caveat has been routinely ignored in practice by the definition's drafters and leading proponents.[15]

Second, *the stipulation that 'criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic'*. But this is less a caveat to the examples than a restatement of them in positive form. Where the examples *prohibit* delegitimising Israel, this *permits* criticism of Israel that does not delegitimise it; where the examples *prohibit* applying double standards to Israel, this *permits* criticism that does not apply double standards to Israel; and so forth. As a restatement of the examples, the caveat neither compensates for nor checks but merely reproduces their flaws. For instance, it was argued in chapters 1 and 2 of this thesis that to designate as inherently antisemitic the depiction of Zionism as 'racist' or the rejection of Israel's legitimacy as a Jewish State is to peremptorily and by fiat presume answers to a set of complex questions in highly contentious domains. Just the same is true of this purported safeguard. Its application requires that antecedent historical, political, and legal judgments be reached about the extent to which Israel is 'similar' to 'any other country' as well as the salience of such similarities for the 'criticism' being assessed.[16]

Third, *the status of the definition as 'non-legally binding'*. The IHRA Working Definition includes the caveat that it is 'non-legally binding'.[17] Defenders of the IHRA Working Definition have argued that this provision ensures the definition cannot undermine free speech as it lacks

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15 See notes 119-124 below.

16 Cf. Robertson, 'Anti-Semitism', paras. 16-18. Ullrich, *Expert*, pp. 14, 16. Randall and Imbeck, *Legal*, para. 73.

17 This stipulation does not appear in the EUMC Working Definition. For the circumstances by which it was introduced into the text adopted by IHRA, see note 169 below.

legal force. This defence does not persuade. For one thing, the definition's drafters and leading proponents have argued for its legal codification (*Table 1*), courts have referred to it,[18] and it has been invested with binding force in some jurisdictions.[19] For another, the Working Definition does not have to be legally codified to undermine free speech. Even if not itself legally binding, it can still control how judicial officials apply hate speech laws. As one pro-Israel advocacy group concluded, 'adoption of IHRA as an interpretative tool makes legislative change redundant'.[20] Finally, supporters of the Working Definition intended that

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18 *Cage Advocacy UK Limited-v-Secretary of State for Education* [2022] EWHC 2373 (Admin), para. 13. The Working Definition's drafters have welcomed its use in court proceedings. Kenneth S. Stern, *Antisemitism Today: How It Is the Same, How It Is Different, and How to Fight It* (AJC, 2006), p. 105. Dina Porat, 'The Struggle Over the International Working Definition of Antisemitism' in Mikael Shainkman ed., *Antisemitism Today and Tomorrow: Global Perspectives on the Many Faces of Contemporary Antisemitism* (Academic Studies Press, 2018), p. 94. Porat, 'Perception', p. 485. Michael Whine, 'Europe's Undertakings to Combat Antisemitism' in Armin Lange et al. eds., *Confronting Antisemitism in Modern Media, the Legal and Political Worlds*, vol. V of *An End to Antisemitism!* (De Gruyter, 2021), p. 374. Cf. Stern, 'Reappraisal', pp. 3-4.

19 In December 2019, US President Donald Trump passed an Executive Order requiring that universities in receipt of federal funding use the IHRA Working Definition to combat antisemitism on campus. In 2021, a guide to applying the IHRA Working Definition jointly published by the European Commission (EC) and IHRA presented as an example of '[g]ood practice' Romanian legislation that 'prosecutes antisemitic crimes based on the IHRA Working Definition'. US President Trump, 'Combating Anti-Semitism', *Executive Order 13899* (11 December 2019). EC and IHRA, *Handbook for the Practical Use of the IHRA Working Definition of Antisemitism* (2021), pp. 17 ('practices'), 18 (Romanian), 38 ('references'). Cf. Rebecca Ruth Gould, 'The IHRA Definition of Antisemitism: Defining Antisemitism by Erasing Palestinians', *The Political Quarterly* 91.4 (2020), pp. 827, 829. Foundation for Middle East Peace, 'Anti-Free Speech/Faux "Fighting Anti-Semitism" Bills, State & Federal (2017-2023)', *fmep.org* (2 March 2023; regularly updated).

20 International Legal Forum, *IHRA's Working Definition of Antisemitism—Legal Analysis* (2020), p. 3. Cf. Email from C.V. (German Interior Ministry) to ALOeS et al., 'WG: heutige St-Runde—AA-Vorlage "Antisemitismus"' (12 September 2017), on file. Lesley Klaff and Derek Spitz, 'Why the 2010 Equality Act Does Not Make the IHRA Definition of Antisemitism Redundant' in Alan Johnson ed., *In Defence of the IHRA Working Definition of Antisemitism* (2021), pp. 40-43. Campaign Against Antisemitism, 'Written Evidence', FOE0236, *UK Parliamentary Human Rights (Joint Committee) Freedom of Expression Inquiry* (2 February 2021), p. 2. Switzerland Federal Council, *International Holocaust Remembrance Alliance (IHRA) Definition of Antisemitism: Federal Council Report in Response to Postulate 19.3942, Rechsteiner, 21 June 2019* (4

it would 'seep into universal usage' as the benchmark for deciding what constitutes antisemitism. They have accordingly campaigned for the definition to be 'adopted universally' and implemented 'at all levels' of society, from universities, political parties, and social media platforms to municipal councils, football clubs, and airline carriers.[21] If such organisations are called upon to suppress antisemitism, then, insofar as they understand antisemitism in terms of the Working Definition, individuals will face censorship or exclusion for breaching its terms. In other words, even where the Working Definition cannot be used to impose criminal penalties, it can still stifle speech across broad swathes of public life.

Table 1. 'Non-legally binding'

EUMC Working Definition	The purpose of this document is to provide a practical guide for … supporting the implementation and *enforcement of legislation* dealing with antisemitism[22]

June 2021), pp. 13-14. Jamie Stern-Weiner, 'It's Not Antisemitic to Oppose Israel's Apartheid Rule Over the Palestinians', *jacobin.com* (23 November 2022).

21 Michael Whine, 'Progress in the Struggle Against Anti-Semitism in Europe: The Berlin Declaration and the European Union Monitoring Centre on Racism and Xenophobia's Working Definition of Anti-Semitism', *Post-Holocaust and Anti-Semitism* 41 (1 February 2006) ('seep'). WJC, 'WJC Calls Labour's Decision to Adopt IHRA Definition Step in Right Direction: "We Hope Action Will Be Forthcoming"', *worldjewishcongress.org* (4 September 2018) ('universally'). Mark Weitzman, 'The IHRA Working Definition of Antisemitism' in Lange et al., *Multi-Faceted*, p. 471 ('levels'). Cf. AJC et al., *Combating Antisemitism and Fostering Jewish Life: Recommendations for the European Commission* (2 June 2021), p. 3. Stern-Weiner, 'Apartheid'.

22 EUMC, 'Working Definition'. All emphases in Table 1 added.

IHRA Chair Romanian Ambassador Mihnea Constantinescu	By adopting this working definition, the IHRA … hopes to inspire … action on a *legally binding* working definition[23]
SWC	IHRA indispensable tool for any nation, locality, or school that actually wants to … hold Jew-haters accountable *under the law*[24]
EC and IHRA	Good practices to fight antisemitism … *Legislation*: … References to IHRA Working Definition of Antisemitism[25]
European Parliament	[C]alls on the Member States and the Union institutions and agencies to adopt and apply the working definition of anti-Semitism … to support the *judicial and law enforcement authorities* in their efforts to identify and *prosecute* anti-Semitic attacks[26]
Global Forum for Combating Antisemitism, convened by the Government of Israel	[T]he Working Definition of Antisemitism should be reintroduced into the international arena with the aim of giving it *legal* status[27]
Michael Whine, a drafter of the definition	[I]t is hoped that states will use it [the IHRA Working Definition] as a guide for their *criminal justice systems*[28]

23 Quoted in IHRA, 'IHRA Concludes Plenary Meetings in Bucharest', *holocaustremembrance.com* (30 May 2016).

24 Tweet by @simonwiesenthal (17 September 2021).

25 EC and IHRA, *Handbook*, p. 38.

26 European Parliament, *Resolution on Combating Anti-Semitism*, 2017/2692 (RSP) (1 June 2017).

27 Dina Porat, Talia Naamat, and Michael A. Salberg, 'Action Plan of the Working Group on Law, Legislation and Enforcement in Combatting Antisemitism' in Israel Ministry of Foreign Affairs and Ministry of Diaspora Affairs, *The Action Plan for Combating Antisemitism 2015 and Beyond and Final Statements* (2015), p. 17.

28 Whine, 'Undertakings', p. 374. Cf. note 86 below.

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The Working Definition is presented as a lucid and objective guide to antisemitism whose distinctive contribution is to clearly distinguish legitimate criticism of Israel from Israel's antisemitic demonisation. In fact, the core definition is vacuous to the point of lacking meaning while the illustrative examples are unhelpfully vague (especially if the caveat that they must be assessed in 'context' is taken seriously) and can easily be construed to delegitimise accurate criticism of Israel (especially if the contextual caveat is ignored). Put otherwise, the Working Definition at best fails to clarify the distinction between legitimate and antisemitic criticism of Israel and at worst actively confounds it. Insofar as the Working Definition is used to regulate speech, its radical indeterminacy is liable to exert a 'chilling' effect while at the same time enabling partisan actors to deploy the examples against Israel's legitimate critics.[29] Meanwhile, the textual safeguards purporting to mitigate these risks are far from robust.

An 'indispensable tool'?

It should hardly surprise that proponents of the New Antisemitism valued an antisemitism definition that incorporated New Antisemitism tenets. But when the Working Definition was first formulated in 2004, as remains the case today, it was a contentious question whether statements about Israel which might be construed as delegitimising, demonising, or evincing double standards should on that account be classified as inherently antisemitic. The Working

29 Tomlinson, 'Opinion', para. 8.

Definition's supporters therefore advanced several supplementary, 'external' rationales for the new definition that might persuade even those who did not agree with the New Antisemitism in principle. This section presents, appraises, and dismisses the most prominent of these rationales.

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For a half-century after World War II, Jewish defence organisations did not feel the need for any formal definition of antisemitism.[30] But since 2004, leading Jewish groups have presented the Working Definition as an 'essential', 'necessary', 'invaluable', 'indispensable' tool that has 'proven its usefulness time and again' in the fight against antisemitism. Their mantra has been that to effectively 'counter' antisemitism 'one needs to define it'.[31] How compelling are these claims? It must first be said that confident estimations of the Working Definition's practical effectiveness have not been substantiated empirically. No evidence has been presented showing that adopting the definition reduces the prevalence or severity of antisemitism. Meanwhile, claims that officials responsible for monitoring or prosecuting antisemitism have uniformly embraced the definition are inaccurate. In 2010, the European Union (EU)'s

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30 Antony Lerman, *Whatever Happened to Antisemitism? Redefinition and the Myth of the 'Collective Jew'* (Pluto Press, 2022), pp. 159-60, 163-64.

31 SWC, *A Watershed in Fighting Antisemitism: The IHRA Working Definition of Antisemitism* (2020), p. 1 ('essential'). Porat, 'Perception', p. 485 ('usefulness'). Robert Williams and Mark Weitzman (chair and former chair of IHRA's Committee on Antisemitism and Holocaust Denial), 'The First Step to Fighting Antisemitism: Why the IHRA Definition Matters', *Jerusalem Post* (6 March 2021) ('counter'). EC, *EU Strategy on Combating Antisemitism and Fostering Jewish Life 2021-2030* (5 October 2021), p. 5 ('necessary'). Mark Weitzman (SWC) in Judah Ari Gross, 'Nearly 80 Years On, the Fight for Holocaust Restitution Continues in Many Countries', *timesofisrael.com* (1 November 2022) ('invaluable'). AJC, 'American Jewish Committee Calls IHRA Working Definition an "Indispensable Tool" to Understand and Fight Antisemitism', *ajc.org* (4 April 2023). Cf. Baker, 'Challenge', p. 35 (mantra).

Fundamental Rights Agency (FRA)—the successor body to the EUMC—reported that feedback on the definition 'drew attention to a number of issues which impacted on its effectiveness as a data collection support tool'. According to a senior FRA official, 'there was no interest by primary data collectors to adopt or use' the definition.[32] But the problem is not just the absence of evidence showing the definition works. It is also that the most salient 'external' rationales for the definition do not withstand scrutiny. Put otherwise, except on the circular premise that it accurately defines antisemitism, the Working Definition is either irrelevant or manifestly ill-suited for the purposes most pressingly claimed for it.

The drafters of the Working Definition presented it as a response to rising anti-Jewish incidents in Western Europe during the Second Intifada (2000-2005).[33] But their arguments to this effect fail to convince. *First*, prominent Jewish organisations charged that European governments were slow to recognise that anti-Jewish incidents had increased, that much of

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32 Stern, 'Reappraisal', p. 4 (claims). Richard Kuper, 'Antisemitism and Delegitimisation', *jnews.org.uk* (22 February 2011) ('issues'—FRA). Ioannis Dimitrakopoulos (Head, FRA Equality and Citizens' Rights Department) quoted in Ben White, 'Israel Lobby Uses Discredited Anti-Semitism Definition to Muzzle Debate', *electronicintifada.net* (28 September 2012) ('interest'). Cf. UK Government, *All-Party Inquiry into Antisemitism: Government Response—One Year On Progress Report*, Cm. 7381 (12 May 2008), p. 6. Michael Whine, 'A Short History of the Working Definition', in *Six Years*, p. 5.

33 The EUMC's 2004 report on antisemitism in Europe provided a relatively 'rigorous' and 'sober', if still in certain respects 'bias[ed]', assessment. It found a near 'consensus' that anti-Jewish incidents had increased, broad agreement that this was linked in part to the Israel-Palestine conflict, and 'limit[ed]' evidence indicating that 'Muslim' or 'North African' perpetrators had in certain countries played an increasing role. However, the EUMC distinguished between different national contexts, underlined the inadequacy of available data, did not provide empirical support for New Antisemitism alarmism, and presented information that cut against sweeping allegations of anti-Jewish sentiment among minority communities. For instance, it reported survey findings that French youths overwhelmingly opposed antisemitic acts while 'French young people of North African origin' were 'even more intolerant of antisemitism than the average'. EUMC, *Manifestations of Antisemitism in the EU, 2002-2003* (EUMC, March 2004), pp. 24-25, 104-5, 239. Finkelstein, *Beyond*, pp. 75-76 ('sober').

this increase was linked to escalations in the Middle East, and that 'Arab and Muslim youth[s]' figured disproportionately among the perpetrators.[34] But even were this complaint valid, it did not require a redefinition of antisemitism to prove a correlation between anti-Jewish incidents and either attitudes towards or the level of Middle East conflict. Rather, conflating these variables would complicate such analysis.[35] Furthermore, already before the Working Definition was drafted, European officials affirmed that anti-Jewish manifestations had become more frequent, that members of 'new minorities' were among those responsible, that 'a form of anti-Semitism may develop … which feeds on the unresolved conflict in the Middle East', and that 'some criticism of Israel is inspired by what amounts to anti-Semitic sentiments and prejudices'.[36] Whether these conclusions were warranted is not here at issue; the point is, the Working Definition was not required to reach them.

Second, it was argued that antisemitic incident monitors needed a common benchmark to ensure the statistics they produced were comparable between countries and over time. EUMC consultations had indeed highlighted as analytically problematic the absence of a common definition of antisemitism for use by data collectors.[37] But even if incident monitors would have benefited from *some* definition of antisemitism, it did not follow that they needed *this* definition. Two considerations argue against this purported rationale for the Working Definition. To begin with, the EUMC had already commissioned a definition to guide data

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34 Andrew Baker (AJC), 'Statement', *US Senate Foreign Relations Subcommittee on European Affairs* (8 April 2004), p. 33. Cf. ibid., pp. 37-38.

35 Cf. Lerman, *Whatever*, pp. 159-60.

36 Romano Prodi, 'A Union of Minorities', SPEECH/04/85, *ec.europe.eu* (19 February 2004).

37 EC and EUMC, *The Fight Against Anti-Semitism and Islamophobia: Bringing Communities Together* (EUMC, 2003), p. 11. EUMC, *Annual Report 2003—Part I* (EUMC, 2004), p. 24. EUMC, *Manifestations 2002-2003*, pp. 25, 254, 320.

collectors from two researchers, Alexander Pollak and Alexander Joskowicz (P-J).[38] In a 2004 report, they distilled from the scholarly literature a definition of antisemitism as '[a]ny acts or attitudes that are based on' a set of anti-Jewish stereotypes.[39] The EUMC recommended that '[f]uture data collection and assessment should be commonly based on' this definition.[40] Drafters of the Working Definition argued that it was needed because the EUMC's existing P-J definition was inadequate. But their criticisms of this P-J definition were either invalid or applied to the Working Definition as well:

- It was alleged that, by listing anti-Jewish stereotypes, P-J's 'astonishing and disturbing' approach 'might actually suggest the idea that the Jew himself was to be blamed for the hostility directed against him'. In fact, P-J stated explicitly that antisemitism was *not* 'hostility towards Jews as … they really are, but rather' hostility 'towards the image of "Jews" constructed by antisemitic ideology'. Furthermore, the Working Definition itself presented as examples of antisemitism the making of 'stereotypical allegations about … the power of Jews' as well as the use of 'symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis'. Did this implicitly blame 'the Jew'—or Israeli—'himself' for antisemitism?[41]

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38 Pollak had achieved his PhD under Ruth Wodak at the University of Lancaster and led work on the report. Joskowicz was a doctoral student in History and worked on the report's historical section. Pollak was subsequently hired by the EUMC and worked for it and FRA over several years.

39 EUMC, *Manifestations 2002-2003*, pp. 10, 12-14, 225-41 (quote at 13 and 238).

40 EUMC, *Manifestations 2002-2003*, pp. 27, 322.

41 EUMC, *Manifestations 2002-2003*, p. 237 ('constructed'). Porat, 'Perception, p. 479 ('blamed'). Cf. Moran Mandelbaum, 'Do We Need a (Legal) Definition of Anti-Semitism?' *opendemocracy.net* (16 July 2018).

- It was alleged that P-J's 'troubling' approach had gotten 'cause and effect … reversed': '[s]tereotypes are derived from what antisemitism is; they are not its defining characteristic'.[42] But, first, wasn't this supposed to be 'a practical tool, not a theoretical one' that was intended for incident monitors and which accordingly described 'manifestations' of antisemitism rather than its essence?[43] Second, the Working Definition itself said nothing about 'what antisemitism is' beyond the minimalist claim that it denotes 'a certain perception of Jews'. Neither did the Working Definition explain its listed examples as 'effect[s]' of an underlying 'cause'.

- It was alleged that P-J's 'crazy' approach had required that incident monitors 'examine the head of perpetrators' to ask whether 'they *really* hate Jews'.[44] P-J themselves acknowledged that applying their definition could be challenging as it was 'very difficult … to look into peoples' heads and grasp their thinking'. But was their handling of this problem so different from that of the Working Definition? P-J defined antisemitism as 'acts or attitudes' based on a stereotypical '*perception*' of 'the Jew', listed examples of these stereotypes, and cautioned that judgments in particular cases would always be 'context dependent'. The Working Definition defined antisemitism as 'a certain *perception* of Jews', listed examples of its manifestations, and

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42 Stern, 'Proposal', p. 9. Cf. Stern, *Today*, pp. 97-98. Kenneth S. Stern, *The Conflict Over the Conflict: The Israel/Palestine Campus Debate* (New Jewish Press, 2020), p. 150.

43 Porat, 'Perception', p. 475. Cf. EUMC, *Manifestations 2002-2003*, p. 225.

44 Stern, 'Proposal', p. 19 ('head'). Stern, 'Reappraisal, p. 2 ('crazy'). Kenneth Marcus, who in 2018 was appointed by the Trump administration as Assistant Secretary for Civil Rights at the US Department of Education, alleges that the P-J definition 'turned out to be useless'. He mistakes criticism from American Jewish organisations for evidence. Kenneth L. Marcus, *The Definition of Anti-Semitism* (Oxford University Press, 2015), p. 17.

> cautioned that judgments in particular cases must always factor 'into account the overall context'. P-J defined criticism of Israel as antisemitic when it reflected a '*view* of Israel as the (stereotypical) "Jew"'. The Working Definition specified that antisemitism could target Israel '*conceived* as a Jewish collectivity'.[45] If the P-J definition of antisemitism was unworkable because it required discerning what was in the mind of each perpetrator, then, the Working Definition was unworkable for the same reason.

In short, claims that the Working Definition was needed because existing guidelines for incident monitors were inadequate do not withstand scrutiny.

An additional problem with this rationale is that the Working Definition was itself manifestly inadequate for guiding data collection. The function of a monitoring definition is to minimise the scope for interpretive discretion on the part of data collectors. It does this by providing monitors with 'easy-to-understand' instructions specifying 'count this, don't count that'. '[C]onsistency, clarity, and precision' are its defining virtues and essential characteristics.[46] Yet what has struck legal and scholarly commentators on the Working Definition is precisely its 'immense vagueness', 'very low level of precision and … internal contradictions'.[47] This is especially true of certain examples relating to Israel. It was noted in Chapter 2, for instance, that determining whether an act or expression applies 'double standards' to Israel requires

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45 EUMC, *Manifestations 2002-2003*, pp. 238 ('perception'), 240 ('difficult'), 241 ('context', 'view'). Emphases added.

46 Email from Kenneth Stern to Yehuda Bauer et al., '[D]efinition of antisemitism' (29 October 2004), on file ('easy'). Stern, 'Reappraisal', p. 2 ('count'). Randall and Imbeck, *Legal*, para. 17 ('clarity').

47 Ullrich, *Expert*, pp. 11 ('vagueness'), 15 ('contradictions'). Emphasis removed.

first taking a position in respect of multiple complex historical, political, and legal controversies. The inclusion of such an egregiously imprecise criterion makes it most unlikely that the Working Definition was crafted with the technical requirements for consistent data collection foremost in mind.

It might be contended that the Israel-related examples were included in the Working Definition despite their imprecision on account of the 'correlation' between 'harsh criticism … of Israel' including 'the view that Jews alone don't have a right to self-determination' and 'the level of antisemitism in Europe'.[48] But this explanation does not persuade. For one thing, no evidence is presented by proponents of the Working Definition to support their proposition that there is significant correlation between the prevalence of (say) anti-Israel 'double standards' and the prevalence of the other statements classified in the Working Definition as antisemitic. More importantly, even perfect correlation would not imply that these two variables were identical or that one was a subset of the other.[49] Being addicted to heroin is known to be strongly correlated with a propensity to commit robbery, but opiate addiction is not itself classified as an acquisitive crime. By the same token, making anti-Israel 'double standards' comments (for instance) should be classified as antisemitic only if it

48 Stern, *Conflict*, pp. 152, 154 ('level'). Kenneth S. Stern, *DEBATE: Antisemitism—IHRA vs JDA*, uploaded to YouTube by Sulha (17 June 2021), 17m00s. ('harsh').

49 Stern recalled 'my UK colleague Mike Whine telling me he used to show two charts: one of the number of mentions of Israel in the UK press … and one of the number of antisemitic hate crimes in the UK. Superimposed, one over the other, they were nearly identical'. So, then, why didn't the Working Definition list, as an 'example' of 'antisemitism in public life', 'mention[ing] … Israel'? Stern, *Conflict*, p. 152. Cf. Michael Whine, 'Antisemitism on the Streets' in Paul Iganski and Barry A. Kosmin eds., *A New Antisemitism? Debating Judeophobia in 21st Century Britain* (Profile, 2003), p. 32.

independently meets the conditions set out in a specified definition of antisemitic behaviour, irrespective of any correlation between the behaviours covered by that definition.[50]

Third, it was argued that incident monitors as well as judicial officials were failing to properly classify crimes targeting Jews or Jewish property, and that applying the Working Definition would correct this. During the Second Intifada period, some Jewish individuals and property in Europe were targeted not on the basis of anti-Jewish prejudice or hostility but rather as perceived proxies for Israel. According to Kenneth Stern of the AJC, the EUMC's existing definition of antisemitism[51] was flawed because it failed to classify as antisemitic this category of crime:

> What should a monitor do if a Jew on the streets of a European city was attacked as a stand-in for an Israeli? The [2004 EUMC] report concluded that, if the [perpetrator] … was upset about an Israeli action, and took it out on the Jew in front of him, while lamentable, that could not be counted as an act of antisemitism.[52]

Stern's AJC colleague, Andrew Baker, made the same complaint about law enforcement:

> We have examples of anti-Israel demonstrators in France who have turned violent and attacked Jews, but authorities considered this a political incident rather than a hate crime. An arson attack on a synagogue in Germany was deemed by the judge not to be an antisemitic

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50 These objections apply with equal force to the (unevidenced) argument that the Working Definition included Israel-related examples because excessive criticism of Israel *caused* antisemitism to 'flourish'.

51 I.e., the P-J definition discussed above.

52 Stern, *Conflict*, p. 150.

> hate crime because the perpetrator had voiced anti-Israel opinions on his social media accounts.[53]

Both Stern and Baker recommended the Working Definition to solve this problem. But this was a non sequitur. If attacks on Jews as stand-ins for Israel were not classified antisemitic, this did not reflect any particular conception of antisemitism. Rather, it reflected a particular understanding of *hate crime*. Most legal jurisdictions adopted the 'animus model' according to which hate crimes are offences motivated by group hatred or hostility. The alternative 'selection model' conceives hate crimes as offences in which the target is chosen—for whatever reason—on account of its perceived connection to a protected characteristic (e.g., Jewishness).[54] Vandalising a synagogue out of misdirected anger over Israeli policies would not qualify as an anti-Jewish hate crime under the animus model, because the offence was motivated by hostility toward Israel rather than Jews. This same act would likely qualify as a hate crime under the selection model because the synagogue was targeted on account of its perceived connection to Judaism or Jews. This is not the place to weigh the merits of these contending approaches.[55] The relevant point for our purposes is that, if the AJC disagreed with how certain European organisations or legal codes classified anti-Jewish incidents, this called for a redefinition not of antisemitism but of hate crime.

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53 Andrew Baker, 'Resisting Anti-Semitism and Xenophobia in Europe', *US House Foreign Affairs Subcommittee on Europe, Eurasia, Energy and the Environment* (29 January 2020), p. 2.

54 On 'selection' versus 'animus' models of hate crimes, cf. Frederick M. Lawrence, 'The Punishment of Hate: Toward a Normative Theory of Bias-Motivated Crimes', *Michigan Law Review* 93.2 (1994), pp. 323-25.

55 Stern dismissed the animus model as 'crazy' but did not present a comparative appraisal of it. Indeed, he betrayed no awareness that his preferred selection model was the minority approach. Note 44 above.

In fact, the Working Definition did incorporate the selection model of hate crime as it stipulated that '[c]riminal acts are antisemitic when the targets of attacks … are selected because they are, or are perceived to be, Jewish or linked to Jews'. But this endorsement of the selection model was inconsistent with—indeed, it rendered irrelevant for classifying hate crimes—both the core definition of antisemitism and the 11 examples of antisemitic acts or expressions which together comprised the bulk of the Working Definition. The implication of the selection model is precisely that anti-Jewish hate crimes need *not* reflect 'a certain perception of Jews'. Meanwhile, per the selection model, assaulting a Jewish person while '[a]pplying double standards' to Israel would likely be a hate crime—but so, too, would assaulting a Jewish person while applying *consistent* standards to Israel. Indeed, *any* 'comments or written statements about … Israel' might constitute evidence that a target was selected because perceived as Jewish.[56] In short, the Working Definition's typology of antisemitic manifestations was not a plausible response to the alleged problem of misclassified anti-Jewish incidents and was inconsistent with the definition's own conception of hate crimes.

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The Working Definition did not clearly distinguish between legitimate criticism of Israel and antisemitic demonisation but instead confounded them. Contrary to claims made by its supporters, the definition was not required to alert governments to rising antisemitism from novel sources, or to guide incident monitoring, or to ensure correct classification of hate crimes. But if the Working Definition was vague, incoherent, and open to partisan misuse,

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56 OSCE ODIHR, *Anti-Semitic Hate Crimes and Addressing the Security Needs of Jewish Communities: A Practical Guide* (OSCE, 2017), p. 49.

and if it answered no pressing need in the fight against antisemitism, then, how is one to account for its genesis and subsequent adoption by dozens of national as well as international bodies? Indeed, doesn't the widespread endorsement of the IHRA Working Definition cast doubt on the critical assessment presented above? Supporters of the Working Definition contend that, if so many governments have adopted it, this must be because they recognise 'its value … in the fight against … antisemitism' and accept 'the need to address' the 'alarming growth of antisemitism' with this 'vital … definition'. 'Its rapid and widespread use', one influential promoter concludes, 'has clearly proven the value of the definition'.[57] Part II of this chapter provides an alternative explanation for the emergence and spread of the Working Definition. It reconstructs the diplomatic record to demonstrate the central role played by pro-Israel advocacy organisations in drafting, promoting, and securing international support for the definition. If the Working Definition has gained traction, this points less to the demonising agenda of Israel's critics than to the political effectiveness of Israel's advocates.

II. Diplomatic history

Part II of this chapter argues that pro-Israel advocacy organisations played a central role in drafting and promoting a Working Definition manifestly designed to stigmatise and stifle legitimate, accurate criticism of Israel. It develops this argument through an original diplomatic history of the Working Definition based on documentation obtained inter alia through investigative research techniques. This historical account offers one way by which to reconcile the critique of the Working Definition advanced in part I with the fact of the

57 SWC, *Watershed*, p. 6 ('proven'). Matas and Braun, 'Debacle' ('vital'). AJC, 'Indispensable' ('fight').

definition's widespread endorsement. It also presents significant new information about the definition's genesis and trajectory. The latter objective is particularly important because prominent drafters and supporters of the definition have misrepresented critical aspects of the diplomatic record. The chapter accordingly now shifts from an analytical to an expository mode, with paragraphs enumerated and nested for clarity, and provides granular detail where this may benefit future researchers. The implications of this material for the New Antisemitism are considered directly in the conclusion.

The EUMC Working Definition

1. In March 2005, the EUMC—an autonomous agency of the EU mandated to provide 'objective, reliable and comparable data' on 'racism, xenophobia, and anti-Semitism'[58]—published on its website a draft Working Definition of Antisemitism.[59] The EUMC Working Definition proved controversial and by 2013 had been removed from the website of the EUMC's successor body, the FRA.[60] On 26 May 2016, the 31 Member Countries of IHRA adopted a variant of the EUMC Working Definition, known thereafter as the IHRA Working Definition.[61] As of 10 April 2023, the IHRA Working

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58 Council of the European Union. *Council Regulation No 1035/97* (2 June 1997), Article 2.1.

59 EUMC, 'Working Definition'; 'Discussion Papers', *eumc.eu.int* (as at 6 May 2006; accessed via the WayBack Machine). The EUMC website clarified that 'discussion papers', such as the EUMC Working Definition, 'do not necessarily reflect the official position of the EUMC'.

60 Antony Lerman, 'Weapons in the Labour Antisemitism Wars? The IHRA Working Definition and the Accusation of "Institutional Antisemitism"' in Greg Philo et al., *Bad News for Labour: Antisemitism, the Party & Public Belief* (Pluto, 2019), p. 123.

61 IHRA, 'Working Definition'. The International Task Force on Holocaust Research, Remembrance and Education (ITF) was established in 1998 'at the suggestion of the Swedish government and in cooperation with the British and Americans'. Its 'remit was to promote archival openness, education and

Definition had been endorsed by 39 UN Member States and underpinned the EU's antisemitism strategy.[62]

Background and genesis

2. The American Jewish Committee (AJC), in particular through its officials Kenneth Stern and Andrew Baker, led the drafting and negotiation of the EUMC Working Definition in 2004-5.[63] From early 2014 to May 2016, Mark Weitzman of the Simon Wiesenthal Center (SWC) engineered the Working Definition's adoption by IHRA[64] while Baker

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memorialization of the Holocaust' through collaboration between governments and civil society organisations. In 2008, a Permanent Office was established in Berlin; half its budget was contributed by the German government. The ITF was renamed IHRA in 2012. Larissa Allwork, *Holocaust Remembrance between the National and the Transnational: The Stockholm International Forum and the First Decade of the International Task Force* (Bloomsbury, 2015), pp. 45 ('Swedish'), 148 (budget).

62 IHRA, 'Information on Endorsement and Adoption of the IHRA Working Definition of Antisemitism', *holocaustremembrance.com* (n.d.; accessed 10 April 2023). EC, *EU Strategy*, pp. 4-5, 6, 12, 22-23.

63 Kenneth S. Stern, 'Written Testimony to the Hearing on Examining Anti-Semitism on College Campuses', *US House Committee on the Judiciary* (7 November 2017), p. 5. Lerman, 'Weapons', pp. 122-23. Stern, the AJC's then-director of antisemitism research, was long credited as the definition's 'lead author'. But after he became a public critic of attempts to use the definition to regulate speech, former colleagues alleged that his role had been 'limited' to that of go-between. Kenneth Stern, 'Proposal for a Redefinition of Antisemitism', *Antisemitism Worldwide 2003/4* (Stephen Roth Institute, 2005). Andrew Baker et al., 'Letter to Kathrin Meyer and Katharina von Schnurbein', *ecaj.org.au* (19 January 2021). Kenneth Stern, 'We Disagree About the Working Definition. That's OK. Here's What's Not', *timesofisrael.com* (10 February 2021). Kenneth S. Stern interviewed by Dov Waxman, Episode 12 of the 'Israel in Depth' podcast, *international.ucla.edu* (19 February 2021).

64 Baroness Ruth Deech, 'Supplementary Evidence (FSU0102)' to House of Commons and House of Lords Joint Committee on Human Rights, *Freedom of Speech in Universities*, Fourth Report of Session 2017-19, HC 589-HL Paper 111 (27 March 2018), footnote 1. The SWC has presented Weitzman as the IHRA Working Definition's 'architect' while US Special Envoy to Monitor and Combat Anti-Semitism Ira Forman characterised the SWC's role as 'essential'. Ira Forman, 'How Our Jewish Organizations Combat Anti-Semitism', *jta.org* (21 March 2017) ('essential'). SWC, 'SWC Contributes to New EU Handbook for the

sought to shepherd it through the Organisation for Security and Co-operation in Europe (OSCE).[65]

3. The AJC and SWC are American Jewish organisations that engage, inter alia, in blanket pro-Israel advocacy. For example, the AJC promoted Israel's line on Operation Cast Lead, the Goldstone Report, the Free Gaza flotilla, Operation Protective Edge, and UN Security Council (UNSC) Resolution 2334 reaffirming the illegality of Israel's settlements.[66] Even where it disapproves of Israeli Government policy, the organisation pledged in 2020, the 'AJC will do what it has always done: explain Israel to the wider world … We will always be their advocates'.[67] The SWC has urged Israel to 'reject a return' to its pre-June 1967 "'Auschwitz" borders'[68] and described EU guidelines prohibiting the funding of Israeli institutions established unlawfully in Occupied

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Practical Use of the IHRA "Working Definition of Antisemitism"', *wiesenthal.com* (8 January 2021) ('architect').

65 Israel Ministry of Diaspora Affairs Combating Antisemitism Division, *Report On: Antisemitism in 2016. Overview, Trends and Events* (November 2016), p. 53. Mihnea Constantinescu, 'Statement of the IHRA Chair, Ambassador Mihnea Constantinescu Regarding the Outcome of the OSCE Ministerial Council in Hamburg', *holocaustremembrance.com* (14 December 2016). Mark Weitzman, 'Anti-Semitism Across Borders', *US House Foreign Affairs Subcommittee on Africa, Global Health and International Organisations* (22 March 2017), p. 9. Baker, 'Challenge', pp. 37-38.

66 Richard Sideman (AJC), 'Letter to the Editor: Israel and Gaza: Which Standards Apply?' *New York Times* (17 September 2009). Gil Stern, 'J Street Under Fire After Attempting to Aid Goldstone', *Jerusalem Post* (3 October 2010). AJC, 'AJC Condemns "Free Gaza" Flotilla for Provoking Tragic Violence', *prnewswire.com* (31 May 2010). AJC, *Impact Report 2014-2015* (September 2015), pp. 7-11. Tweet by @AJCGlobal: 'AJC calls on members of the House & Senate to support bipartisan legislation rejecting the damaging anti-Israel UN Security Council Res 2334' (5 January 2017).

67 Jason Isaacson, 'Confronting the Challenge of Annexation', *ajc.org* (25 June 2020). Cf. John Shapiro, 'AJC and Israel Together', *timesofisrael.com* (8 June 2018).

68 SWC, 'SWC: Israel Should Reject a Return to 1967 "Auschwitz" Borders', *Simon Wiesenthal Center* (19 May 2011).

Palestinian Territory as 'redolent of the 1930's Nazi boycott of the Jews throughout the Reich … which was the prelude to the Holocaust'.[69]

4. In the course of this advocacy, both the AJC and SWC have conflated prima facie legitimate criticism of Israel with antisemitism. The AJC applied the epithet to 'anti-Zionism' as well as the campaign for boycotts, divestment, and sanctions (BDS) against Israel.[70] It asserted that 'to call the Jewish state a racist state by design is antisemitic' since 'to say Israel's founding fathers wholly dispossessed Palestinians oversimplifies history to delegitimize the Jewish state'.[71] And when Amnesty International accused Israel of perpetrating the crime of apartheid, the AJC charged that the venerable human rights organisation had 'earned a place of dishonour in the annals of antisemitism'.[72] For its part, the SWC in 2018 ranked among the world's most egregious 'anti-semitic incidents' a decision by Airbnb to delist Israeli rental properties located in Occupied Palestinian Territory and a German bank's refusal to cut-off a Jewish peace group.[73] Its 2016 review branded UNSC Resolution 2334 the world's 'Worst Anti-Semitic/Anti-

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69 SWC, 'Wiesenthal Centre to World Trade Organisation "Condemn EU for Discriminatory and Anti Free-Trade Measures Against Your Member State, Israel"', *wiesenthal.com* (19 July 2013).

70 Daniel Schwammenthal, 'BDS Is Antisemitic', *neweuropa.eu* (23 September 2019). Cf. Daniel Schwammenthal, '"Anti-Zionism" Threatens Europe's Jews', *transatlanticinstitute.org* (11 December 2018).

71 AJC, 'Common'. Cf. Benny Morris, *The Birth of the Palestinian Refugee Problem Revisited* (Cambridge University Press, 2004).

72 AJC, 'Antisemitism and Foreign Policy: Amnesty International's Israel report', *tranatlanticinstitute.org* (9 February 2022). The AJC cited the IHRA Working Definition in support of this denunciation. AJC, 'Amnesty's Outrageous Lie, Its Big Problem with Jews, and the Truth about Israel—AJC Reacts', *transatlanticinstitute.org* (1 February 2022).

73 SWC, *2018 Top Ten Worst Global Anti-Semitic Incidents* (1 December 2018), pp. 4-5.

Israel Incident'[74] while its 2020 survey decried an 'all-out assault' by the 'German elite' to 're-legitimize anti-semitic BDS'.[75] When the Pre-Trial Chamber of the International Criminal Court (ICC) ruled that it had territorial jurisdiction in Palestine, in February 2021, the SWC charged this 'kangaroo court' with 'anti-Semitism'.[76] What pro-Israel advocacy groups tout as the Working Definition is a vehicle for investing such designations with political, regulatory, and ultimately legal authority.

5. Still more to the point, the AJC was a committed exponent of the New Antisemitism long before it orchestrated the drafting of the Working Definition. In 1990, during the First Palestinian Intifada, an AJC publication authored by Stern proclaimed that '[a]nti-Zionism is bigotry' and 'anti-Zionists are anti-Semites'. Stern endorsed Abba Eban's early formulation of the New Antisemitism that, whereas '[c]lassical anti-Semitism denies the equal rights of Jews as citizens in society', anti-Zionism 'transferred' that 'discriminatory principle' to Israel as a Jewish 'collective'.[77] In 2001, during the Second Intifada, the AJC took control of UN Watch, 'the first NGO established specifically to

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74 SWC, *2016 Top Ten Worst Global Anti-Semitic/Anti-Israel Incidents* (n.d.), p. 1.

75 SWC, *Top Ten Worst Global Anti-Semitic Incidents 2020* (29 December 2020), p. 6. This referred to the 'Initiative GG 5.3 Weltoffenheit', a statement by prominent German academics and cultural institutions rejecting both BDS and the stifling of discussion in the name of combating it.

76 ICC Pre-Trial Chamber I, *Situation in the State of Palestine*, ICC-01/18 (5 February 2021). Abraham Cooper (SWC), 'The ICC Opens a New Front in the War Against Israel. Why We Must Fight', *themedialine.org* (9 February 2021).

77 Kenneth S. Stern, *Anti-Zionism: The Sophisticated Anti-Semitism* (AJC, 1990), pp. 16 (Eban), 27 ('bigotry'), 29 ('anti-Semites').

confront the "new antisemitism"'.[78] And in 2002, as Israel came under heightened international criticism over its diplomatic rejectionism and lethal repression of the Palestinian uprising, another AJC publication by Stern argued that '[t]he current [Israel] divestiture and "boycott" movements' are 'unmistakeably driven by anti-Semitism', '[t]he attacks on Israel on campus today reflect a double standard that can only be explained by bigotry', and '[a]nti-Zionism is anti-Semitism' since '[t]o say that Jews alone don't have a right to self-determination in a part of their historic homeland is clearly anti-Semitic'.[79] Other veteran proponents of the New Antisemitism, such as Israeli holocaust historians Yehuda Bauer and Dina Porat, also participated in the definition's

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78 Lerman, *Whatever*, pp. 72-73. UN Watch became formally independent in 2013 but was still chaired by a former AJC president. Cf. AJC, 'UN Watch, AJC Seal Partnership', *ajc.org* (4 January 2001; accessed via the WayBack Machine).

79 Kenneth S. Stern, *Why Campus Anti-Israel Activity Flunks Bigotry 101* (AJC, 2002), pp. 2 ('boycott'), 3 ('double standard'), 11 ('alone'), 12 ('[a]nti-Zionism'). Cf. 'American Jewish Committee Exposes Inherent Anti-Semitism in Campus Criticism of Israel', *US Newswire* (2 December 2002). Stern, 'Proposal', p. 10. After he left the AJC, Stern denied that the Working Definition had been drafted to stigmatise anti-Zionism as antisemitic, a designation he described as 'offensive'. But that's not what he wrote at the time. Stern's account of the Working Definition is also questionable on other grounds. For example, his 2020 book acknowledges that '[d]ouble standards … need not reflect bigotry', that 'no two countries are the same', that it is not 'necessarily antisemitism if someone cares about' the Israel-Palestine 'issue more than another', and that, if the Working Definition nevertheless listed '[a]pplying double standards' to Israel as an example of antisemitic speech, this was because 'it was relevant' for data collectors seeking to track 'the level of popular antisemitism'. In 2021, he similarly alleged that the 'double standards' example had been 'distorted from its original intent' by people 'abusing it' to characterise 'selective focus on Israel' as antisemitic. But when he was employed by the AJC, Stern affirmed that anti-Israel "'divestiture" is by definition a tool of bigotry unless it is employed against other countries whose policies are clearly more problematic'. And when he proposed the Working Definition, he stated that it was 'problematic' (i.e., indicative of antisemitism) for any institution with a 'broad' human rights 'mandate' to spend 'most of its energies' on Israel. Stern, 'Proposal', p. 10 ('problematic'); *Campus*, p. 20 ('divestiture'); *Conflict*, p. 153 ('need not'). Stern and Waxman, 'Israel in Depth' ('offensive'). Stern, *DEBATE*, 24m40s ('distorted').

drafting.[80] Conversely, Jewish experts sceptical of the New Antisemitism were excluded from the drafting process.[81]

6. As discussed in part I, the AJC presented the EUMC Working Definition as a necessary response to increased anti-Jewish incidents in several European countries. But, as part I also showed, this purported rationale was untenable. Even if anti-Jewish incidents in Europe had risen in response to escalating Middle East conflict, and even if young Arabs and Muslims had figured disproportionately among the perpetrators, still, it did not follow that antisemitism should be redefined to incorporate statements criticising Israel. The only plausible reason for said redefinition was to classify such statements as inherently and intrinsically antisemitic. In candid moments, AJC officials dropped their tendentious rationalisations and acknowledged this classification as the EUMC Working Definition's object.

   6.1 Stern claims to have 'crafted' the EUMC Working Definition in general and to have 'draft[ed]' the most controversial Israel-related examples specifically.[82] By his account, if the EUMC Working Definition listed as an example of antisemitic speech 'drawing comparisons of contemporary Israeli policy to that of the Nazis', it was because these analogies 'demonized Israelis unfairly'. And if the EUMC Working Definition listed as an example of antisemitic speech '[a]pplying double

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80 Lerman, *Whatever*, pp. 57, 60-62 and 70 (Bauer), 138-40 (Porat).

81 Lerman, *Whatever*, p. 128. For a contemporaneous complaint to this effect, cf. Letter from European Jews for a Just Peace Chair Dror Feiler to EUMC Director Beate Winkler, 'Concerning the "Working Definition of Antisemitism"' (13 October 2005), on file.

82 Note 63 above.

standards' to Israel, it was because traditional antisemitism had treated Jews differently while it was unfair to argue 'that Israel should allow its citizens to be attacked when no other democracy would tolerate such violence'. In other words, if the EUMC Working Definition cited as examples of antisemitism certain categories of speech criticising Israel's response to the Second Intifada, it was because its drafters wanted such statements to be considered as intrinsically antisemitic.[83]

6.2 As noted in part I, the EUMC in 2004 published a definition of antisemitism it had commissioned from two researchers (the 'P-J definition'). Drafters of what became the EUMC Working Definition denounced this antecedent text on various grounds that did not withstand scrutiny. But they also accurately criticised it for declining to classify certain criticisms of Israel as inherently antisemitic. Thus, Stern complained that the P-J definition 'bent logic in order to disqualify almost any act motivated by dislike or even hatred of Israel from the label "antisemitic"' and 'fail[ed] … to recognize' that 'anti-Zionism' is just 'politically-based antisemitism'. Baker assessed that, even as the P-J definition allowed that applying 'traditional anti-Semitic stereotypes' to Israel might be antisemitic, still, it 'may not be as complete a definition as some of us would wish'. What he found lacking in the P-J definition was apparent from his gloss on the AJC's own redefinition: 'When Israel is demonized, when its actions are equated to the crimes of the Nazis, when its very right to exist is questioned we are … talking about … a new form of antisemitism'. That is, the animating objective behind

83 Stern, *Conflict*, pp. 153-54. Cf note 79 above.

> the EUMC Working Definition, and its distinctive feature vis-à-vis existing approaches, was the labelling of certain criticisms of Israel as inherently antisemitic.[84]

7. Drafters of the EUMC Working Definition have presented it as a pragmatic response to a technical need expressed by antisemitic incident monitors and/or law enforcement officials. For example, Michael Whine asserts that, in its 2004 report on antisemitism, 'the EUMC noted the lack of a common definition and requested one from a small group of Jewish NGOs'.[85] The falsity of this claim is evident from those aspects of the record already discussed.[86] The EUMC's 2004 report did not 'request' a definition from 'Jewish NGOs' but *provided* a definition and recommended that '[f]uture data collection and assessment should be commonly based on' it.[87] Certain pro-Israel 'Jewish NGOs'

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84 Baker, 'Statement' (8 April 2004), pp. 35-36 ('complete'). Stern, 'Proposal', pp. 9-10. Baker, 'Xenophobia', pp. 1-2 ('demonized').

85 Whine, 'Progress' ('requested'). Cf. Michael Whine, 'Two Steps Forward, One Step Back: Diplomatic Progress in Combating Antisemitism', *Israel Journal of Foreign Affairs* 4.3 (2010), p. 95. Andrew Baker, 'Employing a Working Definition of Antisemitism', *Justice* 58 (2016), p. 5. Andrew Baker, 'Testimony Before the House Judiciary Committee', *docs.house.gov* (7 November 2017), p. 2. Michael Whine, 'Applying the Working Definition of Antisemitism', *Justice* 61 (2018), p. 14. Baker et al., 'Letter'.

86 Whine elsewhere asserts that the Working Definition was needed because 'post war generations … have limited understanding … of antisemitism from' the Nazi period 'or previous eras'. But commentators agree that the distinctive feature of the Working Definition was its incorporation of the *New* Antisemitism. He alleges that only 'those who do not experience antisemitic slurs or physical attacks' would reject the Working Definition's associated examples—yet simultaneously references Jewish commentators who do so. And he dismisses the 'false argument … that the Working Definition is a binding legal act'—by reassuring that it was merely designed to aid 'police officers, prosecutors and the courts' and has 'informed the outcomes of several [legal] cases'. Whine, 'Applying', pp. 14-15. Cf. note 122 below.

87 According to Kenneth Stern, the EUMC's 2004 report said that '*temporarily* we're going to use a definition that looks at stereotypes' (i.e., the P-J definition). In fact, the report recommended without temporal

then *objected* to that definition, on largely spurious grounds, and contrived to *substitute* their own definition in its place.

8. Whine is closer to the mark when he states that 'Jewish NGOs … provide[d] much of the force behind' the Working Definition 'initiative'.[88] During the Second Intifada, Israel's lethal repression in the Occupied Palestinian Territory and rejectionist diplomatic posture provoked widespread international indignation. In September 2001, the NGO Forum affiliated to the United Nations World Conference Against Racism (WCAR) in Durban, South Africa, condemned Israel's 'settler colonialism' and denounced 'Israel as a racist, apartheid state'.[89] Meanwhile, a 2003 survey across EU countries, more respondents agreed that Israel was a 'threat to peace in the world' than any other country.[90] In this context, a small group of pro-Israel Jewish organisations led by the AJC waged a 'diplomatic offensive' that leveraged US, German, and Israeli government support to impress 'the threat of "new antisemitism"' upon European

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qualification that '[f]uture data collection and assessment should be commonly based on' the definition it provided. Stern, *DEBATE*, 8m43s. Note 40 above. Emphasis added.

88 Whine, 'Struggle'.

89 UN WCAR NGO Forum, 'Declaration', *hurights.or.jp* (3 September 2001), paras. 60, 62. Multiple drafters and supporters of the EUMC Working Definition have presented it as a response, primarily or inter alia, to the Durban conference. Whine, 'Combating'. Stern, *Conflict*, p. 154. Stern, *DEBATE*, 45m20s. Gerald Steinberg, 'Antisemitism Today Requires More Than Words to Fight', *Jerusalem Post* (13 October 2021). Dina Porat et al., 'The IHRA Working Definition of Antisemitism: Criticism, Implementation, Importance', *inss.org.il* (23 December 2021), p. 2.

90 Chris McGreal, 'EU Poll Sees Israel as Peace Threat', *Guardian* (3 November 2003). This poll result was itself adduced as 'proof that behind the "political" criticism of Israel stands pure antisemitism' (Sharansky). Brian Klug, 'Is Europe a Lost Cause? The European Debate on Antisemitism and the Middle East Conflict', *Patterns of Prejudice* 39.1 (2005), pp. 54-56 (quote at 54).

agencies and governments.[91] A signal achievement of this 'offensive' was the de facto replacement of the EUMC's existing antisemitism definition with one that could be used to delegitimise much of the heightened international criticism of Israel.

8.1 Whereas an uptick in anti-Jewish incidents was recorded in several European countries, an international Pew Research survey conducted between February and March 2004 found 'no indications that anti-Jewish sentiment has increased over the past decade. Favourable ratings of Jews are actually higher now in France, Germany and Russia than they were in 1991'.[92] A spate of publications nevertheless proclaimed that 'Israel … has been transformed into "the 'Jew' of the nations"' while Jewish public figures decried 'a new, virulent, globalizing and even lethal anti-Jewishness reminiscent of the atmospherics of the 1930s' (Cotler) and warned that '[t]his is the real, ultimately murderous thing' (Britain's Chief Rabbi Jonathan Sacks). The Anti-Defamation League (ADL) declared that 'the actual survival of the Jewish people might once again be at risk' and, in an 'Open Letter to the Nations of Europe', charged that 'Europe's refusal to take a stand against Palestinian terrorism' in the Middle East 'gives license to … anti-Semitic

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91 Michael Whine, 'International Organizations: Combating Anti-Semitism in Europe', *Jewish Political Studies Review* 16.3-4 (2004) (AJC). Whine, 'Struggle' ('force'). Michael Whine, 'Awareness and Initiatives of States and Organisations in Combating Antisemitism', *8th International Seminar for the Research of Antisemitism, Budapest* (November 2006), p. 8n1 ('threat'). Whine, 'Steps', p. 91 ('offensive'). Cf. Esther Romeyn, '(Anti) "New Antisemitism" as a Transnational Field of Racial Governance', *Patterns of Prejudice* 54.1-2 (2020), pp. 208-9.

92 Quoted in Finkelstein, *Beyond*, p. 76. Cf. Peter Beaumont, 'The New Anti-Semitism?' *Observer* (17 February 2002). Note 33 above.

violence in Europe'.[93] Against this alarmist backdrop, a small group of Jewish NGOs 'spurred' first the US and then Germany to instigate high-level OSCE conferences dedicated to antisemitism in Vienna (19-20 June 2003) and Berlin (28-29 April 2004).[94]

8.2 In February 2004, ahead of the OSCE Berlin Conference, Israel's Minister for Jerusalem and Diaspora Affairs Natan Sharansky had distilled the 'new anti-Semitism' as comprising the 'demonization' and 'delegitimization' of Israel as well as applying 'double standards' to it. This '3D test' was announced at the inaugural meeting of Israel's Global Forum for Combating Antisemitism (GFCA), an Israeli Government body that convened Jewish organisations from around the world to 'plan diplomatic initiatives against antisemitism'. An accompanying press release implausibly hailed the GFCA's agreement on a 'definition of "new" antisemitism' as 'a unique intellectual achievement'. Sharansky declared that Israel would wage 'a coordinated counteroffensive against antisemitism' in defence of 'the Jewish People'. But he later remembered matters rather differently. 'When the Forum Against Anti-Semitism'—the

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93 Jonathan Sacks, 'The Hatred That Won't Die', *Guardian* (28 February 2002). ADL, 'An Open Letter to the Nations of Europe', *International Herald Tribune* (11 April 2002) ('license'). Cotler, *Human Rights*, p. 3. Abraham Foxman quoted in Finkelstein, *Beyond*, p. 33 ('survival').

94 Whine, 'Combating'. Whine, 'Steps', pp. 91-92. Within the US, the Congressional CSCE as well as OSCE Ambassador Steve Minikes helped stimulate a reluctant Executive Branch to act. Cf. Ambassador Alfred H. Moses, 'Prepared Statement', *CSCE Parliamentary Forum on Confronting and Combating Anti-Semitism in the OSCE Region* (10 December 2002), p. 54. Baker, 'Statement' (8 April 2004). Steven Windmueller, 'Assessing the American Jewish Institutional response to Global Anti-Semitism', *Jewish Political Studies Review* 17.3-4 (2005). Andreas Nothelle, 'The OSCE Parliamentary Assembly—Driving Reform' in Institute for Peace Research and Security Policy (IFSH), *OSCE Yearbook 2016* (Nomos, 2017), p. 370.

predecessor body to the GFCA—'was first formed out of the [Israeli] Prime Minister's Office, it advanced Israel's mission of helping world Jewry … by defending Jews', Sharansky wrote. 'Once I turned it into the Global Forum for Combating Anti-Semitism, *world Jewry was defending Israel*'.[95]

8.3 In March 2004, the Jewish People Policy Planning Institute gathered officials from Israel's Foreign Ministry, Finance Ministry, and Prime Minister's Office alongside representatives from Jewish organisations including the AJC and ADL. Attendees predicted that Muslim antisemitism in Europe would rise, recommended developing a 'comprehensive strategy to combat' it, and held out that it might 'be exploited to encourage immigration to Israel'.[96]

8.4 In the run-up to the Berlin Conference, American Jewish NGOs sought 'to persuade the US State Department and German Foreign Ministry of the importance' of a conference declaration that 'clearly identifies and condemns the new anti-Semitism'.[97] In April 2004, Baker urged US officials to 'press' European leaders for '[a]cknowledgement that anti-Israeli expressions, including the demonization and vilification of the Jewish State, constitute a new form of anti-

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95 Natan Sharansky, 'Seeing Anti-Semitism in 3D', *Jerusalem Post* (24 February 2004), p. 13 ('3D test'). David M. Weinberg, 'Israel's Role in the Struggle against Antisemitism', *Jerusalem Post* (1 November 2018) ('counteroffensive'). Natan Sharansky and Gil Troy, *Never Alone: Prison, Politics, and My People* (PublicAffairs, 2020), chap. 17, para. 52 ('*Jewry*'; emphasis added). Lerman, *Whatever*, pp. 119 ('plan', 'unique'). Cf. Natan Sharansky, 'The New Antisemitism', *antisemitism.org.il* (1 January 2002); '3D Test'.

96 Quoted in Lerman, *Whatever*, p. 121.

97 Whine, 'International Organizations' ('persuade'). Caryl M. Stern (ADL), 'Prepared Statement on Programs to Counteract Anti-Semitism in Europe', *US Senate Foreign Relations Subcommittee on European Affairs* (8 April 2004), pp. 26, 29 ('identifies and condemns').

Semitism' as well as 'development of an operative definition of anti-Semitism' for 'monitoring, law enforcement, and education'.[98]

8.5 The AJC co-sponsored an NGO Forum preceding the Berlin Conference. The Forum issued a joint Declaration that highlighted as a component in 'the contemporary wave of anti-Jewish hatred' the 'demonization of the state and people of Israel, including anti-Zionist attacks on the legitimacy of Israel's right to exist as a Jewish state, in the media, on the campus, and within public discourse to a degree that is fully one-sided and representative of a double standard'.[99] At the Berlin Conference itself, Sharansky presented his '3D' definition of the 'new anti Semitism' while Israel's President Moshe Katsav implored that '[i]t is impossible to fight against anti-Semitism, while permitting the demonization of Israel and its leaders and denying its legitimate right to exist'.[100] The resulting OSCE Berlin Declaration '[d]eclare[d] unambiguously that international developments or political issues, including those in Israel or elsewhere in the Middle East, never justify anti-Semitism'.[101] This wording was agreed after

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98 Baker, 'Statement' (8 April 2004), pp. 34, 36, 38-39. Emphasis added. Cf. ibid., p. 51.

99 NGO Forum of the OSCE Berlin Conference, *Declaration* (27 April 2004). Windmueller, 'Assessing' (AJC).

100 Moshe Katsav, 'Address by President Katsav at OSCE Conference in Berlin', *mfa.gov.il* (28 April 2004). Natan Sharansky, 'Speech to the OSCE Conference on Anti Semitism', *mfa.gov.il* (29 April 2004).

101 OSCE Bulgarian Chairmanship, 'Berlin Declaration', *osce.org* (29 April 2004), para. 3.

'heated debates' and was 'not as strong as some'—i.e., Israeli Government officials and pro-Israel Jewish organisations—'would have wished'.[102]

8.6 After the Berlin Conference, the AJC led efforts to incorporate Sharansky's '3Ds'[103] in a formal redefinition of antisemitism that would 'build on' the Berlin Declaration. Stern published a draft 'redefinition' in July 2004 whose contents were 'remarkably similar' to the text circulated by the EUMC the following year.[104] How did the AJC text become the EUMC Working Definition? On the one hand, the EUMC effectively 'scrapped' its existing P-J definition 'largely under pressure from American Jewish organisations'.[105] On the other hand, even as the EUMC was backed into a corner by this ferocious political campaign, the AJC shrewdly offered its leadership a way out. Antony Lerman, an informed critic of the New Antisemitism whose account benefits from inside knowledge, writes that Baker persuaded EUMC Director Beate Winkler to acquiesce in its redefinition effort 'as a way of extricating the EUMC from a damaging public controversy over a suppressed, and then leaked, antisemitism report, produced in 2002 by the Centre for Research on Antisemitism, Berlin Technical

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102 Whine, 'Combating' ('strong'). Sharansky and Troy, *Never*, chap. 4, para. 31 ('heated'). Cf. OSCE, *OSCE Conference on Anti-Semitism, Berlin, 28 and 28 April 2004—Consolidated Summary*, PC.DEL/696/04/Rev.1 (27 July 2004), p. 12.

103 Sharansky expressed satisfaction that his 'three D's were baked into' the Working Definition. Sharansky and Troy, *Never Alone*, chap. 4, para. 33. Stern, *Conflict*, p. 152 ('build'). Cf. Weinberg, 'Israel's Role'. Marcus, *Definition*, p. 161.

104 Stern, 'Proposal'. Lerman, *Whatever*, p. 127 ('similar').

105 Marcus, *Definition*, p. 161. Technically, the EUMC neither abandoned the P-J definition nor endorsed the EUMC Working Definition; it merely published both.

University'.[106] Put otherwise, Baker offered to rehabilitate Winkler from political 'embarrass[ment]' and as a quid pro quo the EUMC gave the AJC's definition its implicit support.

8.7 In sum, the diplomatic record does not sustain any suggestion that the EUMC Working Definition was merely a practical response to a technical request from European incident monitors. Instead, it indicates that the EUMC Working Definition was the culmination of a concerted and contentious political campaign spearheaded by pro-Israel American Jewish organisations acting in concert with the State of Israel and elements of the US Government. This campaign sought to redefine as antisemitic much of the heightened international criticism directed at Israel over its repression in the Occupied Palestinian Territory.

9. The EUMC Working Definition's drafters faced a dilemma: the more substantive the text, the more useful it would be, but the more resistance it would generate. The compromise that emerged from the EUMC deliberations was a document that combined a near-meaningless core 'definition' with a list of substantive 'examples' of purportedly antisemitic statements whose relation to the 'definition' was not clearly

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106 Lerman, 'Weapons', p. 122. Cf. Lerman, *Whatever*, p. 127. Lerman was then director of the respected Institute for Jewish Policy Research. The EJC publicly alleged that the EUMC had refused to publish the report because it identified Muslim perpetrators as disproportionately responsible for rising antisemitism in Europe. The EUMC insisted that the report was 'not fit for publication' as the 'data set was … too narrow' to support its 'causal explanations of the development and causes of anti-Semitism in the EU'. Center for Research on Antisemitism—Technische Universität Berlin, *Manifestations of Anti-Semitism in the European Union—First Semester 2002, Synthesis Report* (EUMC, March 2003), pp. 1-3. In the event, this understated the report's shortcomings. Finkelstein, *Beyond*, pp. 71-75.

specified[107] and which were preceded by a qualifier (each did not necessarily but only 'could, taking into account the overall context', constitute antisemitism) that, if taken seriously, divested them of determinative content. The result was a document that was at once technically vacuous and powerfully suggestive.[108]

10. As noted in part I, four of the 11 examples identified acts or expressions related to Israel. These included '[d]enying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavour', comparing 'contemporary Israeli policy to that of the Nazis', and '[a]pplying double standards' to Israel 'by requiring of it a behaviour not expected or demanded of any other democratic nation'.[109]

11. The pro-Israel Jewish organisations that crafted the EUMC Working Definition attached little value to the two-sentence core definition, which even the EUMC Working Definition's architects and proponents have dismissed as a 'preamble' that 'doesn't really say much' (Stern), 'says nothing of any significance' (sociologist David Hirsh), is 'so obvious' (Community Security Trust—CST), is 'very generalist and vague' (Campaign Against Antisemitism—CAA), and is 'totally neutered [and] … unmoored from any

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107 The two-sentence passage introduced as 'Working definition:' was marked off from the rest of the document by double quotation-marks and a bold-italic typeface. On the other hand, the entire document was published under the heading, 'Working Definition of Antisemitism'.

108 See part I above.

109 EUMC, 'Working Definition'. The premise that Israel is a 'democratic nation' is contestable as Israel has exercised military rule over Palestinians for all but seven months of its 75-year existence as a State.

current reality' (Weitzman).[110] What they prized were the illustrative examples, whose effect was to stigmatise as antisemitic a broad swathe of legitimate criticism of and opposition to Israel. Indeed, Baker went so far as to designate these examples the *real* definition:

> When the definition was drafted, and still today, we've always said it's a comprehensive whole. There is a core paragraph, which is in a box … but *essentially the definition is the examples.*[111]

The Working Definition 'is in itself a minimalist definition', a senior official at Israel's Ministry of Foreign Affairs likewise explained. 'What turns it into an essential definition

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110 Mark Weitzman, 'Plenary Talk', *'An End to Antisemitism!' International Conference in Vienna* (18-22 February 2018). CAA, 'The Labour Party's Promise to Cast Aside the International Definition of Antisemitism and Come Up with Its Own Better Version Is a Further Insult to the Jewish Community', *antisemitism.org* (17 May 2018). Mark Gardner (CST), 'What Is the International Holocaust Remembrance Alliance Definition of Antisemitism?' *Jewish Chronicle* (11 July 2018). Kenneth S. Stern, *Defining Antisemitism: Freedom of Speech on Campuses and Beyond (14 December 2020)*, uploaded to YouTube by Independent Jewish Voices (15 December 2020). David Hirsh, 'Statement by David Hirsh' (26 June 2022), on file. A broad consensus of academic and legal specialists concurs with these judgements. Note 11 above.

111 Andrew Baker, *Israel and Antisemitism: The BDS Movement*, uploaded to YouTube by AJC Dallas (6 November 2020). Via Ben White, 'The IHRA Censors Palestinians by Design, Not by Accident', *Vashti Media* (23 December 2020). Emphasis added.

in our eyes is the list of examples'.[112] Of these examples, it was 'those related to the State of Israel' that were 'most useful' and 'of particular note'.[113]

Misuse and misrepresentation

12. Once the Working Definition was published, pro-Israel campaigners frequently exaggerated its significance while suppressing its caveats and qualifications. Whereas the EUMC had disseminated the document as a draft, pro-Israel publicists presented it as having been adopted by the EUMC or rhetorically inflated its status to the 'European' or 'European Union' definition.[114] Once the IHRA Working Definition had been

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112 Noam Katz, Deputy Director General for Public Diplomacy, Israel Ministry of Foreign Affairs, *State Audit Committee*, 23rd Knesset, 1st Session, Knesset Protocol No. 33 (28 July 2020). Translated from Hebrew. Katz was referring to the IHRA Working Definition. When he proposed that Israel's parliament endorse IHRA's text, Zvi Hauser MK identified the '11 concrete examples', rather than the 'broad definition', as perhaps 'the important part'. *Knesset Plenum*, 24th Knesset, 146th Session (22 June 2022). Translated from Hebrew.

113 AJC, 'AJC Praises Lithuania Endorsement of Anti-Semitism "Working Definition"', *prnewswire.com* (24 January 2018). AJC, *The Working Definition of Antisemitism: What Does It Mean, Why Is It Important, and What Should We Do with It?* (August 2021), p. 3.

114 David Matas, 'Assessing Criticism of the EU Definition of Antisemitism', in *Six Years*. Jonny Paul, 'UK Academic Union Rejects EU Definition of Anti-Semitism. UCU Institutionally Racist, Board of British Jews Charges', *Jerusalem Post* (1 June 2011). Andrew Baker, 'Combating Anti-Semitism in the OSCE Region: Taking Stock of the Situation Today', *CSCE* (2 December 2011). Kantor Center for the Study of Contemporary European Jewry, *Antisemitism Worldwide 2011—General Analysis* (Stephen Roth Institute, 2012), p. 3. President's Advisory Council on Campus Climate, Culture, & Inclusion, *University of California Jewish Student Campus Climate Fact-Finding Team Report & Recommendations* (July 2012), p. 8. European Forum on Antisemitism, 'Working Definition of Antisemitism', *european-forum-on-antisemitism.org* (as at 20 February 2013; accessed via the Wayback Machine). Executive Council of Australian Jewry, *Report on Antisemitism in Australia, 1 October 2021—30 September 2013* (2013), pp. 8, 10, 182. SWC, 'Wiesenthal Centre to British Labour Party Shadow Home Secretary: "Adopt the EU Working Definition of Antisemitism"', *weisenthal.com* (1 July 2016). For further examples, see White, 'Discredited'.

adopted, publicists conceded that its predecessor 'never really … [had] any kind of official status'—it 'had never been adopted legally, officially, politically … by any organisation'.[115]

13. A more significant misrepresentation concerned the EUMC's illustrative examples. The Jewish groups that drafted the Working Definition, led by the AJC, had initially presented the examples as designating manifestations that were straightforwardly and unequivocally antisemitic.[116] As discussed, the document's principal value for them was precisely this designation. In final negotiations with EUMC officials, the contextual caveat discussed above ('could, taking into account the overall context') was inserted to 'allay … concerns' that 'critics of Israel' would be illegitimately targeted.[117] But, as noted in part I, the Working Definition provided no guidance as to what 'context' should be considered qualifying while, in practice, the caveat was frequently ignored as pro-Israel activists wielded the EUMC Working Definition with what one drafter termed 'the subtlety of a mallet' to stigmatise and stifle criticism of Israel.[118]

13.1 Baker asserted, with no reference to any 'contextual' qualifier, that:

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115 Mark Weitzman, *Presentation to Ray Wolpow Institute: Defining Antisemitism and Why It Matters (25 October 2017)*, uploaded to YouTube by WWU Libraries (29 November 2018). Mark Weitzman, *How Should We Define Antisemitism—and Who Should Define It?* uploaded to YouTube by MomentMag (21 July 2021).

116 This is true of all three draft versions so far published. Stern to Bauer et al., '[D]efinition'. Stern, 'Proposal'. Stern, *Today*, pp. 192-93fn11.

117 Andrew Baker, 'Testimony Before the House Judiciary Committee', *docs.house.gov* (7 November 2017), p. 3. Baker et al., 'Letter'.

118 Stern, 'Reappraisal', p. 5. Cf. Stern, 'Written Testimony'; 'I Drafted the Definition of Antisemitism. Rightwing Jews Are Weaponising It', *Guardian* (13 December 2019).

> the definition itself goes out of the way to state that criticism of Israel is not antisemitic. But when Israel is demonised, when you equate its activities with the Nazis, when you suggest it doesn't really have a right to exist or that it's a 'racist endeavour', we were very clear: this is not criticism, this *is* a form … of antisemitism.[119]

13.2 Dina Porat, who was centrally involved in early discussions about a Working Definition,[120] referred unequivocally to the EUMC Working Definition's 'list of acts and statements that *are* anti-Semitic'.[121]

13.3 Michael Whine, who participated in the negotiations wherein the contextual caveat was added, subsequently ignored it, as he claimed without qualification that 'the singling out of Israel, holding it to standards that are not required of other states, the demonization of Israel and its right to exist as a Jewish state … are deemed antisemitic' by the definition.[122]

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119 Baker, *BDS*. Emphasis added.

120 Stern credits Porat with first proposing a formal definition of antisemitism during the April 2004 Berlin Conference. But the AJC called for such a definition, and claimed to be working on its formulation, already before the Berlin Conference. Stern, 'Reappraisal', p. 1. Stern, *Conflict*, p. 151. Note 98 above.

121 Quoted in Lerman, 'Weapons', p. 123. Original source: Dina Porat, 'What Makes an Anti-Semite?' *Ha'aretz* (28 January 2007). Emphasis added.

122 Whine, 'Applying', p. 15.

13.4 The SWC, which would subsequently orchestrate IHRA's adoption of the Working Definition, repeatedly used the definition, without any reference to its qualifying caveats, to criticise support for Palestinian rights as antisemitic and pressure for sanctions against it.[123]

This political instrumentalisation of the EUMC Working Definition could scarcely have been avoided; the purpose of the Working Definition was precisely to redefine statements encompassed by the examples as antisemitic, while, as noted, to take seriously the document's contextual qualifier would have rendered it near-meaningless.[124]

14. Such misuses and misrepresentations of the EUMC Working Definition stimulated mounting criticism.[125] Apparently in response, the EUMC and its successor body publicly clarified that the document was merely a work-in-progress, had been adopted

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123 E.g., SWC, 'Wiesenthal Centre to OSCE/ODIHR Warsaw Meeting: "Condemn Spain for Exclusion of Israeli Scientists, in Violation of Its Commitments to OSCE"', *wiesenthal.com* (7 October 2009). SWC, 'Wiesenthal Centre to European Union Foreign Minister: "Cut EU Funding from Universities Hosting 'Israeli Anti-Apartheid Week'"', *wiesenthal-europe.com* (4 April 2011).

124 See part I above.

125 In May 2011, Britain's University and College Union (UCU) Congress adopted a motion to dissociate the union from the EUMC Working Definition, which it characterised as an instrument 'to silence debate about Israel and Palestine on campus'. On this and other grounds, leading British Jewish organisations then denounced the UCU as 'institutionally racist' and backed a lawsuit against it. The lawsuit was dismissed by the Employment Tribunal as 'an impermissible attempt to achieve a political end by litigious means' that evinced 'worrying disregard for pluralism, tolerance and freedom of expression'. *Fraser-v-UCU* [2013] ET 2203290/2011, paras. 178-79. Marcus, *Definition*, pp. 164-65.

neither by the EUMC nor by the EU, had no official status and had not to their knowledge been applied in practice by any public authority within the EU.[126]

The IHRA Working Definition

From EUMC to IHRA

15. When it became clear, in 2013, that the FRA had removed the EUMC Working Definition from its website, American and European Jewish organisations as well as the Government of Israel were sharply critical and resolved to act.[127] 'After that happened', one US delegate to IHRA recalled, 'we decided at IHRA to have discussions about adopting a definition'.[128] The SWC warned that '[t]he absence of an accurate definition

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126 Letter from EUMC Director Beate Winkler to European Jews for a Just Peace Chair Dror Feiler (28 November 2005), on file. Ben White, 'Discredited Definition of Anti-Semitism No Longer in Use, Says BBC', *electronicintifada.net* (30 October 2013). SWC, 'SWC to EU Baroness Ashton: "Return Anti-Semitism Definition Document to EU Fundamental Rights Agency Website"', *wiesenthal.com* (6 November 2013). Shimon Samuels (SWC), 'EU Disowns the "EU Working Definition of Anti-Semitism"', *timesofisrael.com* (3 December 2013). 'EU Anti-Racism Agency Unable to Define Anti-Semitism, Official Says', *jta.org* (4 December 2013). Ben White, 'Israel Lobbyists Finally Concede that EU Has Ditched Anti-Semitism "Definition"', *electronicintifada.net* (5 December 2013). Sam Sokol and Lahav Harkov, 'Israel Urges EU Human Rights Body to Return "Anti-Semitism" Definition to Website. European Jewish Congress President Moshe Kantor Says Move Sends "A Troubling Message"', *Jerusalem Post* (6 December 2013). '"Working Definition" of Anti-Semitism Abandoned by Europe', *European Jewish Press* (14 December 2013). Whine, 'Applying', p. 14.

127 Sokol and Harkov, 'Israel Urges'. 'European Lawmakers Urge E.U. to Reinstate Anti-Semitism Definition', *jta.org* (31 January 2014). The president of CRIF sounded a discordant note: 'The EU never adopted the definition nor did its authors ask them to'; '[t]o continue bleating about the definition is not relevant'. Sokol and Harkov, 'Israel Urges'.

128 Robert Williams quoted in JTA, 'New Anti-Semitism Definition Replaces Abandoned EU Version', *timesofisrael.com* (9 June 2016). '[T]he result', Williams continued, 'was the adoption of a text very similar to

of anti-Semitism, which includes the vilification of Israel and falsely comparing Israel to the Nazis, will only encourage our enemies all over the world to intensify their efforts to delegitimise the Jewish state'.[129] The Chairman of Israel's Knesset Committee for the Struggle Against Anti-Semitism urged a 'push for the adoption of an internationally accepted definition of anti-Semitism'.[130] This was reiterated at the Fifth GFCA convened by Israel's Ministry of Foreign Affairs and Ministry of Jerusalem and Diaspora Affairs in May 2015, which recommended that European institutions and governments '[a]dopt a formal definition of antisemitism' that 'should include unambiguous reference to attacks on the legitimacy of the State of Israel and its right to exist'.[131] The GFCA's Working Group on Law, Legislation and Enforcement in Combating Antisemitism, co-chaired by Porat, recommended 'that the [EUMC] Working Definition of Antisemitism … be reintroduced into the international arena with the aim of giving it legal status'. Its Working Group on Antisemitism in the EU and Western Europe Region recommended that the EU 'appoint a Special Envoy on antisemitism among whose tasks should be to work towards a definition of antisemitism'. And its Working Group on the Role of International Organisations in Combating Antisemitism, co-chaired by Baker and Weitzman, advised that 'one should not underestimate the value of international resolutions and commitments as tools for encouraging action', citing as an example the 'EUMC Working Definition' which 'offered a comprehensive definition of antisemitism

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the definition abandoned by the European Union'. Williams succeeded Weitzman as chair of IHRA's Antisemitism Committee in March 2017.

129 Sokol and Harkov, 'Israel Urges'.

130 Shimon Ohayon, 'Defining Anti-Semitism in Order to Fight It', *Jerusalem Post* (2 January 2014).

131 Israel Ministry of Foreign Affairs and Ministry of Diaspora Affairs, *The Action Plan for Combating Antisemitism 2015 and Beyond and Final Statement* (2015), p. 3.

… including as it relates to the State of Israel'. The Working Group recommended 'engage[ment] with ambassadors and national representatives who serve on these international bodies (e.g., UN, OSCE, IHRA)' and 'foster[ing] efforts to increase the use of the EUMC working definition of antisemitism'.[132]

16. By this point, Weitzman, as Chair of IHRA's Committee on Antisemitism and Holocaust Denial ('Antisemitism Committee') and Director of Government Affairs at the SWC, had already put this recommendation into practice. In 'early 2014', shortly after the SWC had publicly criticised the FRA for having disavowed the EUMC Working Definition,[133] the Antisemitism Committee endorsed a proposal by Weitzman that IHRA adopt a version of the EUMC Working Definition.[134] In December 2014, at an IHRA Plenary meeting in Manchester, Weitzman met and 'obtained the support of'[135] Romanian Ambassador Mihnea Constantinescu, who 'agreed to make the Definition one of his primary goals during the Romanian [IHRA] Chairmanship of 2016'.[136] For

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132 Israel Ministry of Foreign Affairs and Israel Ministry of Diaspora Affairs, *Action Plan 2015*, pp. 14, 17, 23-24. Katharina von Schnurbein became the first EC Coordinator on Combating Antisemitism in December 2015. One of her first acts was to attend a planning meeting for the Working Definition's adoption by the IHRA and OSCE. Note 140 below.

133 SWC, 'SWC to EU Baroness Ashton'. Samuels, 'EU Disowns'.

134 Mark Weitzman, 'The IHRA Working Definition of Antisemitism' in Lange et al., *Multi-Faceted*, p. 465.

135 Mark Weitzman quoted in Manfred Gerstenfeld, 'To Fight Anti-Semitism, You Have to Define It', *Israel National News* (5 March 2018).

136 Weitzman, 'The IHRA Working Definition', p. 466. Weitzman, 'Plenary Talk'. Cf. IHRA, *Plenary Session Bucharest, 26 May 2016: Annotated Agenda* (n.d.), Annex 13, p. 3, on file. In June 2007, Constantinescu delivered introductory remarks to an OSCE High-Level Conference, co-hosted with Romania's Ministry of Foreign Affairs in Bucharest. Weitzman, Baker, Kathrin Meyer (later IHRA Executive Secretary) and Beate Winkler were among the participants. See Mihnea Constantinescu, 'Address to Civil Society Preparatory Meeting—OSCE High-Level Conference on Combating Discrimination and Promoting

Weitzman this was a 'key step', enabling the Working Definition to be presented as a European rather than a parochially Jewish, Israeli or Anglo-American initiative and increasing the prospects of it being adopted.[137]

17. In January 2016, a meeting of Holocaust-related special envoys and representatives of the OSCE and IHRA was convened at the Czech Foreign Ministry.[138] Participants included the new European Commission (EC) Coordinator on Combating Antisemitism Katharina von Schnurbein;[139] Baker, as Personal Representative of the OSCE Chairperson-in-Office on Combating Anti-Semitism; Constantinescu, incoming IHRA Chair; and Cristina Finch, the newly appointed Director of the Tolerance and Non-Discrimination Department of the OSCE's Office for Democratic Institutions and Human Rights (ODIHR). The discussion included 'an animated exchange on the Working Definition and ways to promote it and put it to use'.[140]

Mutual Respect and Understanding', *osce.org* (6 June 2007). OSCE, 'Final List of Participants for the OSCE Conference', *osce.org* (15 June 2007).

137 'There is a quid pro quo', Weitzman explained, such that 'when countries are Chairs, they have pet projects that they make their priorities and other countries generally try to go along with it so that they in turn will get support when they take the Chairmanship'. Weitzman, 'Plenary Talk'.

138 Tweets by @SitlerJiri: '@SEASForman @kschnurbein The idea was born at the envoys# meeting at @CzechMFA in January' (26 May 2016); 'Happy to hear that. The idea was born at envoys' meetin[g] at @CzechMFA in January' (26 May 2016). Jiří Šitler was the Czech Ambassador to Sweden.

139 Letter from IHRA Chair Ambassador Mihnea Constantinescu to IHRA Antisemitism Committee (5 April 2016), on file. A Working Group of Israel's 2015 GFCA had recommended the creation of Schnurbein's position inter alia to 'work towards a definition of antisemitism'. Note 132 above.

140 Also participating were the Special Envoys of Greece, Germany, France, the United States, Macedonia, and Israel, along with the outgoing IHRA Chair. UK Foreign and Commonwealth Office (FCO), 'Brief for Meeting of Post-Holocaust Issues Envoys, Prague, 12 January 2016' (n.d.), on file. Baker, 'Challenge', p. 9.

18. On 5 April 2016, IHRA Chair Constantinescu informed the Antisemitism Committee that IHRA and the OSCE—then chaired by Germany—had determined 'to seek adoption of the EUMC Working Definition of Antisemitism'.[141] He requested that members of the Antisemitism Committee 'help me argue this challenging case' at IHRA's upcoming 23-26 May Bucharest Plenary and delegated to Weitzman the coordination of this effort. In the meantime, experts were to 'open up the dialogue on this issue within your delegations and particularly with your Heads of Delegation'.[142]

19. On 26 May 2016, IHRA's Plenary adopted a Working Definition of Antisemitism. Observing that the IHRA Working Definition was 'essentially the same text' as the EUMC Working Definition, the Louis D. Brandeis Centre kvelled that 'because the IHRA has adopted it, the definition has now officially been given the international status that it was previously lacking'.[143] This was celebrated as a significant achievement for those 'Israeli representatives, individuals and organisations, Jews and non-Jews' who, since the EUMC Working Definition's removal from the FRA website in 2013, had 'been endeavouring to restore awareness of the definition as well as its use'.[144] But in the short term, at any rate, pro-Israel activists' IHRA victory was more apparent than real.

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141 Constantinescu, 'Letter'.

142 Constantinescu, 'Letter'.

143 Quoted in White, *Cracks*, p. 109. Original source: Aviva Vogelstein, 'IHRA Adopts Definition of Anti-Semitism', *brandeiscenter.com* (1 June 2016). Cf. note 128 above.

144 Quoted in White, *Cracks*, p. 109. Original source: Israel Ministry of Diaspora Affairs, *Antisemitism in 2016*, p. 52. According to an unnamed Israeli official responding to the IHRA decision, Israel had 'requested the definition'. 'Comparing Israel to Nazis Is Anti-Semitic, 31 Western States Declare', *JTA* (2 June 2016). Dina Porat also presents the IHRA initiative as a response to the FRA's distancing from the EUMC

Controversy in Bucharest

20. On 26 May 2016, the IHRA general Plenary in Bucharest adopted by consensus this '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.[145]

It was reproduced verbatim from the EUMC Working Definition.

21. To help 'guide IHRA in its work', the Bucharest Plenary also endorsed the EUMC Working Definition's 11 illustrative 'examples' of acts or expressions that 'could, taking into account the overall context', constitute antisemitism. As in the EUMC Working Definition, four of these related to Israel.

22. As discussed, the EUMC Working Definition had combined a vacuous core definition with a list of substantive examples but left unclear the relationship between these elements. The status of the examples also became the central controversy in the IHRA

Working Definition. Dina Porat, 'Definition of Anti-Semitism Is a Threat to No One but Anti-Semites', *Ha'aretz* (20 December 2016). Porat, 'Struggle', p. 98.

145 IHRA, 'Working Definition of Antisemitism', *holocaustremembrance.org* (26 May 2016).

negotiations: Did the IHRA Working Definition include the 11 illustrative examples, or not? For the pro-Israel groups behind the definition, the implications were significant. When the IHRA examples were challenged, their proponents rarely offered a substantive defence of each example's usefulness for efforts against antisemitism. Instead, they tended to argue that the examples reflected widespread and hard-won agreement, which it would be foolish to jeopardise.[146] Thus, Dina Porat insisted that the definition's 'validity … has been established by its being adopted by various groups'[147] while the AJC's Felice Gaer shot down a rival definition of antisemitism as follows: 'the IHRA Working Definition is in a category by itself … [M]ore than 40 countries and hundreds of sub-national entities … have already formally adopted [it] … It has *singular* legitimacy'.[148] If, in fact, IHRA adopted as its Working Definition only the two-sentence passage quoted above, such groups would find it more difficult to promote the list of examples as the product of a broad, non-partisan consensus.

23. The text drafted in 2004 by the AJC and likeminded Jewish groups did not distinguish between the two-sentence 'definition' and the examples that followed.[149] (*Fig. 1*) But in the 2005 EUMC draft, the '[w]orking definition' was distinguished from the accompanying examples by double-quotation marks and a bold-italic typeface. (*Fig. 2*)

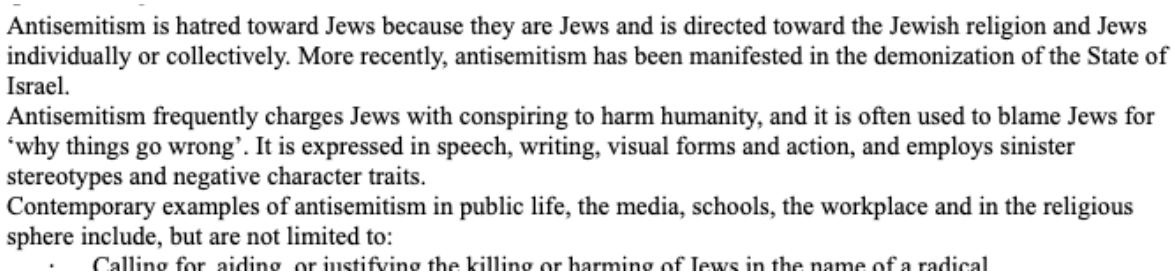
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146 See, e.g., 'Statement by Experts of the UK Delegation to the IHRA on the Working Definition of Antisemitism', *holocaustremembrance.org* (7 August 2018).

147 Dina Porat et al., 'The IHRA Working Definition of Antisemitism: Criticism, Implementation, and Importance', *inss.org.il* (23 December 2021). Cf. note 57 above.

148 Felice Gaer (AJC Jacob Blaustein Institute), presentation to 'A UN Action Plan'.

149 See note 116 above.



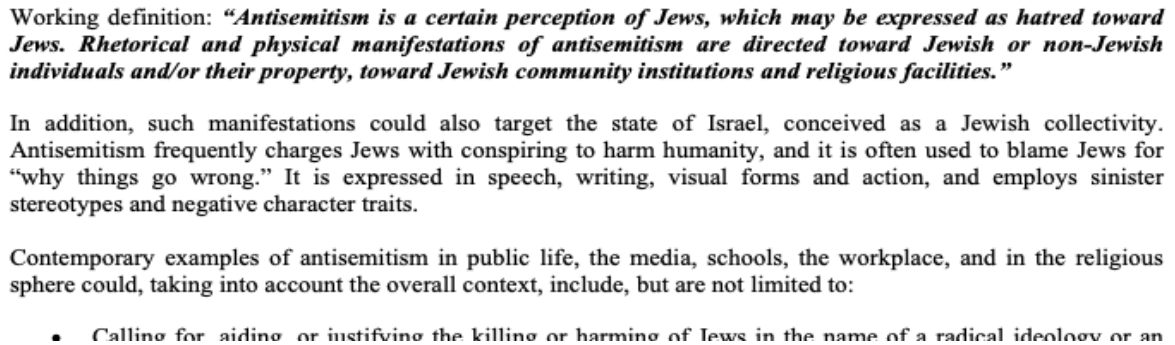
Antisemitism is hatred toward Jews because they are Jews and is directed toward the Jewish religion and Jews individually or collectively. More recently, antisemitism has been manifested in the demonization of the State of Israel.

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 include, but are not limited to:

- Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical

Fig. 1. AJC Proposed Working Definition (2004)



Working definition: ***"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."***

In addition, such manifestations could also target the state of Israel, conceived as a Jewish collectivity. 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

Fig. 2. Draft EUMC Working Definition (2005)

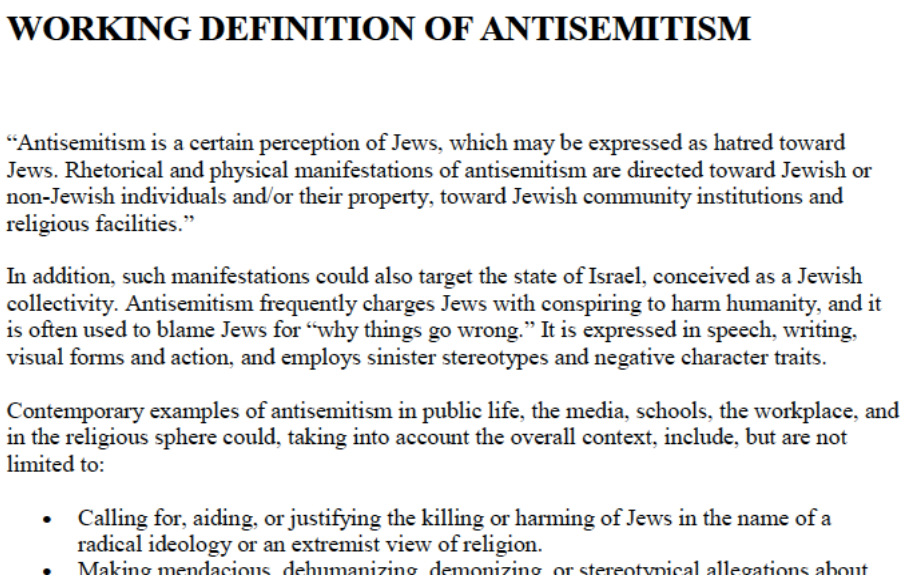
On the other hand, the entire EUMC document was headed, 'Working Definition of Antisemitism'. As a result, the examples were sometimes treated as part of the definition[150] and sometimes not.[151]

24. Ahead of IHRA's 2016 general Plenary in Bucharest, the Antisemitism Committee, headed by the SWC's Weitzman, circulated a draft Working Definition and

150 Porat, 'Threat'. CPCCA, *Inquiry*, pp. 4-6, 15, 16-17, 40, 53-54.

151 OSCE ODIHR, *Combating Anti-Semitism: Current Trends and Challenges in the OSCE Region* (17 March 2009), p. 10n6.

recommended that IHRA's Plenary adopt it.[152] It was the EUMC Working Definition, with two modifications whose common effect was to erode any distinction between definition and examples: the two-sentence opening passage now appeared in Roman typeface and was no longer separately introduced as the 'Working definition'. (*Fig. 3*)



WORKING DEFINITION OF ANTISEMITISM

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- 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

Fig. 3. IHRA Antisemitism Committee proposal (2016)

25. Alleging that a 'surge' in antisemitism had raised '[e]xistential questions … about the viability of continued Jewish life in Europe', the Antisemitism Committee implored delegates to unite behind the existing EUMC Working Definition as there wasn't time to negotiate a new one:

> It is our opinion that for the IHRA to remain a credible and relevant organisation, given the gravity of the situation and the urgent need for action, that [*sic*] we simply cannot

152 IHRA, *Annotated Agenda*, Annex 17, on file.

take another five years (or longer) to have such a tool.[153]

Just as proponents of the EUMC Working Definition had presented it as an emergency response to rising anti-Jewish incidents during the Second Intifada, so Weitzman invoked the spectre of surging antisemitism in the aftermath of Israel's summer 2014 assault on Gaza. But as explained in part I, even if this factual premise was accepted, it did not follow that adopting the Working Definition was a relevant or effective response.

26. According to a confidential internal report by an Ambassador to IHRA, this 'haste that suddenly emerged came as something of a surprise'. Sweden and Denmark proposed deferring the issue until the following Plenary meeting in November 2016. They objected to flaws in the procedure (it was being rushed through) as well as to 'the examples added to the definition'. Supporters of the definition insisted that, while improvements to the text were doubtless possible, it was only 'a working definition' that could 'be further refined later if necessary'. In an effort to reach consensus, Constantinescu 'allowed a compromise proposal to be worked on and to present it to the Plenary meeting'.[154]

27. The revised text[155] was presented by Constantinescu to the Bucharest Plenary on 26 May. The definition 'had been shortened to two sentences' as 'the examples that had

153 IHRA, *Annotated Agenda*, Annex 16, p. 2.

154 Ambassador of [] to IHRA, 'Summary of the IHRA Plenary Meeting in Bucharest, 25-26 May 2016' (n.d.), on file. Translated from [].

155 IHRA.ROC.PL1.CRP.1, on file.

perturbed' Sweden and Denmark 'were no longer together with the definition, but rather [appeared] separately after the two-sentence definition'.[156]

28. Germany, Austria, Canada, Hungary, Romania, Lithuania, Spain, Belgium, Switzerland, Hungary, Slovakia, Serbia, the UK, and the US 'supported the new text'. Sweden held out for 'more time' and for 'the definition' to be still 'more clearly differentiated from the examples'; however, 'they did not want to be the country that brings the process to a halt'. Denmark 'wanted to put the examples in a separate appendix' and objected to the 'excessive haste'. They requested 'time until the next Plenary meeting … to work out' a revised text. Constantinescu then 'started applying pressure'.[157] 'Many member states expressed regret that the examples stand separately from the definition' but were prepared to support it regardless; committee heads then took turns giving 'emotional speeches on how important it was to immediately adopt the definition'. Discussion turned to other matters to give Denmark, Sweden and Ireland time to consult their capitals.[158] In the meantime, a 'sentence was … added' to the document emphasising 'that this working definition of antisemitism is for use by IHRA experts and does not provide recommendations or place political obligations on any member state'.[159]

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156 Ambassador of [] to IHRA, 'Summary'.

157 The Ambassador reported that 'nobody mentioned the "elephant in the room", neither those applying pressure nor those who were subjected to pressure'. This presumably referred to the sudden urgency from proponents of the Working Definition. Ambassador of [] to IHRA, 'Summary'.

158 There 'were no diplomats in the SE [Sweden] and DK [Denmark] delegations'. Ambassador of [] to IHRA, 'Summary'.

159 Ambassador of [] to IHRA, 'Summary'.

Discussion resumed after lunch and the document was adopted at approximately 3.23pm.[160]

29. As will be discussed, it subsequently became a subject of controversy whether IHRA's Bucharest Plenary had considered the illustrative examples *part of* and *integral to* the Working Definition. On this critical point, the Ambassador's account is unequivocal: IHRA consensus was achieved only when

> the original draft text was cut into two, and only the first two-sentence part was to be the *working-definition to be adopted*, while the other part, the examples, remained what they were: *examples to serve as illustrations, to guide the IHRA in its work*.[161]

It was only by excluding the examples from the Working Definition that the IHRA Plenary was able to reach the consensus required to adopt it.

30. The Ambassador's account is credible.

30.1 The account was set out in a confidential report to their own capital. They had personally witnessed, and had no conceivable motive to misrepresent, what transpired.

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160 The Heads of Delegation of the UK and Canada both tweeted at 3.23pm EEST (26 May 2016) to announce that the Working Definition had been adopted.

161 Email from Ambassador [] (24 August 2018), on file. Emphases in original.

30.2 Much of the Ambassador's report can be independently corroborated. The Ambassador's description of the urgency conveyed by the initiative's advocates is confirmed by the Antisemitism Committee's memorandum circulated to delegates ahead of the Plenary.[162] The Ambassador noted that Sweden and Denmark had objected to this 'excessive haste', wanted 'the definition' to be 'more clearly differentiated from the examples', and proposed deferring the issue to the following Plenary meeting in November.[163] Real-time updates posted to Twitter by a delegate from the European Shoah Legacy Institute similarly reported that Sweden and Denmark objected to the definition,[164] that the illustrative 'examples' provoked 'heated debates' which were 'prevent[ing] passing of def[inition] by consensus', that Denmark requested deferral of the issue, and that the Plenary's morning session accordingly 'failed to pass' the document.[165] The Ambassador related how, shortly before the text was adopted, 'a sentence was … added' stating 'that this working definition of

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162 IHRA, *Annotated Agenda*, Annex 16.

163 Ambassador of [] to IHRA, 'Summary'.

164 There is one apparent discrepancy between the Ambassador's report and the European Shoah Legacy account: the former lists Norway among the supporters of the definition, whereas the latter puts Norway among the opposition.

165 Tweets by @ShoahLegacy: '#Denmark refuses to accept the nonbinding definition and urges to return to the definition at the next Plenary Session #IHRAinBucharest' (10.47am EEST, 26 May 2016); '#Sweden joins Denmark, doesn't support adoption of working definition of anti-Semitism b/c of examples provided by #IHRAinBucharest' (10.49am EEST, 26 May 2016); 'E.g. of anti-SEmitism definition raising heated debates & prevent passing of def by consensus #IHRAinBucharest' (1.01pm EEST, 26 May 2016); '#IHRAinBucharest | IHRA failed to pass non-binding legal definition of anti-Semitism. Currently, no internationally accepted definition' (1:53pm EEST, 26 May 2016). This delegate was not present for the afternoon session when a revised text was adopted.

antisemitism is for use by IHRA experts'.[166] Email records indeed show that approximately 45 minutes before the text was adopted, a revised draft was circulated in which the sentence immediately following the definition was amended from, 'The following text and examples are meant to illustrate some of the forms antisemitism can take', to, '*To guide IHRA in its work*, the following examples may serve as illustrations …'.[167]

31. The Ambassador's key observation—that to achieve consensus a separation was effected between definition and examples—can also be corroborated.

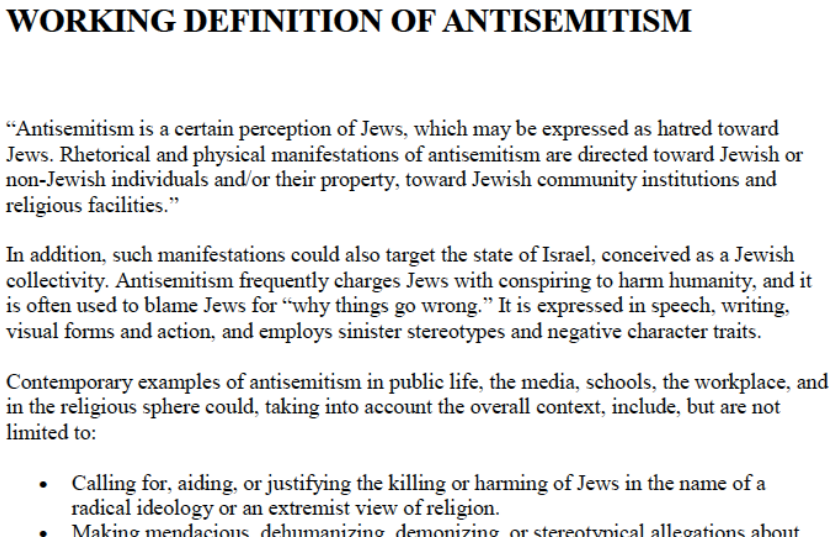
31.1 The separation is evident in the resolution adopted by IHRA (*Fig. 5*) as well as IHRA's press release announcing it. (*Fig. 6*) Whereas the text proposed by the Antisemitism Committee ahead of the Bucharest Plenary did not clearly distinguish between the definition and the examples,[168] (*Fig. 4, reproducing Fig. 3 above*) the final draft had the 'working definition' cordoned off by a rectangular box from the surrounding text, from which it was additionally distinguished by a bold typeface and double-quotation marks. In a departure from the EUMC

166 Ambassador of [] to IHRA, 'Summary'.

167 IHRA.ROC.PL1.CRP.1 (older draft). IHRA.ROC.PL1.CRP.1a (revised and final draft). Emphasis added. Both documents on file. Version CRP.1a was sent to the Denmark's Head of Delegation by the IHRA office at approximately 2.40pm EEST; see Email from IHRA Permanent Office to Denmark Head of Delegation, 'Version 1a' (26 May 2016, 2.40pm EEST), on file. The documents were also published on Twitter: the older draft by delegate @ShoahLegacy (1.01pm EEST 26 May 2016) and the revised draft by UK Head of Delegation @EricPickles (3.29pm EEST, 26 May 2016). Cf. Weitzman's recollection that he, together with Dina Porat and Ambassador Constantinescu, 'were jointly editing the document during the lunch break of the Plenary meeting'. Weitzman, 'The IHRA Working Definition', p. 465.

168 Cf. Lerman, 'Weapons', p. 129.

Working Definition, the IHRA Working Definition was explicitly 'non-legally binding'[169] while IHRA's examples were prefaced by the caveat that their limited function was to 'guide IHRA in its work'.



WORKING DEFINITION OF ANTISEMITISM

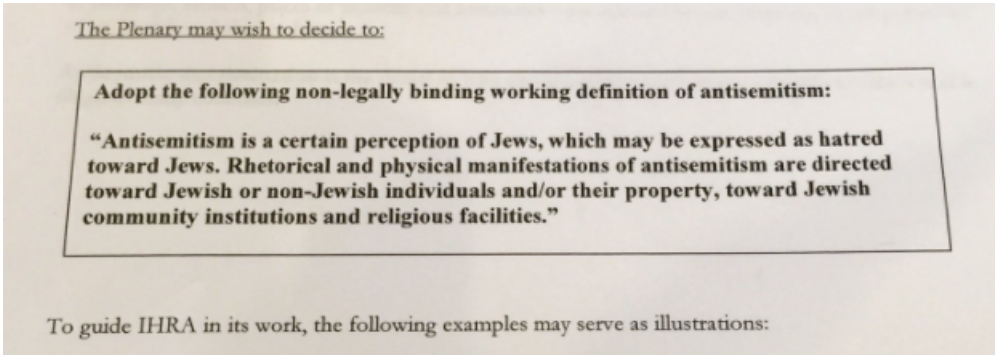
"Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities."

In addition, such manifestations could also target the state of Israel, conceived as a Jewish collectivity. 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

Fig. 4. IHRA Antisemitism Committee proposal (2016)



The Plenary may wish to decide to:

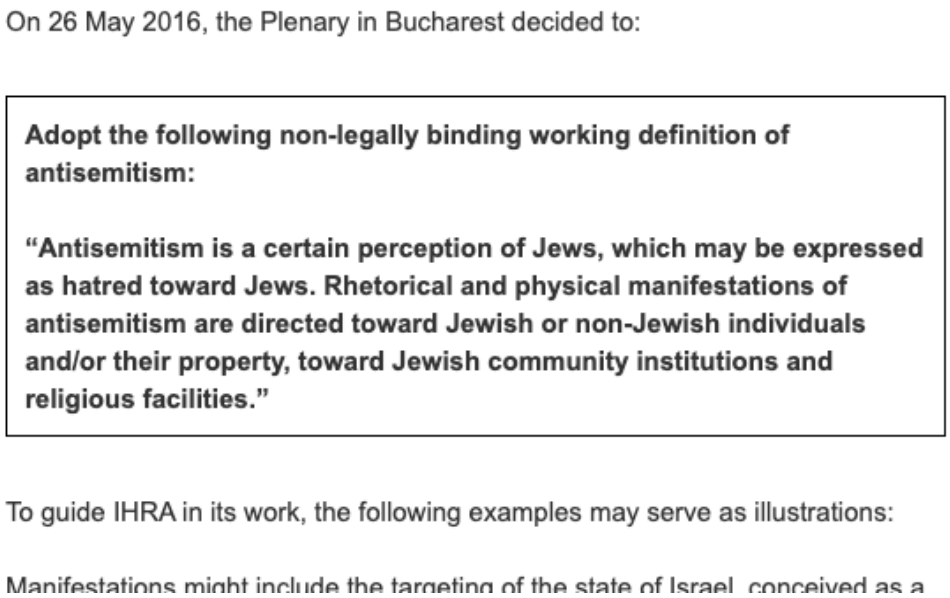
Adopt the following non-legally binding working definition of antisemitism:

"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."

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

Fig. 5. IHRA decision (2016)

169 Denmark's Head of Delegation noted that, in Bucharest, 'we, among other things, codified' the Working Definition 'as not legally binding'. Denmark Head of Delegation, *Reporting, IHRA, Plenary Session Geneva, 29 June 2017* (n.d.), on file. Translated from Danish.



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."

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

Fig. 6. IHRA press release (2016)

31.2 In September 2017, IHRA's Permanent Office itself clarified, in response to a query from a Brussels-based Palestine advocacy group, that:

> *The working definition is the text in the box* and the examples may serve as illustrations to guide the IHRA in its work and to illustrate how antisemitism could manifest itself.[170]

170 Email from IHRA Permanent Office to European Coordination of Committees and Associations for Palestine (ECC Palestine; 12 September 2017), on file. Emphasis added. Cf. ECC Palestine and Free Speech on Israel, *The "IHRA Working Definition of Antisemitism"* (7 December 2017).

31.3 Shortly after the Bucharest Plenary, Denmark's Ministry of Foreign Affairs placed on record its position in an email addressed to IHRA Chair Constantinescu along with all IHRA Heads of Delegation:

> Denmark supports the definition of antisemitism as written down in the decision of the Plenary Meeting of the IHRA in Bucharest, but *does not consider the examples as being an integral part of the definition*.[171]

During IHRA's November 2018 Plenary, in Ferrara, Sweden reiterated its reservations regarding the illustrative examples and urged that the definition be distinguished from the examples 'in all contexts'.[172] Slovenia 'supported [Sweden's] … interpretation of the definition' as well as its reservations about the examples' 'implications for freedom of expression'.[173] IHRA Plenary '[d]ecisions are taken by consensus'.[174] The internal IHRA record after

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171 Email from Head of Department, International Law and Human Rights, Ministry of Foreign Affairs, Denmark to IHRA, 'IHRA—Working Definition on Antisemitism, Danish Position' (16 June 2016), on file. Emphasis added. Belgium reportedly sent an email to the same effect.

172 Utrikesdepartementet—Sweden, *Arbetsgrupps—och plenarmöte i International Holocaust Remembrance Alliance (IHRA), Ferrara 27-29 November* (n.d.), p. 7, on file. Translated from Swedish.

173 Utrikesdepartementet—Sweden, *Ferrara 27-29 November*, p. 7. Translated from Swedish. Denmark's Head of Delegation to IHRA reported from the Ferrara Plenary that one delegation, identity redacted, 'emphasised that the IHRA's definition is not legally binding and that it does not agree with the attached examples of anti-Semitism, which run counter to freedom of expression'. Denmark Head of Delegation to Denmark Ministry of Foreign Affairs, 'Feedback from IHRA Plenary Session in Ferrara' (n.d.), on file. Translated from Danish.

174 IHRA, *Working Rules of the International Holocaust Remembrance Alliance (IHRA)* (2020), article 20.2.

Bucharest, corroborates the internal IHRA record from Bucharest, that no such consensus existed for including the examples in the Working Definition.

31.4 In November 2020, a legal analysis commissioned by Switzerland's Federal Department of Home Affairs stated that 'lack of consensus regarding "new antisemitism"' evident in the 'controversy surrounding' the IHRA examples had led to a 'compromise reached by the IHRA Plenary in Bucharest, which was to separate the core definition from the other parts'. As a result, there 'is no reference to criticism of Israel in the core definition'.[175]

31.5 In 2021, a Minister of the Government of Ireland stated that

> Ireland was supportive of the adoption by IHRA of the non-legally binding Working Definition of Antisemitism. However, this support was conveyed on the basis that while Ireland was supportive of the definition we did not consider the illustrative examples that followed to be an integral part of the definition.[176]

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175 Randall and Imbeck, *Legal*, paras. 2, 4, 45, 66.

176 Ireland Minister for Children, Equality, Disability, Integration and Youth, 'Written Answers' to 'Questions (478)', *oireachtas.ie* (9 November 2021). Cf. Sue Pentel and Jacob Woolf, 'Anti-Semitism Must Not Be Elevated Over Other Racism', *irishtimes.com* (16 December 2021).

31.6 In its 2021 *National Strategy against Antisemitism*, the Government of Austria stated that the 'examples of antisemitism which serve to guide the work of the IHRA … are not part of the working definition itself'.[177]

31.7 Only these mutually corroborating accounts are consistent with the public record in the months following the Bucharest Plenary. This is clearest in the case of Germany, which, as Chair of the OSCE and the principal lobbyist along with Baker, Weitzman, and Constantinescu for the Working Definition, was well-positioned to understand its content.[178] A June 2017 Bundestag Motion proposed, inter alia, that the Federal Republic adopt the IHRA Working Definition; this was quoted as the core definition, with no mention of the examples.[179] On 20 September 2017, the Federal Government endorsed by Cabinet decision an 'extended version of the IHRA definition'—'extended' because, in addition to the text-in-the-box, it incorporated one sentence on Israel-related antisemitism from the EUMC Working Definition (as translated into German by the AJC).[180] *This 'extended version' did not include any illustrative*

177 Austrian Federal Chancellery, *National Strategy Against Antisemitism* (2021), p. 52.

178 Germany sought to use its 2016 OSCE chairmanship to have that body adopt the IHRA Working Definition. This effort failed due to the objection of Russia. See German Federal Foreign Office, 'Arbeitsdefinition Antisemitismus (AS)' (June 2017), on file.

179 'Antisemitismus Entschlossen Bekämpfen', Antrag Bündnis 90/Die Grünen, Drucksache 18/12784, *Deutscher Bundestag* (20 June 2017), footnotes I and II.I.

180 'Regierungspressekonferenz vom 20. September', *bundesregierung.de* (20 September 2017). Cf. 'IHRA Verabschiedet Antisemitismus-Definition—Update: Die Definition Wurde Offiziell von der Bundesregierung Übernommen', *Israel Embassy in Berlin* (20 September 2017), 'Antisemitismus Entschlossen Bekämpfen', Antrag CDU/CSU, SPD, FDP, Bündnis 90/Die Grünen, Drucksache 19/444, *Deutscher Bundestag* (17 January 2018), II. The IHRA document included a near-identical sentence on Israel-related antisemitism, but the German Cabinet decision took its wording from the EUMC Working

> *examples*. Internal correspondence between German Foreign Office, Chancellery, and other departmental officials confirms their understanding that the IHRA Working Definition adopted in Bucharest comprised only the short text-in-the-box: 'The consensus to also include the extended sentence on Israel-related antisemitism failed due to the resistance of Sweden, Norway, Denmark, and the Netherlands'.[181]

32. In sum, the coordinated 'push' by pro-Israel groups and supportive governments to have the EUMC Working Definition 'reintroduced into the international arena' through the OECD and IHRA met with only limited success. At the OSCE, Baker and German Foreign Minister Walter Steinmeier were thwarted by a Russian veto.[182] The efforts of Weitzman and Constantinescu at IHRA were more fruitful as, in May 2016, the IHRA

Definition as translated into German by the AJC's European Forum on Antisemitism and then quoted in a 2017 report of the Independent Expert Commission on Antisemitism. Unabhängiger Expertenkreises Antisemitismus, *Bericht Des Unabhängigen Expertenkreises Antisemitismus*, Drucksacher 18/11970 (7 April 2017), p. 23. Joseph Croitoru, 'Was Ist Antisemitismus?' *Süddeutsche Zeitung* (20 July 2020). 'IHRA-Definition', *antisemitismusbeauftrager.de* (n.d.; accessed via the WayBack Machine on 4 October 2020).

181 Email from N.G. (Foreign Office—AA) to K.P. (Chancellery—BK), 'AW: dringende Rückfrage' (20 September 2017, 9.37am), on file. Translated from German. Original text: '*Der Konsens, auch den erweiterten Satz zum israelbezogenen Antisemitismus aufzunehmen, scheiterte am Widerstand von Schweden, Norwegen, Dänemark und den Niederlanden*'. Cf. Email from N.G. (AA) to KP (BK), 'Kabinettbeschluss Definition von Antisemitismus – Bitte um Rückmeldung bis morgen, 12.9. 12.00 Uhr' (11 September 2017, 6.21pm), on file ('this sentence [on Israel-related antisemitism] is not part of the endorsed definition of the International Holocaust Remembrance Alliance'). Translated from German. I am grateful to Itay Mashiach for the last reference. The identification of Denmark and Sweden as opponents of the 'expanded' definition further corroborates the Ambassador's Report.

182 Cf. notes 65 and 178 above. The IHRA and OSCE Working Definition initiatives were 'coordinate[d]'. Constantinescu, 'Letter'. The OSCE draft motion reportedly did not specify the status of the examples but 'spoke only about adopting the IHRA Working Definition with a link to the full definition on the IHRA website'. Baker, 'Challenge', p. 37.

Plenary adopted by consensus a Working Definition of Antisemitism.[183] But this definition excluded what was, for pro-Israel advocacy organisations, the EUMC Working Definition's valuable element: the list of 11 illustrative examples.

Misrepresenting the IHRA Working Definition

33. In 2018, prominent supporters of the examples within and outside IHRA began to systematically misrepresent the IHRA Plenary's May 2016 decision. Whereas IHRA Member Countries were able to reach consensus only by *excluding* the examples from the Working Definition, the examples' supporters falsely claimed that there was a consensus for *including* them. The aspect thus misrepresented was neither trivial nor obscure, but, on the contrary, had been the subject of a 'heated' controversy that nearly derailed the whole initiative.[184] These actors misrepresented the outcome of that controversy to smuggle the contentious examples into the IHRA Working Definition.

34. Before 2018, IHRA's Permanent Office distinguished between '[t]he working definition', which 'is the text in the box', and 'the examples' that 'guide the IHRA in its work'.[185] This distinction faithfully reflected the decision of IHRA's Plenary in Bucharest. The same distinction was evident in, for example, the Government of Israel's

183 IHRA, 'Working Definition'.

184 Tweet by @ShoahLegacy: 'E.g. of anti-SEmitism definition raising heated debates & prevent passing of def by consensus #IHRAinBucharest' (26 May 2016). Cf. note 165 above. Weitzman recalls 'the examples that related to Israel' as '[t]he major sticking point' in negotiations over the Working Definition. Weitzman, 'The IHRA Working Definition', p. 466.

185 See para. 31.2 above.

announcement on 26 January 2017 that 'in addition to the [IHRA working] definition' it had 'also adopted the accompanying illustrations',[186] as well as Germany's adoption of an 'extended version' of the Working Definition that incorporated *none* of the examples in September 2017.[187]

35. In the first half of 2018, Weitzman made several public interventions that muddied to the point of obscuring this distinction. In early 2017, the IHRA Working Definition had been mobilised to shut down a number of pro-Palestine events on UK campuses,[188] to the express approval of Weitzman and the SWC.[189] When a British academic and activist concerned about the IHRA Working Definition's deployment to curtail free expression imprecisely claimed that the illustrative examples had not been adopted in Bucharest,[190]

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186 Israel Ministry of Foreign Affairs, 'January 27: The World Marks International Holocaust Remembrance Day', *mfa.gov.il* (26 January 2017).

187 See para. 31.7 above.

188 Free Speech on Israel and Palestine Solidarity Campaign, 'Selected Cases of Interference with Free Expression, 2017', *freespeechonisrael.org.uk* (11 December 2017). Cf. Rosa Doherty, 'University Cancels Israel Apartheid Week Event', *Jewish Chronicle* (21 February 2017). Matthew Offord MP, 'Matthew Joins Protest Outside Parliament to Condemn Israel Apartheid Week', *matthewofford.co.uk* (28 March 2018). Rebecca Ruth Gould, 'Legal Form and Legal Legitimacy: The IHRA Definition of Antisemitism as a Case Study in Censored Speech', *Law, Culture and the Humanities* (18 August 2018).

189 SWC, 'Wiesenthal Center—Other Universities Should Follow British University's Cancellation of "Israel Apartheid Week', *wiesenthal.com* (21 February 2017). Cf. Benny Fisher, presentation to Knesset Foreign Affairs and Defence Committee, 'The Place of Students in the Struggle Against the Delegitimization Movement', *main.knesset.gov.il* (4 July 2017).

190 Jonathan Rosenhead, 'Oral Evidence' to House of Commons and House of Lords Joint Committee on Human Rights, *Freedom of Speech in Universities*, Fourth Report of Session 2017-19, HC 589-HL Paper 111 (17 January 2018).

Weitzman and Constantinescu, 'at the request of some Jews in the UK',[191] issued this mystifying 'clarification' in January 2018:

> We can confirm that the definition itself (as stated in the text of the adopted definition) is part of the entire document, including examples, that was officially adopted (as one piece) by the IHRA Plenary on 26 May 2016. There is no question about that and any assertion otherwise is absolutely false or misleading.[192]

Further obfuscatory formulations followed:

> [T]he BDS Movement, along with antisemitic anti-Zionists, have focused on the definition and attempted to discredit [it] by various means… . [T]hey have recently tried a new attack, claiming that the text in the box (which does not mention Israel) was the only officially adopted part … and the rest was just illustrations that have no standing. This would in effect decouple the text from anything directly related to Israel and thus create a totally neutered definition unmoored from any current reality that includes references to Israel.[193]

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191 Weitzman, 'Plenary Talk'.

192 Weitzman and Constantinescu quoted in Whine, 'Applying', p. 14. Whine cites the quote to 'IHRA response to the Government of Latvia' (p. 15n34). But in her written evidence to the parliamentary Joint Committee on Human Rights, Baroness Deech sourced it to an email from Mark Weitzman to Jonathan Turner of UK Lawyers for Israel, while, as noted, Weitzman himself has said that the joint statement was issued 'at the request of some Jews in the UK'. Deech, 'Supplementary Evidence', footnote 1. Weitzman, 'Plenary Talk'. Cf. 'False Speech on Israel', *JVL Watch* (18 January 2018).

193 Weitzman, 'Plenary Talk'.

> [I]n May 2016 at the Bucharest Plenary, the IHRA adopted a definition of anti-Semitism very similar to the previous EUMC version, which included a number of examples.[194]

36. It is not difficult to state plainly, as did the Government of Israel in January 2017 and IHRA's Permanent Office in September 2017, that IHRA adopted the core text-in-the-box as the Working Definition alongside a list of illustrative examples to guide its own work. If Weitzman resorted instead to such convoluted circumlocutions as '*the definition itself … is part of the entire document, including examples, that was … adopted (as one piece)*', this was apparently in order to convey the false impression that the Working Definition '*include[ed]*' the examples. Indeed, Constantinescu had already, as IHRA Chair, publicly misrepresented the 'working definition' 'adopted by consensus' at 'the Bucharest Plenary' as a 'one-page text' that 'includes examples'.[195]

37. From early May 2018, the IHRA Working Definition figured prominently in a political controversy over alleged antisemitism in the British Labour Party. On 17 July 2018, Labour's ruling body adopted a Code of Conduct for Antisemitism which incorporated the IHRA Working Definition as well as most of the examples.[196] The Party was criticised for deciding not to adopt all the examples verbatim. The dispute over this

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194 Weitzman, quoted in Gerstenfeld, 'Fight'.

195 Mihnea Constantinescu, 'Despre Cum Să Întoarcem Definitiv o Pagină de Istorie', *Realitatea Evreiască* Nos. 488-489 (February 2017), p. 15. Translated from Romanian.

196 Lee Harpin, 'Read Labour's New Definition of Antisemitism That Has Caused So Much Anger', *Jewish Chronicle* (5 July 2018).

decision was then escalated by Labour's critics into a protracted national controversy that culminated in Labour's capitulation.[197]

38. In the course of this confrontation, the IHRA Working Definition was at times misrepresented by its advocates in just the manner of the EUMC Working Definition before it. Perhaps the most significant misrepresentation concerned the status of the examples. Labour's leadership maintained that the Party had adopted the Working Definition while adapting so as to improve upon the list of examples.[198] Its critics contended that the examples constituted an integral part of the definition (sometimes referred to, in emphasis of this, as the 'full' or 'original' definition) so that to reject or revise any of the examples was to reject the definition. (*Table 2*)

Table 2. 'Inseparable' and 'Not Negotiable'

Jewish Labour Movement (JLM)	The Jewish community, and the Jewish Labour Movement, believe that the best working definition of antisemitism is the full IHRA definition, *including its examples*[199]

197 'Labour Adopts Full Anti-Semitism Definition', *BBC News Online* (4 September 2018). Cf. Lerman, 'Weapons'.

198 The party had endorsed the core definition in December 2016. Peter Edwards, 'Corbyn Backs Official Definition to Stamp Out "Repugnant" Anti-Semitism', *LabourList* (12 December 2016).

199 Letter from the JLM to Jennie Formby (General Secretary of the Labour Party), 4 July 2018, on file. Cf. JLM, 'Statement', published on Twitter at 7.13pm, 3 August 2018: '[The Code of Conduct] rejected the full IHRA definition of antisemitism'.

Board of Deputies of British Jews (BoD) and Jewish Leadership Council (JLC)	Labour needs to accept the International Holocaust Remembrance Alliance definition *with all its examples*[200]
Community Security Trust	[Labour has] rewritten (and therefore rejected) the widely recognised IHRA definition of antisemitism… . The chair of IHRA at the time the definition was adopted has made it clear that the definition is one document. It is not a pick and mix selection of components. *To adapt it is to reject it*… . It is not, as many have argued, a core paragraph with optional examples to then be selected from[201]
Campaign Against Antisemitism	[Labour officials seem to imply] that they can adopt the very generalist and vague opening paragraph of the definition and reject the examples that form part of it. However, the definition, including *its examples*, is a single document, as confirmed by its authors, who state that *the examples are not merely optional guidance but are an inseparable part of the definition* itself…[202]

200 Marie van der Zyl (President, BoD) and Jonathan Goldstein (Chair, JLC), 'Jeremy Corbyn Must Remember that Inaction in the Face of Racism is Complicity', *New Statesman* (5 August 2018).

201 Gardner (CST), 'Labour'. Cf. Gardner, 'What Is' ('The definition is a single document, but Labour treats it as having two parts'). Dave Rich (CST), 'Labour's Antisemitism Code Exposes a Sickness in Jeremy Corbyn's Party', *Guardian* (18 July 2018) ('[T]he IHRA definition … includes 11 examples of potentially antisemitic speech'). Dave Rich (CST), 'Jeremy Corbyn Needs to Do Much Better to Convince Jews He Acts in Good Faith', *Guardian* (5 August 2018) ('The full IHRA definition includes 11 illustrative examples').

202 CAA, 'Insult'. Cf. CAA, 'Letter to the Equality and Human Rights Commission', *antisemitism.org* (31 July 2018), p. 3.

39. In this context, the Weitzman-Constantinescu statement was repeatedly cited as proof positive that, by declining to adopt certain IHRA examples, Labour had thereby rejected the Working Definition.[203] And in 2020, Weitzman himself presented the statement this way:

> Some opponents falsely allege that examples citing Israel were not part of the IHRA definition. As stated by the IHRA Chair Ambassador Constantinescu and myself, the definition and illustrative examples form a single text that was officially adopted by the IHRA Plenary in Bucharest.[204]

40. The Weitzman-Constantinescu statement was 'not an official IHRA statement'; Weitzman explained that obtaining the latter would 'take more time'.[205] The decisive shift in IHRA's public position on the Working Definition took place during its May 2018 general Plenary meeting in Rome, which convened about one month in to the public dispute in the UK around Labour and the IHRA Working Definition.[206] The Rome Plenary reached no new decision on the Working Definition.[207] But, seemingly at

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203 CAA, 'Insult'. Whine, 'Applying', p. 14. APT, *IHRA Working Definition*, p. 3. Indirectly referenced in Gardner (CST), 'Labour'.

204 Weitzman in SWC, *Watershed*, p. 6. Cf. ibid., p. 2.

205 Weitzman quoted in Deech, 'Supplementary', footnote 1.

206 Lee Harpin, 'Labour Wants to Develop New Definition of Antisemitism Claims Shadow Minister', *Jewish Chronicle* (30 April 2018). CAA, 'It's Not Easy to Keep Track of What the Labour Party and Momentum Say Constitutes Antisemitism', *antisemitism.org* (7 May 2018). CAA, 'Insult' (17 May 2018).

207 Sweden Head of Delegation to IHRA, *Plenarmöte I International Holocaust Remembrance Alliance (IHRA), Rom 31 Maj 2018* UD/2018-06-01/1435 (1 June 2018). Germany Head of Delegation to IHRA, *Vermerk: IHRA Plenarsitzung Rom Mai* (8 June 2018), on file. IHRA's Bern Plenary meeting (November 2017) also

Weitzman's behest, IHRA's Antisemitism Committee independently proclaimed the examples part of 'the full definition' and declared the subject closed to 'further discussion':

> The [Antisemitism] Committee discussed the status of adoptions/endorsements of the Working Definition of Antisemitism. Mark Weitzman (US) noted that there were some attempts by civil society organisations in some IHRA member countries to suggest that the definition had not been adopted by the IHRA in its entirety at the Bucharest Plenary. The Committee noted that the *IHRA adopted the definition in its entirety (including with working examples) at the Bucharest Plenary* and voted unanimously to affirm that *the definition and the examples constituted the full definition*, and that *the subject was not open to further discussion*.[208]

40.1 A representative of IHRA's Permanent Office confirmed in an email to this author that, since its May 2016 meeting in Bucharest, 'there have not been any further decisions taken on the working definition' by the IHRA Plenary.[209] The Plenary is 'the central body of the IHRA' responsible for 'decisions'; the role of Committees is to 'provide facts and analyses, as well as recommendations

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saw '[n]othing new about' the Working Definition. Utrikesdepartmentet—Sweden, *Plenarmöte I International Holocaust Remembrance Alliance (IHRA), Bern 27-30 November* UD/2017-12-02-1927 (2 December 2017). Translated from Swedish.

208 IHRA, *Summary of Discussions: Committee on Antisemitism and Holocaust Denial Meeting Dates, 29-30 May 2018 Rome, Italy* (15 November 2018), on file. Emphases added.

209 Email from IHRA Permanent Office to Jamie Stern-Weiner, 'Re: Academic Article—IHRA Working Definition' (23 November 2020), on file.

> *for consideration by the Plenary*'.[210] The Antisemitism Committee had, and has, no authority to revise or rewrite the decision of the May 2016 Bucharest Plenary, let alone to peremptorily prohibit all 'discussion' of its unilateral decree.

41. The Antisemitism Committee's decision was not made public but was immediately publicised by Eric Pickles, former Chairman of Britain's Conservative Party and the UK's Special Envoy for Post-Holocaust Issues and Head of Delegation to IHRA:

> To remove any cover to bigots @IHRA_news meeting in Rome restated it's definition of Antisemitism in FULL including EVERY part. Each week brings news of countries and institutions adopting the definition. Reed it here [link][211]

Pickles' tweet was false on at least two counts: it was not 'IHRA', but IHRA's Antisemitism Committee, which had determined the examples 'part' of the Working Definition; this was not a 'restate[ment]' of, but an ultra vires attempt to revise and override, the decision of IHRA's Plenary.

42. On 12 July 2018, Weitzman publicly condemned the Labour Party's 'refusal to accept' the IHRA Working Definition as 'a clear signal of the party's refusal to deal with the reality of anti-Semitism in its ranks'. The SWC additionally described this alleged 'refusal to endorse the IHRA Working Definition of Antisemitism' as 'an open invitation to

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210 IHRA, *Working Rules*, articles 7.1, 10.1. Emphasis added.

211 Tweet by @EricPickles (11.57am, 31 May 2018). All typographical errors in original. An accompanying link directed to the IHRA Working Definition webpage.

anti-Semites' and 'a slap in the face to the UK's Jewish community'.[212] The SWC would go on to rank Corbyn's leadership of the Labour Party the world's fourth-worst 'anti-semitic incident' of 2018 and 'worst anti-semitic and anti-Israel incident' of 2019.[213]

43. IHRA's Permanent Office publicly validated these misrepresentations of the IHRA Plenary's decision.

43.1 At the height of the Labour Party furore, on 7 August 2018, IHRA published on its website a joint statement by seven UK delegates to IHRA that reporters characterised as a 'damning rebuke' to Labour:[214]

> Any 'modified' version of the IHRA definition that does not include all of its 11 examples is no longer the IHRA definition.[215]

43.2 At approximately (or perhaps exactly) the same time, an explanatory page about the Working Definition on the IHRA website was revised inter alia to introduce what amounted to the same false assertion:

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212 'Wiesenthal Center: Labour's Rejection of Antisemitism Definition-Open Invitation to Anti-Semites', *wiesenthal.com* (10 July 2018).

213 SWC, *2018 Top Ten*, p. 2; *2019 Top Ten Worst Global Anti-Semitic and Anti-Israel Incidents* (December 2019), p. 1.

214 Lee Harpin, 'IHRA's UK Delegation Warns Labour Against Altering Its Antisemitism Definition', *Jewish Chronicle* (7 August 2018).

215 'Statement by Experts of the UK'. Not every delegate signed; see UK Ministry of Housing, Communities & Local Government, *Response to FOI Request 10576785* (13 April 2021), on file.

> The Working Definition, including its examples, was reviewed and decided upon unanimously during the IHRA's Bucharest Plenary in May 2016.[216]

According to IHRA's Executive Secretary, this amended webpage was drafted 'as advised by the IHRA Chair and the Chair of the Committee on Antisemitism and Holocaust Denial'.[217]

43.3 Both the UK delegates' statement and the revised IHRA webpage were publicised in IHRA's August 2018 newsletter.[218]

43.4 On 11 September 2018, IHRA's Executive Secretary emailed colleagues noting that 'the IHRA Working Definition has been much discussed in the UK and beyond'. For 'guidance and background information on the matter', she referred them to the UK delegates' statement and revised IHRA webpage, specifically highlighting its revised and revisionist account of the 2016 Plenary decision:

> One of the most frequently asked questions is about the IHRA adoption and the

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216 IHRA, 'Working Definition of Antisemitism', *holocaustremembrance.com* (19 July 2018). The WayBack Machine (archive.org) reveals that the page was revised at some point between 27 July 2018 and 15 August 2018. The UK delegates' intervention was published on 7 August 2018.

217 Kathrin Meyer, 'Enquiries about Working Definition of Antisemitism' (11 September 2018), on file. At this time, IHRA was chaired by Ambassador Sandro de Bernardin (Italy) and IHRA's Antisemitism Committee was chaired by Robert Williams (US).

218 IHRA, *Newsletter* No. 10 (16 August 2018).

> article clarifies that the Working Definition, including its examples, was reviewed and decided upon unanimously during the IHRA's Bucharest Plenary in May 2016.[219]

44. The above assertions are impossible to reconcile, not only with IHRA's internal record, but also with IHRA's own public statements. The UK delegates claimed, in a statement published, circulated, and endorsed by IHRA, that '[a]ny "modified" version of the IHRA definition that does not include all of its 11 examples is no longer the IHRA definition'. But when Germany endorsed a modified ('extended') version of the Working Definition that incorporated *none* of the examples,[220] when the French parliament endorsed the Working Definition in a form that 'excluded the examples',[221] and when the Council of the European Union endorsed the Working Definition only after a reference to the 'illustrating examples' had been removed,[222] IHRA publicly recognised and welcomed these adoptions.[223] IHRA also recognised Luxembourg and the

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219 Meyer, 'Enquiries'.

220 See para. 31.7 above.

221 Assemblée Nationale, 'Proposition de Résolution Visant à Lutter Contre l'Antisémitisme', No. 2403, tabled 12 November 2019 and adopted 3 December 2019. Sylvain Maillard, 'L'Assemblée Nationale Adopte Notre Résolution de Lutte Contre l'Antisémitisme', *sylvainmaillard.fr* (3 December 2019).

222 Council of the European Union, *Draft Council Declaration on the Fight Against Antisemitism and the Development of a Common Security Approach to Better Protect Jewish Communities and Institutions in Europe* 12116/1/18 REV 1 (29 October 2018), on file.

223 IHRA, 'Germany Endorses Working Definition of Antisemitism', *holocaustremembrance.com* (20 September 2017). IHRA, 'Fact Sheet: Working Definition of Antisemitism', *holocaustremembrance.com* (23 June 2020), para. 10. (*Germany*) IHRA, 'Working Definition of Antisemitism', *holocaustremembrance.com* (n.d.; accessed 12 February 2021) (*France*). Ambassador Sandro de Bernardin (IHRA Chair), 'IHRA Chair's Statement on Adoption of Declaration on Antisemitism by the Justice and Home Affairs Council',

Netherlands as having 'adopted or endorsed' the IHRA Working Definition[224] even as Luxembourg's 'prime minister clarified in May 2021 that Luxembourg had adopted the IHRA definition, without the examples'[225] while the Netherlands did 'not' consider the 'examples to be an integral part of the IHRA definition'.[226]

45. Since 2018, senior IHRA, European, and UN officials have publicly misrepresented the IHRA Working Definition as incorporating the examples delegitimising criticism of Israel. (*Table 3*) Meanwhile, even as the EC's 2021 *EU Strategy on Combating Antisemitism and Fostering Jewish Life* purported to have been informed by 'a wide consultation of relevant stakeholders', and even as multiple submissions to this 'consultation' documented the exclusion of the examples from the IHRA Working Definition,[227] the Commission ignored these submissions as its *Strategy* recommended that Member States '[a]dopt and use' the 'IHRA definition', which 'includes a number of illustrative examples'.[228]

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holocaustremembrance.com (6 December 2018) (*Council of the EU*). Cf. SWC, 'Wiesenthal Center Praises Germany's Adoption of Anti-Semitism Definition', *wiesenthal.com* (20 September 2017).

224 IHRA, 'Information on Endorsement and Adoption of the IHRA Working Definition of Antisemitism', *holocaustremembrance.com* (n.d.; accessed 23 February 2022).

225 FRA, *Antisemitism: Overview of Antisemitic Incidents Recorded in the European Union 2010-2020* (European Union, 2021), p. 91.

226 Minister of Justice and Security F.B.J. Grapperhaus, 'Antwoord op Vragen van het Lid Kuzu over de Status en Rol van de IHRA-Definitie bij de Strafrechtelijke Beoordeling of Uitlatingen Discriminatoir Zijn', *tweedekamer.nl* (28 August 2020). Translated from Dutch.

227 Feedback from Israeli Academics in the UK (F2661299, 3 July 2021), 11.11.11 (F2661309, 5 July 2021), Free Speech on Israel (F2661329, 5 July 2021).

228 EC, *EU Strategy*, pp. 3, 3n18, 4n23, 6.

Table 3. Official misrepresentation

German Ambassador and IHRA Chair Michaela Küchler	When IHRA member countries agreed to the text of the working definition, they adopted it in its entirety—the text inside the box, and the examples included. So that means, each member country stands behind the text of the working definition in its entirety—the text inside the box, and the examples included[229]
IHRA and the EC	the IHRA Working definition of Antisemitism includes eleven examples[230]
Robert Williams and Mark Weitzman, respectively the Chair and former Chair of IHRA's Antisemitism Committee	the IHRA definition includes 11 examples … [b]uilt on agreement by multiple groups of experts and diplomats … [before] adoption by the IHRA[231]
EC	The IHRA definition includes a number of illustrative examples[232]
UN Special Rapporteur on Freedom of Religion or Belief Ahmed Shaheed	The working definition … offers the following illustrations[233]

229 Ambassador Michaela Küchler presenting to *An Accelerated Push to Tackle Antisemitism: The Double German Presidency* [22 June 2020], online webinar uploaded to YouTube by the European Jewish Congress (23 June 2020).

230 EC and IHRA, *Handbook*, pp. 4, 9. Weitzman contributed to and Baker reviewed this. An EC webpage about the IHRA definition alters its text so that the examples appear as part of the working definition. EC, 'Definition of Antisemitism', *ec.europa.eu* (n.d.; accessed 14 June 2021). Cf. SWC, 'Handbook'.

231 Williams and Weitzman, 'First'.

232 EC, *EU Strategy*, p. 4n23.

233 Ahmed Shaheed, *Report of the UN Special Rapporteur on Freedom of Religion or Belief*, A/74/358 (20 September 2019), para. 51.

46. IHRA, the EC, and the UN Special Rapporteur on Freedom of Religion or Belief have all implied that every State and intergovernmental body that adopted or endorsed the IHRA Working Definition also thereby adopted the examples.[234] But this is untrue. As of 12 February 2021, IHRA listed 29 countries as having adopted its Working Definition.[235] According to a senior official in Israel's Ministry of Foreign Affairs, speaking on 28 July 2020, only 10 countries had also adopted the examples.[236] Such misrepresentations have enabled pro-Israel NGOs to launder their partisan conception of the New Antisemitism as the product of a broad international as well as expert consensus.

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234 EC, *EU Strategy*, pp. 5n29, 22n120. Shaheed, *Report*, para. 53n77. The EC claimed '[t]he IHRA definition was endorsed by the 2018 and 2020 Council Declarations and the European Parliament Resolution of 1 June 2017'. But those documents did not mention the IHRA examples while a reference to the examples in the draft 2018 Council declaration was removed before that text was adopted. These institutions did not, in fact, endorse the 'IHRA definition' as defined in the Commission's *Strategy*. EC, *Strategy*, pp. 4-5n25.

235 IHRA, 'Working Definition' (n.d.; accessed 12 February 2021).

236 Noam Katz, Deputy Director General for Public Diplomacy, Israel Ministry of Foreign Affairs, *State Audit Committee*. Translated from Hebrew. Katz stated that 29 countries had adopted the IHRA Working Definition. The correct figure, at the time he spoke, was 27. Cf. Israel Ministry of Foreign Affairs, 'Israeli Delegation Attends IHRA Plenary Meetings', *mfa.gov.il* (2 July 2020). An internal Canadian Government briefing on the IHRA Working Definition similarly reported 'a differentiation between countries adopting the definition and its illustrative examples, and those adopting solely the definition'. A legal analysis commissioned by Switzerland's Federal Department of Home Affairs also noted that, '[w]hile some states just adopted the core definition, or a slightly refined or extended version, others adopted the definition in the broader sense, including the explanatory notes and examples'. Email from Giuliana Natale (Director, Inclusion and Religion Freedom, Global Affairs Canada), 'Update on the International Holocaust Remembrance Alliance (IHRA) Working Definition of Antisemitism' (15 May 2019), on file. Randall and Imbeck, *Legal*, para. 3.

Proponents of the Working Definition have argued that, if the definition has been widely endorsed, this must reflect both the prevalence of antisemitic demonisation targeting Israel and the usefulness of the Working Definition for combating this. Part II of this chapter offered an alternative explanation anchored in the diplomatic record. The Working Definition was drafted and promoted by pro-Israel advocacy organisations to immunise Israel from heightened international criticism. Those organisations deftly wielded political pressure, support from allied governments, and relationships with international agencies (notably, Baker at the OSCE and Weitzman within IHRA) to push their partisan redefinition. At each stage of this lobbying campaign, they presented the definition as an emergency response to an overwhelming crisis of antisemitism. Institutions targeted by this juggernaut sought to placate it while limiting potential fallout by diluting the definition's content. EUMC officials inserted caveats that stripped the definition of substance while IHRA Member Countries opposed to the Israel-related examples ensured they were excluded from the Working Definition adopted by IHRA's Plenary. But in both cases, pro-Israel campaigners pocketed their limited achievements and then proceeded to push the envelope—inflating the definition's status, dropping its caveats, retroactively smuggling in the examples, and demanding the definition be enforced to regulate speech.[237]

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237 The AJC assures that the IHRA 'definition *on its own* … does nothing to prohibit speech'. This is accurate in the same sense that—per the National Rifle Association—guns don't kill people. Meanwhile, the AJC has demanded that social media platforms 'utilize the IHRA Working Definition of Antisemitism' for 'content removal'. AJC, 'Indispensable' ('prohibit'). AJC, 'Social Media Companies Action Items', *ajc.org* (n.d.; accessed 18 April 2023). Emphasis added.

Germany's acknowledgement of the IHRA Working Definition illustrates in microcosm the political dynamics by which it gained traction.[238] One month before the 24 September 2017 federal election, German Foreign Minister Sigmar Gabriel met 'with Jewish organisations' and 'promised them that the cabinet would quickly address the question of the working definition'.[239] The Foreign Office then pushed internally for a formal Cabinet decision that would acknowledge the Working Definition before polling stations opened. Neither the Chancellery nor the domestic ministries concerned had been consulted or 'involved at all' but they scrambled 'at short notice' to respond.[240] The specialist departments responsible for antisemitism advised that they were 'not technically in agreement' with the IHRA Working Definition. They viewed existing 'tried-and-tested' definitions as 'sufficient' and 'not requir[ing]' of 'any modification'.[241] If these departments acquiesced in a Cabinet

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238 I am grateful to Itay Mashiach for the documentation referenced in this paragraph.

239 M.L. (Chancellery—BK), 'Kabinettbefassung Arbeitsdefinition Antisemitismus', Hausruf 2218 (11 September 2017), p. 2, on file. Translated from German. Cf. Email from C.D. (Foreign Office—AA) to M.B. (Interior Ministry—BMI) et al., 'Antisemitismusdefinition—Gespräch am Rande der StS-Runde' (8 September 2017), on file. The 'Jewish organisations' apparently included the Zentralrat der Juden. J-E.B. (BK) to S.L. (BK) et al., 'Arbeitsdefinition von Antisemitismus—Ressortabstimmung zur Kabinettvorlage' (14 September 2017), on file.

240 Email from GZ3 (BK) to OeSII3 et al., 'AA—Kabinettvorlage Antisemitismus' (6 September 2017), on file ('short'). Email from I.S. (BK) to P.B. (BK) et al., 'AW: Kabinettvorlage Arbeitsdefinition von Antisemitismus' (6 September 2017), on file ('involved'). Cf. Email from N.G. (AA) to A.L. (BMI), 'Bitte um Mitzeichnung bis 6.9. DS—Kabinettborlage Arbeitsdefinition von Antisemitismus' (5 September 2017), on file. Email from R.T. (BK) to M.L. (BK), 'AW: Kabinettvorlage Arbeitsdefinition von Antisemitismus' (6 September 2017), on file. Translated from German. The Working Definition was similarly railroaded through IHRA's 2016 Plenary at short notice; see note 157 above.

241 AA—2-zbV, *Arbeitsdefinition Antisemitismus (AS)*' (June 2017), on file ('sufficient'—view of BMI). Email from I.S. (BK) to P.B. (BK) et al., 'AW: Kabinettvorlage Arbeitsdefinition von Antisemitismus' (6 September 2017), on file ('technically'—view of the Ministry of Justice and Consumer Protection, BMJV). Email from C.V. (BMI) to ALOeS et al., 'WG: heutige St-Runde—AA-Vorlage "Antisemitismus"' (12

acknowledgement of the IHRA Working Definition, it was not because they found the definition useful—on the contrary—but steps were taken to ensure it would be 'harmless'.[242] Whereas the Foreign Office draft proposal had recommended the definition's 'application' (*Anwendung*) in the areas of education, the judiciary, and law enforcement, this was watered down so that the approved decision called merely for the definition to be 'considered' (*berücksichtigt*).[243] The Cabinet acknowledgement was internally rationalised *not* as a measure to combat antisemitism but primarily as 'a signal to other states' to endorse the IHRA Working Definition and, in particular, as giving 'weight to our foreign policy credibility vis-á-vis partners (above all the USA; ISR, Jewish organizations) and international organizations (IHRA, OSCE)'.[244] IHRA then presented this strictly symbolic *acknowledgment* of the Working Definition *without any examples* as if Germany had '*adopted or endorsed*' the Working Definition *including examples*, pro-Israel campaigners alleged that the examples' 'validity' had 'been established by' their 'being adopted',[245] and the bandwagon rolled on.

September 2017), on file ('modification'). Email from I.S. (BMI) to ALOeS et al., 'WG: heutige St-Runde—AA-Vorlage "Antisemitismus"' (13 September 2017), on file ('tested'). Translated from German.

242 Email from I.S. (BK) to P.B. (BK) et al., 'AW: Kabinettvorlage Arbeitsdefinition von Antisemitismus' (6 September 2017), on file ('harmless'). Translated from German.

243 Foreign Minister Sigmar Gabriel to Chancellery, 'Beschluss der Bundesregierung zu einer Arbeitsdeinition Antisemitismus' (n.d.), on file ('application'). Cabinet, 'Regierungspressekonferenz vom 20. September', *bundesregierung.de* (20 September 2017) ('considered). The department of Police Legal and Policy Matters (ÖS 1.1) within the BMI found this terminological 'weakening' particularly 'welcome because it leaves open the possibility to continue using' existing 'terminology in the police field', while the BMI considered it 'the most important point'. Email from C.V. (BMI) to ALOeS et al., 'WG: heutige St-Runde—AA-Vorlage "Antisemitismus"' (12 September 2017), on file ('welcome'). Email from I.S. (Chancellery) to F.H. (Chancellery) et al., 'AW: Antisemitismus-Kabinettsvorlage, Formulierungsanregung für AA, Frist: 10:30 Uhr (Verschweigen)' (12 September 2017), on file ('important'). Translated from German.

244 AA—2-zbV, *Arbeitsdefinition Antisemitismus (AS)*' (June 2017). Translated from German. Cf. M.L. (BK), 'Kabinettbefassung Arbeitsdefinition Antisemitismus', Hausruf 2218 (11 September 2017), p. 2.

245 See note 147 above.

But is it not an exaggeration—or even an antisemitic conspiracy theory[246]—to suggest that the AJC, SWC, and kindred outfits could impose a document on unwilling governments and intergovernmental bodies? In fact, the potency of a ramified international pro-Israel bureaucracy working in coordination with the Israeli State should not be underestimated. In 2004, the AJC shrewdly exploited the conjunction of rising anti-Jewish incidents in Europe with a political controversy embroiling the EUMC to foist its definition on the latter. In 2016, the SWC used its perch within IHRA to push the same definition through the Plenary. Furthermore, these organisations did not succeed in isolation. They were able to leverage allied State actors (notably in the US, Germany, and Britain) to advance their project, while support for the definition at national levels often ran *with* the grain of established interests.[247] Perhaps most importantly, this lobbying juggernaut was mobilised around an issue that the institutions targeted *did not consider a priority*. Even those States that opposed the Working Definition—or rather the associated examples—were reluctant to expend scarce political capital resisting it. This explains why those IHRA Member Countries that rejected the Israel-related examples did not publicly object even as their Plenary votes were misrepresented.[248]

Conclusion

246 Porat, 'Detractors', p. 100. David Hirsh, 'New Definition of Antisemitism Only Threatens Antisemites', *Jewish Chronicle* (12 December 2016). Yehuda Bauer, 'Daniel Blatman's Anti-Semitic Attack', *Ha'aretz* (1 August 2019).

247 For example, the Conservative Government and its supporters in Britain found the definition and examples convenient as a political bludgeon against Jeremy Corbyn's Labour Party. Further research is needed on the politics of adopting the Working Definition in different national contexts—notably, its embrace by right-wing nationalist administrations in Hungary, Poland, and the US.

248 Some did protest in private. See notes 171-173 above.

This chapter examined the New Antisemitism contention that to subject Israel to excessive criticism, or demonisation, is a form of antisemitism. As Israel's human rights record has been extensively documented, this discussion approached the issue of demonisation from a different and original angle. The Working Definition was an influential attempt to institutionalise the New Antisemitism concept of demonisation in a regulatory framework. The definition has been presented by its proponents as an indispensable weapon against antisemitism that provides a clear, unambiguous, objective standard distinguishing legitimate criticism from 'demonization of the State of Israel'.[249] Part I of this chapter found, on the contrary, that the Working Definition blurs these categories through opaque language and overly broad examples. It also assessed various rationales for the Working Definition put forward by the definition's proponents and found them wanting. Even if alarmist claims about surging antisemitism in Europe were accepted, the Working Definition was not a logically plausible response to them. Rather, a febrile political climate was exploited to redefine broad swathes of international criticism directed at Israel as antisemitic. The chapter then addressed the counterargument that, if the Working Definition was widely endorsed, this must have reflected the prevalence as well as virulence of anti-Israel demonisation. Part II advanced an alternative explanation by documenting the critical role of pro-Israel advocacy groups in drafting, promoting, and securing international support for the definition. If the Working Definition gained traction, it was testament to the effectiveness of this campaign.

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249 Stern, 'Proposal', p. 11.

Conclusion

Since its emergence in the early 1970s, New Antisemitism discourse has consolidated and developed to the point where it has become, at any rate in the political West, the 'dominant discourse about antisemitism'.[250] This thesis has argued that historians of the Israel-Palestine conflict should view the New Antisemitism as an intervention in the long-running international legitimacy war over Zionism and Israel. It developed this argument by engaging New Antisemitism argumentation on its own terms, investigating how persuasively the New Antisemitism engages with critical episodes in the history of the Israel-Palestine conflict that figure prominently in the New Antisemitism literature as examples of the phenomenon. By showing that New Antisemitism arguments did not compel either conceptually or in light of the empirical record, the thesis has cleared the ground for historians to interpret the salience and influence of New Antisemitism discourse in terms of its role as a legitimating ideology. This overarching claim was substantiated by three chapters that between them addressed different aspects of the Israel-Palestine conflict as well as all three pillars of the New Antisemitism conceptual framework. Because New Antisemitism discourse intersected at critical junctures with Israel-Palestine history, each chapter also made additional contributions to the diplomatic, legal, and political history of the conflict. Empirically, each chapter analysed large quantities of archival documentation that historians have hitherto

250 Antony Lerman, *Whatever Happened to Antisemitism? Redefinition and the Myth of the 'Collective Jew'* (Pluto Press, 2022), p. 12.

overlooked or which—in the case of Chapter 3—had not previously been disclosed. Conceptually, Chapter 2 presented the first systematic juxtaposition of Jewish and 'White' self-determination claims as these were articulated and contested in international fora; it also developed a novel comparative framework for undertaking this analysis.

These findings have several implications for future research on antisemitism, the Israel-Palestine conflict, and the interactions between them. *First*, the New Antisemitism contention that it is inherently antisemitic to repudiate the legitimacy of, apply real or perceived double standards to, or level severe allegations of misconduct against Israel should be rejected. This position is unable to explain the historical cases most prominently cited in its support; on the contrary, New Antisemitism-inspired accounts of UNGA Resolution 3379 as well as the international debate over Jewish statehood have been at best partial and at worst liable to mislead. *Second*, it does not follow that inaccurate beliefs, negative stereotypes, or hostile sentiments vis-à-vis Jews have played no role in the Israel-Palestine conflict or its emanations. The point, rather, is that assessment should always be disciplined by the empirical record, informed by a broad historical perspective, and unconstrained by stifling preconceptions. In this respect, the present thesis argues in favour of recent historiographical calls for an 'entangled history of antisemitism'.[251] *Third*, the research presented above might usefully be extended to additional case studies, notably the 2001 World Conference Against Racism held in Durban, South Africa, under the auspices of the United Nations as well as the 2015-2019 antisemitism controversy that engulfed Britain's Labour Party. Both episodes figured prominently in New Antisemitism writings; each also

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251 Jonathan Judaken, 'Rethinking Anti-Semitism: Introduction', *The American Historical Review* 123.4 (2018), p. 1124.

provided powerful stimulus for institutionalising the New Antisemitism in regulatory frameworks. Durban raised no novel conceptual issues—it just revived the arguments prompted by UNGA Resolution 3379—but allegations of widespread antisemitism by attendees and claims that Durban enduringly shaped the international human rights agenda warrant empirical scrutiny. As shown in Chapter 3, the Durban conference was also cited by drafters of what became the IHRA Working Definition as salient context to its formulation. Meanwhile, the Labour Party controversy offers an opportunity inter alia to consider the distinct dilemmas that arise when attempting to apply the New Antisemitism to regulate speech or membership in a political organisation.

As well as arguing that the New Antisemitism should be viewed as an ideological discourse, the thesis also sought to locate it, more precisely, as a product of the distinct, post-1967 phase of the Israel-Palestine legitimacy war. Whereas international deliberations on the Palestine Question prior to 1967 had centred on the legitimacy of Israel's existence as a State, Israel's decisive military victory in the June 1967 War followed by the adoption of UNSC Resolution 242 effectively drew a diplomatic line under those earlier controversies. Henceforth, international criticism of Israel overwhelmingly targeted its occupation, not its existence. The thesis also argued, however, that even in this second phase, an element of ambiguity remained. On the one hand, in the period of decolonization, when the Palestinian cause was assimilated into broader anticolonial and Third World milieux, the anomaly of endorsing ethnic/racial segregation through partition in Palestine while struggling to overcome it elsewhere was glaring. On the other hand, insofar as Israeli intransigence was perceived as the obstacle to resolving the conflict through partition, the call for one democratic State always persisted as a fall-back alternative. This is what the adoption of UNGA Resolution 3379 arguably signalled. The broad international community was, after

1967, prepared to accept not just Israel's establishment but also its expanded 1949 borders and—in practice—sharp limits on the return of Palestinian refugees. But if Israel refused a settlement on these terms, then, those concessions could be rescinded. The thesis presented the New Antisemitism as a response to this multi-layered political conjuncture. On the one hand, in every case examined, New Antisemitism discourse was primarily mobilised against critics of Israel's occupation, not its existence. On the other hand, the New Antisemitism also registered and responded to the fact that, so long as the Israel-Palestine conflict was unresolved, a question-mark would remain hanging over Israel's fundamental legitimacy.

This thesis observed that Israel-Palestine historians have largely overlooked the episodes examined herein and explained this in terms of the prevailing political paradigm for resolving the conflict. So long as the two-State solution was perceived as being the only diplomatic game in town, then, UNGA Resolution 3379, the 2001 Durban conference, and BDS could each be downplayed or dismissed as an isolated development removed from the conflict's critical dynamics and main trajectory. If the key story of the 1970s and 1980s was the consolidation of a broad international consensus in favour of partition, then, UNGA Resolution 3379 appears as a solitary step down a dead end. Similarly, if scholars overwhelmingly focused in the 1990s and 2000s on Israel's occupation and the unfolding of the US-led 'peace process', then, the emergence of BDS could easily be construed as a sideshow. Indeed, there is much truth to this historiographical perspective. Chapter 1 argued that UNGA Resolution 3379 was viewed as an opportunity more than a threat by the US and Israeli delegations, as well as by those pro-Israel organisations that mobilised New Antisemitism discourse in its wake. Chapter 2 similarly argued that BDS never endangered Israeli prosperity, that the BDS coalition overwhelmingly opposed the occupation rather than Israel's existence as a State, and that Israel exploited 'anti-BDS' framing to delegitimise

its external critics tout court. Chapter 3 noted that the IHRA Working Definition was developed, inter alia, in response to the re-emergence of the 'Zionism is Racism' charge at Durban but also documented its mobilisation against even the most mainstream and moderate of Israel's critics. I would want to conclude the thesis, however, on a more equivocal, if necessarily speculative, note.

It is arguable that we are now approaching the threshold of a third phase in the Israel-Palestine legitimacy war. If that contest initially concerned Israel's existence as a Jewish State (1917-1967), and then narrowed to focus on Israel's occupation (from June 1967), there are indications that mainstream Western and international constituencies are increasingly prepared to reopen those fundamental questions that many understood the 1967 War and UNSC Resolution 242 to have resolved. If UNGA Resolution 3379, the Durban conference, and BDS each served as a reminder that international recognition of Israel was contingent upon its willingness to resolve the conflict through partition, the 'apparent demise of the two-state solution has … made legitimate' again 'the idea of a one-state solution where Palestinians should have equal rights'.[252] There are many signs of this political transition. In scholarship, there has been a turn toward the settler-colonial paradigm for interpreting the history and politics of the Israel-Palestine conflict as well as a proliferation of studies advocating or sympathetic to a one-State framework.[253] On the terrain of international law,

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252 Shlomo Ben-Ami, *Prophets without Honor: The Untold Story of the 2000 Camp David Summit and the Making of Today's Middle East* (Oxford University Press, 2022), p. 2.

253 On the settler-colonial turn, see Chapter 2 notes 14-17 above. The intellectual shift against partition is registered in Cherine Hussein, *The Re-Emergence of the Single State Solution in Palestine/Israel: Countering an Illusion* (Routledge, 2015). Notable works in this vein are Ian S. Lustick, *Paradigm Lost: From Two-State Solution to One-State Reality* (University of Pennsylvania Press, 2019). Michael N. Barnett et al. eds., *The One*

the claim that 'Zionism' is 'a form of racism' has in recent years effectively been revived and validated by leading international as well as Israeli human rights organisations.[254] And politically, the extent to which Israel's existential legitimacy is now in question, even among constituencies that were traditionally supportive, was reflected in a major March 2024 speech by US Senate Majority Leader Chuck Schumer—one of Israel's staunchest Congressional supporters. Speaking amidst Israel's devastating 'Operation Swords of Iron' offensive against Gaza, Schumer felt obliged not only to rebut the anti-Zionism that was percolating through the Democratic Party base, but to do so respectfully. So far from dismissing liberal opposition to the Jewish State as antisemitic, Schumer empathised with 'the idealism that inspires so many young people in particular to support a one-state solution'.[255]

The magnitude of this shift should not be exaggerated. Formally, the international community remains overwhelmingly committed to the two-State framework, even as there is widespread pessimism about its continued viability. The paradoxes now in play were poignantly illustrated in December 2023, when the Republic of South Africa instituted proceedings against Israel at the International Court of Justice alleging violations of the Genocide Convention.[256] On the one hand, South African representatives consistently

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State Reality: What Is Israel/Palestine? (Cornell University Press, 2023). Daniel Boyarin, *The No-State Solution: A Jewish Manifesto* (Yale University Press, 2023).

254 B'Tselem, *A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid* (12 January 2021), p. 1. HRW, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (April 2021), p. 2. Amnesty International, *Israel's Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity* (1 February 2022), p. 12.

255 Chuck Schumer, 'Full Text of Senator Chuck Schumer's Speech: "Israeli Elections Are the Only Way",' *timesofisrael.com* (15 March 2024).

256 Republic of South Africa, 'Application Instituting Proceedings and Request for the Indication of Provisional Measures', *icj-cij.org* (20 December 2023).

affirmed their support for 'two states, Palestine, and Israel, living side by side … along the 1967 borders'. At the same time, South African officials explained their championing of Palestinian rights as an extension of their own historic struggle against apartheid, while South Africa's very existence was a monument to the resolution of such conflicts through democratisation not partition.[257]

Historians working within the two-State paradigm may have dismissed international challenges to Israel's existential legitimacy in the post-1967 period as isolated, anachronistic holdovers from the Mandatory era. Viewed from the present vantage point, they can plausibly be construed instead as foreshadowing the conflict's future trajectory. If New Antisemitism discourse has primarily served to delegitimise critics of Israel's occupation, it can now also be seen as a gradually accreting response to, and rearguard ideological defence of Israel against, an anticolonial critique of Zionism that never fully went away. Meanwhile, if mainstream international and Western constituencies are increasingly reviving as well as validating the critical contentions which underpinned UNGA Resolution 3379, the Durban declaration, and the BDS programme, Israel and certain of its supporters have reprised their New Antisemitism-inspired response. This was evident, for example, in a sequence of controversies in Germany that saw postcolonial critics of Israel condemned as antisemitic,[258] as well as in condemnations of Amnesty International's report on Israeli apartheid as

257 'Statement by Dr Naledi Pandor, Minister of International Relations and Cooperation of South Africa', *dirco.gov.za* (24 October 2023) ('1967'). Tanupriya Singh, 'South African Foreign Minister Naledi Pandor Reveals Threats to Family…', *peoplesdispatch.org* (9 February 2024) (extension).

258 Aleida Assmann, 'A Spectre Is Haunting Germany: The Mbembe Debate and the New Antisemitism', *Journal of Genocide Research* 23.3 (2021), pp. 400-11. A. Dirk Moses, 'Die Documenta15, Indonesian und das Problem Geschlossener Welten', *geschichtedergegenwart.ch* (24 July 2022).

'antisemitic' and inspired by the 'Soviet[s]'.[259] As Israel advances towards a full-blown international legitimation crisis, the salience of the New Antisemitism looks set to increase.

259 Israel Ministry of Foreign Affairs, 'MFA Press Release: Amnesty UK Expected to Publish a False, Biased, and Antisemitic Report Tomorrow', *gov.il* (31 January 2022). NGO Monitor, 'Analyzing Amnesty's Antisemitic Apartheid Attack', *ngo-monitor.org* (31 January 2022). Luke Akehurst, 'Amnesty's Apartheid Slur Is an Attack on Jewish Self-Determination', *timesofisrael.com* (31 January 2022). Jonathan S. Tobin, 'Why the Amnesty "Apartheid" Smear of Israel Can't Be Ignored', *jns.org* (6 February 2022).

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