

Dear Co-Sponsors of Proposed ABA Resolution 514,

We write to convey our strong opposition to ABA resolution 514 and its call to employ the discredited and malicious International Holocaust Remembrance Alliance (IHRA) definition of antisemitism. We endorse letters to this effect already submitted by numerous non-governmental organizations with widely varying views on Israel and Palestine. In particular, we note that the U.S. Department of Education recently resisted calls to adopt the IHRA definition for its work and declined to do so.¹ We urge the ABA to follow the department's lead and excise all reference to the IHRA definition from any statement it issues on antisemitism.

The IHRA definition posits a series of "examples" that aim to conflate criticism of Israel or Zionism with antisemitism, instead of spotlighting (as the proposed report does) the true source of the current resurgence of hateful and often violent antisemitism: white supremacist groups that attack other groups as well. In one such example, IHRA states that critiques of Israel as a racist entity are indicative of antisemitism. As such, condemnations of Israel as an apartheid regime, acknowledgment of Israel's history as a settler-colonial regime created through the displacement of indigenous Palestinian communities, and frank and overdue discussions and analogies about racism, ethnic nationalism, wartime atrocities and authoritarianism involving Israel are themselves tagged as discriminatory. IHRA perniciously stigmatizes advocacy against racist policies by the Israeli state affecting Palestinian, Black, Arab, and Muslim communities.

While we wish we inhabited a world in which concerns about Israeli racism were meritless, the National Lawyers Guild shares those and similar sincere concerns about the Israeli state and its ongoing history of racial violence with international, Israeli and Palestinian human rights groups like Human Rights Watch², Amnesty International³, B'Tselem⁴, Yesh Din⁵, and Al-Haq⁶. Indeed, the last Israeli election saw the rise of long-dismissed Israeli violent extremists to key government posts and the associated escalation of attacks against Palestinians, thereby putting the legitimacy of such concerns to rest in mainstream society.⁷

The IHRA definition of antisemitism, if codified as a resolution, would provide no new protections for Jewish people who are subjected to hatred or discrimination. Existing ABA resolutions 72M32A and 90M100E, condemning discrimination based on religion, already provide such protections for Jews and other groups under attack. The proposed resolution and report provide no reasoning as to why existing resolutions have proven to be inadequate and why this resolution would help to resolve those inadequacies. Rather, the IHRA definition would provide a tool to stigmatize and suppress lawyers, legal advocates and law students from expressing political criticism of Israel or advocacy for Palestinian human

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<https://palestinelegal.org/news/2023/1/5/palestine-legal-welcomes-ed-depts-decision-to-combat-antisemitism-without-ihra-definition-in-new-factsheet>;
https://mondoweiss.net/2023/01/despite-pressure-from-pro-israel-groups-education-department-doesnt-adopt-controversial-antisemitism-definition/?ml_recipient=77643943428228173&ml_link=77643718790743398&utm_source=newsletter&utm_medium=email&utm_term=2023-01-18&utm_campaign=Daily+Headlines

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<https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>

³ <https://www.amnesty.org/en/latest/campaigns/2022/02/israels-system-of-apartheid/>

⁴ https://www.btselem.org/publications/fulltext/202101_this_is_apartheid

⁵ <https://www.yesh-din.org/en/the-occupation-of-the-west-bank-and-the-crime-of-apartheid-legal-opinion/>

⁶ <https://www.alhaq.org/advocacy/20931.html>

⁷ <https://www.nytimes.com/2022/11/04/opinion/israel-netanyahu.html>

rights. We believe a better approach to fighting hate and discrimination is one that addresses all forms of the phenomenon and thereby promotes solidarity among Jews and other victims instead of singling out one category of racism as if it is sui generis. Resolutions 72M32A and 90M100E already provide avenues to effectuate such an approach, and the proposed resolution does nothing more to further to combat such discrimination.

Finally, the proposed resolution adopting the IHRA definition would discriminate against Palestinian members of ABA in particular by restricting and chilling their expression of their own history and their defense of their rights to self-determination, to return to the land from which they have been forcibly expelled, and to remedy their experiences of egregious human rights abuses.

The resolution asserts that “nothing in this resolution is intended to diminish or infringe upon any right protected by the First Amendment to the United States Constitution.” But it does not explain how the ABA would ensure such protection, and does not address the concern that adopting such a definition at all shows callous disrespect for marginalized people. In fact, adoption of the IHRA document, which also includes such an ostensible disclaimer, has led to widespread attempts to suppress the speech that it stigmatizes.⁸

This resolution would mark a sharp turning point for the American Bar Association and could have drastic consequences on the legal profession, in that it would greatly affect education at law firms, legal organizations and law schools across the country, chilling anti-racist speech. We believe ABA – consistent with its commitment to the rule of law, the legal process, holding governments accountable under law, human rights and justice – has an important role to play in conveying concerns about Israel and its policies. With that in mind, we are concerned that adoption of the IHRA definition in the ABA resolution would undermine the ABA’s own ability to engage on key issues related to Palestinian rights, including in support of human rights defenders who are increasingly under attack.

For all of these reasons, we urge you to oppose proposed ABA Resolution 514.

Sincerely,
National Lawyers Guild

⁸ <https://palestinelegal.org/distorted-definition>