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International Holocaust Remembrance Alliance (IHRA) definition of antisemitism

Federal Council report
in response to postulate 19.3942, Rechsteiner,
21 June 2019

Executive summary

The Federal Council is publishing this report in response to postulate 19.3942 'IHRA working definition of antisemitism' dated 21 June 2019 from Council of States member Paul Rechsteiner, which called for a report on the IHRA working definition of antisemitism to assess the usefulness of the definition for awareness-raising, advisory, prevention and research purposes and as potential guidance for the courts. The Federal Council recommended adoption of the postulate, noting that the report also provides an opportunity to review policy to combat antisemitism in Switzerland and to recommend further measures that may be needed.

The Federal Council report summarises the findings from two studies: a legal analysis of the IHRA working definition and an evaluation report on federal, cantonal and communal measures to combat antisemitism.

The first part of this report addresses the background to the working definition, its adoption by international organisations and other countries, and the ways in which it is used. The report also breaks down the working definition into its constituent elements in order to explore its content, eliminate ambiguities, and identify gaps. In conclusion, the Federal Council recognises the value and practical relevance of the IHRA non-legally binding working definition, which can provide guidance in identifying antisemitic incidents. It notes, in particular, that the working definition may serve as a basis for more specific definitions to be used for particular situations and purposes, albeit with provisos to ensure that freedom of expression is protected. The Federal Council stresses, however, that it would be unusual for the Swiss authorities to explicitly endorse a non-legally binding international text and such a step is not envisaged by the legislature.

The second part of the report assesses and acknowledges the wide-ranging and substantive measures used to combat antisemitism at national and international level. Specifically, it assesses the extent of antisemitism and the level of acceptance and threat posed to the Jewish community in Switzerland, provides a selective, but representative, overview of measures at federal, cantonal and communal level, and concludes with a series of recommendations for more comprehensive and coherent efforts to combat racism and antisemitism in Switzerland. Better coordination at federal, cantonal and communal level, for example, could clarify roles, tasks and responsibilities in combating racism and antisemitism, lead to greater sharing of information, and promote joint strategic planning. The Service for Combating Racism (SCRA) and the Federal Commission against Racism (FCR) are responsible for implementing these proposals at federal level within the scope of the powers conferred on them. As part of their coordination responsibilities, they will help to enhance the exploitation of synergies throughout Switzerland and facilitate the development of a nationwide strategy to combat racism and antisemitism.

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1. Background information

1.1 Political mandate

On 21 June 2019, Council of States member Paul Rechsteiner submitted postulate 19.3942 'International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism' calling on the Federal Council to produce a report assessing the usefulness of the definition for awareness-raising, advisory, prevention and research purposes and as potential guidance for the courts. In the postulate, Rechsteiner notes that the working definition has already been adopted by a number of European countries.

The Federal Council recommended the adoption of the postulate. In his speech to the Council of States on 12 September 2019 (see Annex 1), Alain Berset stressed that the report does not just provide an opportunity to assess the IHRA working definition, but also to review antisemitism policy in Switzerland and to recommend further measures that may be needed. The Council of States adopted the postulate on 12 September 2019.

This report has been produced in response to the parliamentary mandate. It explores the legal implications of the working definition and assesses the measures in place at federal, cantonal and communal level to combat antisemitism in Switzerland.

Two studies were commissioned to assist in the preparation of the report: 1) a legal analysis of the IHRA working definition and 2) an evaluation report on federal, cantonal, and communal measures to combat antisemitism.¹ Recommendations are set out in section 4.

1.2 Wording of postulate 19.3942 'International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism' dated 21.06.2019 (English translation)

The Federal Council is instructed to produce a report on the use of the International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism in federal domestic and foreign policy.

The report should address:

- 1. the legal, domestic policy and foreign policy implications of the working definition;*
- 2. the usefulness of the definition for awareness-raising, prevention, advisory and intervention work at federal, cantonal and communal level;*
- 3. the use of the definition for the targeted collection of data on incidents and its potential value to research;*

¹ The studies are available in German, French and Italian on the SCRA website (www.frb.admin.ch). An abridged version of the legal opinion is also available in English.

4. *the extent to which the definition is used or can be used by the courts.*

Reasons

In 2016, the International Holocaust Remembrance Alliance (IHRA), adopted a working definition of antisemitism. Switzerland is a member of the IHRA and held the presidency in 2017. A number of European countries, including the UK, Austria, Romania, Germany, Bulgaria, the Czech Republic, Lithuania and Macedonia have since adopted the definition. The European Parliament has called on EU member states to adopt the definition. Switzerland's adoption of the definition would also send out an important signal.

1.3 Wording of the International Holocaust Remembrance Alliance (IHRA) working definition²

[Core 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.

[Explanatory notes]

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 Jewish collectivity. However, criticism of Israel similar to that levelled against any other country cannot be regarded as antisemitic. 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.

[Examples]

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:

- [1] *Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.*
- [2] *Making mendacious, dehumanising, demonising, or stereotypical allegations about Jews as such or the power of Jews as collective – such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.*
- [3] *Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.*

² The definition is available on the IHRA website: <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>

- [4] *Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust).*
- [5] *Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.*
- [6] *Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.*
- [7] *Denying the Jewish people their right to self-determination, e.g. by claiming that the existence of a State of Israel is a racist endeavour.*
- [8] *Applying double standards by requiring of it a behaviour not expected or demanded of any other democratic nation.*
- [9] *Using the symbols and images associated with classic antisemitism (e.g. claims of Jews killing Jesus or blood libel) to characterise Israel or Israelis.*
- [10] *Drawing comparisons of contemporary Israeli policy to that of the Nazis.*
- [11] *Holding Jews collectively responsible for actions of the State of Israel.*

[Explanations]

Antisemitic acts are criminal when they are so defined by law (for example, denial of the Holocaust or distribution of antisemitic materials in some countries).

Criminal acts are antisemitic when the targets of attacks, whether they are people or property – such as buildings, schools, places of worship and cemeteries – are selected because they are, or are perceived to be, Jewish or linked to Jews.

Antisemitic discrimination is the denial to Jews of opportunities or services available to others and is illegal in many countries.

1.4 Genesis of the report

The Service for Combating Racism (SCRA) was tasked with preparing this Federal Council report. The SCRA set up a working group to assist it in its work comprising representatives from the FDHA (General Secretariat, SCRA), the FDFA (General Secretariat, Peace and Human Rights Division (PHDA), Directorate of International Law (DIL)) and the FDJP (Federal Office of Justice (FOJ)). A representative of the Swiss Federation of Jewish Communities (SIG) and an academic with expertise in this subject were also consulted.

Two external parties were commissioned to provide expert reports in two subject areas:

- A legal analysis of the IHRA working definition to provide an objective basis on which to engage in complex political debate on what constitutes antisemitism as a specific form of racism.

- An assessment of federal government, cantonal and communal measures to combat anti-semitism and the threats posed to Jewish minorities in Switzerland, and proposals for changes and additional measures.

This report incorporates the key findings from both studies and the feedback provided by the members of the working group. The report also refers to some recent developments and various documents that have been produced or published since the studies were submitted.

2 Key findings from the legal analysis of the IHRA working definition of antisemitism

The key findings from the legal analysis of the IHRA working definition of antisemitism are set out below.

2.1 Context in which the working definition was adopted

The IHRA

The International Holocaust Remembrance Alliance (IHRA) aims to strengthen, advance and promote Holocaust and Sinti and Roma genocide education, research and remembrance. The IHRA (formerly the Task Force for International Cooperation on Holocaust Education, Remembrance and Research, or ITF), which now has 38 member countries, was initiated in 1998 by former Swedish Prime Minister Göran Persson. The organisation changed its name to the IHRA in 2013. The IHRA is an intergovernmental organisation, as its members are the governments of various countries. Switzerland has been a member of the ITF/ IHRA since 2004.³

Background to the IHRA working definition

The IHRA member countries, including Switzerland, adopted the working definition at the IHRA Plenary in Bucharest in 2016, provided that it was stated to be non-legally binding.

The IHRA working definition consists of the following: [core definition], [explanatory notes], [examples], [explanations] (see section 2.3). There is disagreement as to precisely which elements have been adopted. Some take the view that the Plenary's resolution to adopt the working definition is confined to the [core definition], while others argue that the resolution includes the other elements and, in particular, the [examples]. In taking a position on the working definition, there are significant differences in the way that countries approach the separate elements (see section 2.2).

The working definition in the context of debate surrounding the definition of antisemitism

³ www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-21615.html

The IHRA working definition differs from other definitions of antisemitism in two respects. Firstly, the definition does not focus on perpetrators' motives, i.e. whether they acted out of hatred for Jews, but on whether the victim was targeted because they were perceived to be Jewish. Secondly, the working definition highlights the issue of 'new antisemitism', which has become a controversial aspect of the working definition. 'New antisemitism' primarily concerns anti-Zionism and criticism of the State of Israel and its policies and, in particular, whether criticism of the Israeli government is intrinsically antisemitic or only antisemitic to the extent that it resorts to antisemitic stereotypes.

Debate on the working definition centres on the [examples], five of which predominantly relate to Israel and a few of which potentially relate to the conflict in the Middle East. Certain critics fear the potentially adverse impact on freedom of expression if the list of examples were to be used as a checklist of acts and speech that are antisemitic per se, without considering the motives, overall context or the working definition itself. Also, although it is explicitly intended to be non-legally binding, the working definition could be misused by parties with vested interests as a one-size-fits-all model and a means of exerting pressure in order to enforce restrictive political and legal measures or require changes to educational programmes.

2.2 Adoption and use of working definition by other countries and international organisations

As the working definition is not part of a legally binding international instrument, it falls outside the scope of international law as defined in Article 38 paragraph 1 of the Statute of the International Court of Justice of 26 June 1945.

The vast majority of states that have endorsed the working definition in various ways are IHRA member countries or observer countries. The approaches to adopting the working definition taken by the UK, France, Germany, Austria, Canada and the US are described in detail in the legal analysis.

- In these countries, the definition was at least initially adopted or endorsed by the executive, without the involvement of the legislature. In France and Germany, Parliament approved the government's decision. However, the French Parliament opted to adopt the [core definition] only, as opposed to the government which wanted to adopt the working definition in its entirety. The Austrian government commended the working definition, but left it to Parliament to determine whether or not it should be adopted.
- In 2019, the UN Human Rights Council Special Rapporteur on freedom of religion or belief produced a report on antisemitism from a freedom of religion perspective that looked in detail at the definition.⁴ Although the report considers the working definition to be valuable in helping to identify certain types of antisemitism, it recommends using it as a

⁴ Report of UN Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, dated 20 September 2019.

non-legal educational tool. It also recommends that states intending to use the working definition take appropriate measures to ensure that freedom of expression is fully protected.

- The OSCE has not adopted a uniform interpretation. OSCE documents and publications set out different opinions on the content and scope of the working definition and the [examples].
- The European Commission against Racism and Intolerance (ECRI) adopted an interpretation of the working definition on 2 December 2020. ECRI welcomed the working definition as a tool, in the sense that it aids and promotes a better understanding of anti-semitism and facilitates data collection, education and awareness-raising. However, it took the view that it was not meant to be used in court proceedings and did not represent an academically widely accepted definition. ECRI also explicitly acknowledges the criticism levelled at the working definition and warns against interpretations that stigmatise as antisemitic legitimate criticism of Israel and support for the concerns of the Palestinian people.⁵
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- The European Parliament has called on EU member states to adopt the working definition and issued a Handbook for the Practical Use of the IHRA Working Definition of Anti-semitism at the beginning of 2021.⁶

Statements issued by governments on the working definition take different forms ('cabinet decisions', 'statements of policy', 'policy strategies', sometimes accompanied by a 'recommendations') and the terms used also vary ('adoption', 'endorsement', 'assent'). In all countries, the working definition has non-legally binding status.

⁵ "ECRI strongly emphasises that any attempts to misuse the Working Definition and its examples to stifle, or stigmatise as antisemitic, legitimate criticism of Israel and its policies, in particular towards the Palestinian people and in the context of the Israeli occupation of Palestinian territories, will jeopardise efforts to combat antisemitism and should therefore be rejected." ECRI's Opinion on the IHRA Working Definition of Antisemitism (adopted at ECRI's 84th plenary meeting on 2 December 2020).

⁶ European Commission, 2021: Handbook for the Practical Use of the IHRA Working Definition of Antisemitism.

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⁸ European Commission, 2021: Handbook for the Practical Use of the IHRA Working Definition of Antisemitism.

Although various countries have adopted the [core definition] only, or a version that includes some of the [explanatory notes] or [explanations], others have adopted the working definition in its entirety, including all the [explanatory notes], [examples] and [explanations]. However, differentiating between the [core definition] and [examples] has had little impact on policy and public debate. Even in countries that have solely adopted the [core definition], debate largely concerns the [examples] and [explanatory notes] relating to Israel.

As far as use of the working definition is concerned, most countries have stated that they intend to use it for the purpose of law enforcement training and in school curricula. None of the countries use the working definition to determine levels of antisemitism among the general public or for academic purposes. The FRA conducted a survey on the use of the working definition in EU member states, which was published in 2019:⁹ the majority of countries that have adopted or endorsed the working definition, use it to train law enforcement personnel and, to a slightly lesser extent, for educational purposes. Romania is the only country where the working definition is also used by judicial authorities to identify hate crimes.¹⁰

2.3 Analysis of the working definition

The legal analysis works on the assumption that in order to determine the meaning and scope of the working definition, clarify vague wording, and identify gaps, the definitional elements, i.e. the [core definition], [explanatory notes], [examples] and [explanations], should be taken as a whole and treated as interrelated. The key findings are set out below.

The somewhat open-ended and vaguely worded core definition is elucidated as follows:

- 'Certain perception' means a negative perception characterised by rejection and hostility.
- 'Jews' (and not the state of Israel) are the objects of that perception.
- Antisemitism may be expressed as hatred, or may not be expressed, or at least not in an easily detectable manner.
- Antisemitism is not necessarily expressed in concrete words or deeds that can clearly be attributed to a specific individual.
- Antisemitism also encompasses latent and unconscious structural discrimination and attitudes.
- The references to just two specific forms of antisemitism and two specific targets of antisemitism are indicative only and not intended to be exhaustive and do not rule out other possible manifestations of antisemitism, which are less clear-cut and more difficult to identify.
- An act refers to all acts, including discriminatory treatment and hostile behaviour.

⁹ FRA, 2019: Antisemitism Overview of Data Available in the European Union 2008–2018, p. 20 f.

¹⁰ For a recent overview of the different ways in which the working definition is used in practice, see: Handbook for the practical use of the IHRA working definition of antisemitism (Directorate-General for Justice and Consumers (European Commission), Federal Association of Departments for Research and Information on Antisemitism e.V.).

- Antisemitism is not just directed at Jewish individuals or property but also at non-Jewish individuals who are wrongly deemed to be Jewish.

The emphasis that the [core definition] places on actions – hate speech and hate crimes – may mean that other manifestations of antisemitism are overlooked, including the construction of the image of the 'Jew' that is at the root of antisemitism, hostility, conspiracy theories, or direct, indirect and structural discrimination.

The explanatory notes expound on certain elements of the core definition and provide details on the various manifestations of antisemitism and its modus operandi (e.g. the use of stereotypes or negative character traits). They indicate the circumstances in which criticism of the State of Israel may be considered as a manifestation of antisemitism and when it should not. The explanatory notes also highlight conspiracy theories as a concrete form of antisemitism, which is not self-evident from the core definition.

The text introducing the list of examples emphasises that these are 'contemporary' examples, that the list is not exhaustive, and the overall context must always be taken into account in assessing the specific circumstances. The text therefore acknowledges that antisemitism evolves and changes over time and that there are manifestations of antisemitism other than the types of behaviour mentioned. Given the importance of considering the overall context, particularly in relation to 'new antisemitism', the legal analysis discusses the examples in detail, especially those that predominantly relate to the State of Israel (cf. 2.4).

The final explanations indicate that antisemitic acts are criminal when they are so defined by law and also clarify when criminal acts are antisemitic. Finally, there is an explanation of antisemitic discrimination which is expressly prohibited in some countries but not mentioned in the core definition.

The working definition, particularly in situations where only the [core definition] is used, does not adequately cover the scope of current actions to combat antisemitism, either compared to the SCRA definition of antisemitism or international standards, e.g. the ICERD and ECRI.

Any definition broad enough to cover the scope of the ICERD must include discrimination. Moreover, the ICERD requires States Parties to declare it an offence to practice discrimination caused by unconscious biases, practices and behaviour, whereas the working definition, in using phrases such as antisemitism 'expressed as hatred' and 'rhetorical and physical manifestations', focuses more on the conscious behaviour of individuals.

The SCRA, which is responsible for federal anti-antisemitism policy, provides the most comprehensive definition for the reality in Switzerland that takes account of the criticism levelled at the working definition. The SCRA definition clarifies, elaborates on and expands the IHRA working definition (see Annex 2).

2.4 Fundamental rights and human rights

Criticism of the IHRA working definition is centred, in particular, on the eleven examples accompanying the definition, seven of which refer to the State of Israel: applying these examples without any context can be misused in order to blur the boundaries of legitimate political expression and action in relation to Zionism, the State of Israel and Palestine, thus delegitimising all criticism by qualifying it as antisemitic per se. Ultimately, this does not just cause confusion and controversy, but may result in actual censorship. Accordingly, in March 2021, over 200 intellectuals presented the Jerusalem Declaration on Antisemitism, which criticised the IHRA working definition and sought to provide an alternative. The Jerusalem Declaration on Antisemitism has been very well received, but also attracted some strong criticism, which underscores just how controversial and politically charged these types of definition can be.⁹

The legal analysis therefore explores the tension between ensuring freedom of expression and the need to combat antisemitism in all its forms. As noted in the text introducing the [examples], it is essential to take proper account of the overall context in applying the [core definition]. This is because the examples do not provide specific instances of antisemitism, but describe situations that could be deemed antisemitic in the overall context. It is also important to bear in mind that the ability to discuss political matters openly is a crucial part of any free and democratic society. Accordingly, the courts afford a very high level of protection to freedom of political speech. Any restrictions on freedom of expression must be grounded in law, serve an overriding public interest and be proportionate having regard to the role of the press as a public watchdog and civil society actors as a social watchdog in a democratic society.

In applying these general considerations to the IHRA working definition, it is possible to draw two conclusions.

In relation to 'new antisemitism', antisemites clearly often attempt to avoid penalties by adapting their speech and replacing references to Jews with terms such as 'Rothschild' or 'financial oligarchy' that invoke age-old anti-Jewish stereotypes. Similarly, they may use terms such as 'Zionists' or 'State of Israel' to perpetuate the same stereotypes. In these circumstances, it is both appropriate and necessary to characterise such speech as antisemitic. On the other hand, there must be freedom to express criticism of Israeli politicians or Israeli policy, including in politically sensitive contexts such as the Israeli-Palestinian conflict. This view is also reflected in ECtHR

⁹ Jerusalem Declaration on Antisemitism, 26 March 2021 (jerusalemdeclaration.org).

The following reports and papers also engage critically with the IHRA working definition:

- ECRI's Opinion on the IHRA Working Definition of Antisemitism (adopted at ECRI's 84th plenary meeting on 2 December 2020).
- Government Response to Home Affairs Committee Report: 'Anti-Semitism in the UK'. Presented to Parliament by the Secretary of State for Communities and Local Government by Command of Her Majesty. December 2016.
- Peter Ullrich, 2019: Expert Opinion on the 'Working Definition of Anti-Semitism' of the International Holocaust Remembrance Alliance. Rosa Luxemburg Stiftung and medico international e.V.

case law, which draws a line between "political or ideological criticism of Zionism and the actions of the State of Israel", which is protected by freedom of expression, and 'racial defamation' or 'inciting hatred', which is not.¹⁰

Even though the working definition is non-legally binding it may still have a chilling effect and cause controversy. From the vantage point of freedom of expression, it is therefore essential that any reference to the working definition sets out the reasons for using the definition and the specific areas in which it should be used. In particular, to minimise the risk of the examples being used incorrectly, it is essential to state that the overall context must be taken into account. Finally, it is also important to stress that the list of examples is not intended as a checklist to be applied mechanically.

2.5 Impact of working definition on certain areas of law

Even though the working definition is non-legally binding, it may have indirect legal implications regardless of whether it is adopted by Switzerland. Law enforcement agencies may refer to the working definition, for example, for the purpose of interpreting or clarifying vague legal concepts. Swiss courts may use the working definition as guidance for explaining or interpreting specific terms in Swiss law, as they already do with other non-legally binding international instruments adopted by international organisations of which Switzerland is a member. The potential implications of the working definition in three key areas of law (criminal law, civil law and administrative law), are assessed briefly below:

- The vague and unspecific way in which the core definition is worded makes it unsuitable for use in a criminal law context. Applying a broad interpretation to criminal law provisions to the detriment of the accused would be contrary to the principle of legality, which requires that offences be clearly defined in law for reasons of foreseeability and legal certainty. In addition, based on the *ultima ratio* principle, only the most egregious (and above all public) forms of discrimination and incitement to hatred are defined as offences under criminal law. Article 261bis of the Swiss Criminal Code (SCC), for example, sets out the exact criteria that must be met for an offence to be established and a conviction to be entered. It is not possible to prosecute a person for speech or acts that do not fulfil the criteria for an offence, even though they may qualify as racist or antisemitic on the basis of other definitions or understandings. As a result, the adoption of the working definition would not have a direct impact on the application of Article 261bis SCC in practice.

However, giving due consideration to the working definition may make public prosecutors and judges aware of avoidance strategies, thus helping to ensure that individuals

¹⁰ ECtHR, *Garaudy v. France*, 24 June 2003, case no. 65831/01.

engaging in speech that potentially constitutes an offence under Article 261bis SCC are brought to justice. An increased awareness of different facets of antisemitism among law enforcement authorities could also have an impact on sentencing. Accordingly, the courts may be more inclined to take antisemitic motives into account in sentencing of offenders, given that the principle of *in dubio pro reo* also applies to sentencing.

- Adopting the working definition of antisemitism could have a greater impact on the protection of personality rights under civil law, than in relation to offences under criminal law. This would specifically apply to situations in which someone accused of racism or antisemitism brings an action under Article 28 of the Swiss Civil Code governing the protection of personality rights, claiming that the accusation is defamatory. In this type of situation, there is a conflict between the right to protection of privacy and private life (Art. 13 of the Federal Constitution (Cst.) and Art. 8 of the European Convention on Human Rights (ECHR)), as laid down in the protection of personality provisions of the Swiss Civil Code, and freedom of expression (Art. 16 ff. Cst. and Art. 10 ECHR). ECtHR case law proceeds on the basis that both rights carry equal weight. Adopting the working definition could encourage courts to consider whether accusations against specific individuals for making antisemitic statements lack a sufficient factual basis and thus constitute an injury to personality rights. In practice, Federal Supreme Court decisions tend to limit the scope of permissible criticism to situations where labelling a person's statements as racist falls within the scope of Article 261bis of the Swiss Criminal Code, an approach that is not supported by the ECtHR. Given that the working definition of antisemitism is broader than the offences of 'discrimination and incitement to hatred' under Article 261bis SCC (or Article 171c MCC), adopting the working definition could have the advantage of widening the scope of permissible criticism, thus opening up the debate on what constitutes and what does not constitute antisemitism. Any potential effect of the working definition in terms of balancing freedom of speech against the right to protection of reputation, would, however, be limited by the context-based approach adopted in the case law.
- Adopting the working definition is unlikely to have a significant impact on one particular area of administrative law: using state property to exercise freedom of expression. When determining appeals against refusals to grant authorisations to use public areas or administrative assets for communication purposes, the Federal Supreme Court has held that applications for an authorisation must be assessed objectively, i.e. without regard to the substance of the ideas and messages to be communicated. The authority concerned is solely permitted to undertake a cursory examination. The court stated that given the importance of freedom of expression in relation to political issues, and the serious implications of any form of prior restraint of freedom of expression, withholding an authorisation on the grounds of content was only justified in exceptional circumstances, mainly in situations where there is a real and specific risk of a breach of the provisions of the Swiss Criminal Code (Art. 261bis SCC). This therefore leaves little scope for a

broader conception of antisemitism than that set out in the definitions of discrimination and incitement to hatred in the Swiss Criminal Code.

2.6 Conclusions

The main conclusions of the legal analysis concern whether and to what extent a single definition is able to capture a complex phenomenon such as antisemitism, which changes over time. The legal analysis concludes that there is no universally accepted definition of antisemitism and neither can such a definition exist. Any attempted definition must be appropriate for the purpose for which it is used, be capable of amendment and disclose its limitations.

The legal analysis notes that the Swiss approach of viewing antisemitism as part of the general phenomenon of 'racism' is in line with the ECRI approach. In order to understand the specific phenomenon of antisemitism, it is necessary to consider the specific features of antisemitism that correlate with racism and those that differ.

According to the legal analysis, scrutinising the IHRA working definition provides an opportunity to explore the specific form of racism which is 'antisemitism' more closely. This would allow the specific features of contemporary antisemitism to be identified and any requisite countermeasures to be planned and implemented in a targeted manner. The legal analysis argues that this is important because all too often narrow understandings of racism and antisemitism that are vague and unspecific conceal a conscious or unconscious refusal to address painful but real social problems.

The legal analysis stresses the need to take all the elements of the working definition into account: [core definition], [explanatory notes], [explanations] and, in particular, the [examples]. These must be understood in context in the light of the particular circumstances and should not be treated as a checklist. Reviewing the various [examples] in depth provides a better insight into the issues and raises questions as to what limits should be placed on freedom of expression in a liberal society.

In terms of court decisions, although the working definition is non-legally binding, the use of the definition by the courts may help to expose potential avoidance strategies and enable harsher penalties to be imposed once antisemitic motives have been established. Finally, the legal analysis notes that in using the working definition for teaching purposes, it is essential to ensure that additional information is provided and that teachers are aware of the importance of the overall context in relation to antisemitism.

3 Policies and measures to combat antisemitism in Switzerland

The 'Evaluation Report on Federal, Cantonal, and Communal Measures to Combat Antisemitism' (in German only), produced by Interface, was based on the expertise of members of the working group set up by the SCRA, interviews with experts (public and private actors from various language regions, cantons and policy areas), documents including the SCRA's 'Report on the action taken by the federal government to combat antisemitism in Switzerland' (2017) and report on 'Racial discrimination in Switzerland'(2018), the SIG and CICAD annual reports and recent research.

The report assesses the extent of antisemitism and the level of acceptance and threat posed to the Jewish community in Switzerland, provides a selective, but representative, overview of measures at federal, cantonal and communal level, and concludes with a series of recommendations for more comprehensive and coherent efforts to combat racism and antisemitism in Switzerland.

The following sections outline Switzerland's anti-antisemitism policy at international level, provide an overview of the current situation and set out the assessments and recommendations of the authors of the Interface report.

3.1 Switzerland's policy against antisemitism at international level

Switzerland believes that racial discrimination and antisemitism constitute serious violations of human rights. Switzerland's ratification of relevant international agreements reflects its belief that it is essential in all circumstances to eliminate all forms of racism wherever they may be. Switzerland therefore complies with all its international obligations, including the prosecution of racially motivated crimes. The relevant obligations are laid down, in particular, in the UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which came into force, as far as Switzerland is concerned, at the end of 1994.

Switzerland's commitment to eliminating racism and antisemitism does not just involve prosecuting crimes. High-level delegations from Switzerland participated in the Stockholm International Forum on the Holocaust organised by the ITF, which was renamed the International Holocaust Remembrance Alliance (IHRA) in 2013. Switzerland joined the ITF in 2004. Alongside this work, Switzerland has been involved in developing tools and approaches designed to step up the prevention of genocides and atrocities by systematically linking Holocaust research, education and remembrance to current efforts to prevent genocide and all atrocities. For example, Switzerland held four regional forums on genocide prevention between 2008 and 2021. These led to the establishment of Global Action against Mass Atrocity Crimes (GAAMAC), which Switzerland

chaired until 2020. The IHRA and GAAMAC actively cooperate on a transdisciplinary basis, for example on preventing hate speech, racism, discrimination or incitement to violence.¹¹

Switzerland is also involved in work undertaken by a number of international organisations and activities aimed at combating racism and antisemitism, such as the 'Journées des Justes' (Righteous Among the Nations event). Preparations for the 4th event are currently under way with the involvement of French and Swiss civil society organisations.

3.2 Situation in Switzerland

Switzerland provides a biennial report 'Racial discrimination in Switzerland', which is produced by the SCRA, and provides a complete set of data on racism and antisemitism¹² in Switzerland. This monitoring system was established in cooperation with various contributors including the SIG, GRA and CICAD.¹³

Cases recorded by the police and dealt with by the courts are systematically analysed, while the reports of the SIG and the NGOs CICAD and the GRA highlight cases in the press and on the internet. However, the various organisations also report that a large number of antisemitic incidents remain unrecorded by any agency. The Beratungsnetz für Rassismuspfer (Network for the Victims of Racism), which encompasses the majority of centres providing advice to victims in Switzerland, reports very few incidents of antisemitism because the victims rarely seek help from advice centres.

The annual reports produced by the Swiss Federation of Jewish Communities (SIG) and CICAD in the French-speaking part of Switzerland provide an insight into current morale in the Jewish community and organisations in Switzerland. Although there is no systematic study at federal level of the experiences of discrimination of different communities, a first survey of the Jewish community in Switzerland was conducted in 2020, resulting in the report 'Erfahrungen und Wahrnehmungen von Antisemitismus unter Jüdinnen und Juden in der Schweiz' (Experiences and perceptions of antisemitism among the Jewish community in Switzerland).¹⁴

In the report, the authors conclude that "Jews in Switzerland are on the whole less worried than Jews in other European countries" and generally feel safe and well accepted in society. The Jewish community experiences less discrimination, for example in the housing or job markets, than other (religious) minorities (especially Muslims). In fact, physical and verbal attacks on persons of Jewish faith and damage to property are less common in Switzerland than in other countries. However, over half of the respondents saw antisemitism as a current social problem

¹¹ At the GAAMAC's Global Meeting in November 2021, the IHRA will offer a workshop on lessons learned from the Holocaust for preventing hate speech (www.gaamac.org).

¹² See SCRA, 2018: 'Racial Discrimination in Switzerland', section 6.3.4 'Antisemitism and measures to combat it' (p.97 ff.).

¹³ Contributing organisations and details on the sources are summarised on the SCRA's website (de and fr only), see Annex 3 (www.frb.admin.ch) > Monitoring and reporting > Data in Switzerland)

¹⁴ The study, which was conducted by the ZHAW in cooperation with the GRA, was based on a survey of 487 Jewish individuals.

in Switzerland, while Orthodox Jews and Jews who wear a kippa in public or regularly attend synagogue felt unsafe to some extent.

Although, in general, there has been no significant increase in antisemitism in recent years, it is becoming more noticeable, especially on the internet, where attacks on Jews living in Switzerland are now as frequent as in other countries. In the context of the COVID-19 pandemic, antisemitic attacks on social media were evidently less frequent in Switzerland than in other countries during the first few months of the pandemic, but they have steadily increased in recent months. There have also been both physical and online attacks on Jewish organisations and events in recent months.¹⁵

The FIS considers the level of threat posed to the Jewish community in Switzerland to be lower than in neighbouring countries. However, the FIS has concluded that the risk of terrorist or violent extremist actions against Jewish (but also Muslim) individuals and institutions may have increased. It believes that incidents such as the antisemitic terrorist attack on a synagogue in the German city of Halle, which was carried out by a far-right extremist, could also happen in Switzerland.

Jewish communities are aware of the very real threat and have invested in specific security measures to protect their members and buildings in recent years, spending an estimated CHF 4–5 million annually on these measures. As a result, there have been calls for public funding to be provided by the communes, cantons and federal government. Against this backdrop, in 2017 the Federal Council appointed the Swiss Security Network (SSN) to work with the cantons, communes and the representatives of affected communities to develop a plan for better coordination of measures to protect minorities at particular risk, including Jewish individuals. Based on this plan, the Federal Council adopted the Ordinance of 9 October 2019 on Measures to Support the Safety of Minorities in Particular Need of Protection (SR 311.039.6). An annual sum of CHF 500,000 is currently available for this purpose. In 2020, 11 projects in total received financial support, ten of which were submitted by Jewish organisations. The Ordinance is based on Article 386 SCC, which provides that the Confederation may employ communication, educational and further measures aimed at preventing specific offences and crime in general. As a result, it is only possible at this point in time to obtain funding for structural, technical and organisational protection measures or raising awareness and disseminating information to the general public. The SSN working group on 'Protecting Minorities in Particular Need of Protection' previously recommended the option of drafting formal legislative provisions that would facilitate more broad-based government support.¹⁶

¹⁵ SIG/GRA, 2021: 2020 Report on Anti-Semitism for German-Speaking Switzerland.

CICAD, 2021: *Rapport sur l'antisémitisme en suisse romande 2020* (2020 Report on antisemitism for French-speaking Switzerland).

¹⁶ SSN 2018: *Konzept Sicherheit Minderheiten mit besonderen Schutzbedürfnissen* (Plan to ensure the safety of minorities in special need of protection, de only).

Extensive debate at local and national level and a greater awareness of the security needs of minorities, including Jews, have prompted cantons with large Jewish communities to increase funding for the protection of Jewish institutions and facilities.¹⁷

3.3 Measures to combat antisemitism

A wide range of measures to combat antisemitism have been initiated at all levels of government – federal, cantonal, municipal and communal.

At federal level, the main organisations involved in combating antisemitism in Switzerland are the SCRA, the FCR, the Swiss Coordination and Information Centre for Religious Affairs at the FOJ, the Swiss Armed Forces' Service for Combating Extremism (FS EX A) and Diversity (FS DSA), the PHRD at the FDFA, and the SSN working group on 'Protecting Minorities in Particular Need of Protection'.¹⁸ The National Action Plan to Prevent and Counter Radicalisation and Violent Extremism (NAP) also includes measures to prevent antisemitic violence.

The cantons and communes, especially those with large, active and well-organised Jewish communities, are highly proactive against antisemitism (e.g. the cantons of Aargau, Basel-Stadt, Bern, St Gallen, Vaud, the Canton and City of Geneva, the Canton and City of Zurich, the City of Winterthur and Surbtal area in the canton of Aargau). These cantons and cities have also laid down clearly defined responsibilities for antisemitism issues. However, a number of cantons have no designated organisation or individual with responsibility for antisemitism.

Some cantons and communes report that they cannot provide information on responsibilities for antisemitism issues and, even if this were possible, they would be unable identify relevant officers or the specific functions or tasks they perform. There is also a lack of clarity regarding the various stakeholders and the existence or extent of cooperation between them. Some cantons and communes attribute these inconsistencies to a lack of clear guidance from the federal government.

At civil society level, NGOs and, in particular, those with strong ties to Jewish organisations and individuals are involved in work to combat antisemitism and promote Shoah remembrance, in part funded by the federal government (e.g. the SCRA and FDFA), the cantons and the communes. These include the SIG, including Likrat, the GRA, GMS, NCBI, SET, CICAD and the Gamaraal Foundation.

Schools play an important role in working against antisemitism and teaching young people about the Holocaust. In recent years, greater prominence has been given to antisemitism and

¹⁷ The cantons of Basel Stadt and Zurich and, on a one-off basis, Aargau, Vaud and Bern have agreed to provide support.

¹⁸ It should also be noted that access to pastoral care has been extended to all faith communities with the adoption of the *Weisungen über die Beratung, Begleitung und Unterstützung durch die Armeeseelsorge* (Guidelines on counselling, assistance and support provided by military chaplains in German only) by the Chief of the Armed Forces on 1 March 2020. The *Merkblatt der Armeeseelsorge. Vereinbarkeit Glaubenspraxis und Militärdienst* (Military chaplaincy information sheet. Reconciling religious observance with military service) dated 1 January 2018 provides guidance on reconciling personal religious observance with serving in the Armed Forces.

Holocaust education in teacher training and also in the development of teaching materials, so that they are now compulsory subjects on cantonal curricula. The Swiss Conference of Cantonal Ministers of Education (EDK) has served on the IHRA Education Working Group since 2004, the year in which Switzerland joined the ITF (later renamed the IHRA). The EDK Information and Documentation Centre (IDES) produces an annual dossier of 'Remembrance Day' publications and activities to mark International Holocaust Remembrance Day on 27 January each year. Teaching materials are being developed by various universities of teacher training and by *éducation21*, the national centre of excellence and service provider of education for sustainable development. The SCRA has also tasked *éducation21* with promoting, supporting and assessing school projects. Online information and advice on antisemitism is also available to parents and teachers on the national 'Young People and Media' platform of the Federal Social Insurance Office (FSIO).

3.4 Relationship between the state and faith communities and interfaith dialogue

Article 72 paragraph 1 of the Federal Constitution provides that the regulation of the relationship between church and state is the responsibility of the cantons. Jewish communities participate in official exchanges between the state and faith communities in the six cantons (Basel Stadt, Fribourg, Bern, St Gallen, Zurich and Vaud) where they are recognised under public law. The relevant responsibilities in cantonal administrations have evolved over time and vary from canton to canton.¹⁹ There has been a growing awareness in recent years of the importance of the relationship between government agencies and faith communities (not just those recognised under public law), given the requirement to preserve religious peace (Art. 72 para. 2 Cst.) and changes in the religious environment. The importance of involving faith communities in implementing social cohesion measures has also been recognised. As a result, special offices for religious affairs have been established in the cantons of Bern, Basel Stadt, Solothurn, Ticino, Vaud and Zurich, which are tasked with cultivating relations with religious communities and promoting interfaith dialogue.²⁰ Organised dialogue and cooperation formats,²¹ where the cantonal authorities liaise on religious matters with all the main faith communities, facilitate joint efforts to define legally binding rights and duties and promote mutual acceptance and social coexistence. None of these initiatives, including civil society work on interfaith dialogue (e.g. House of Religions, IRAS COTIS,

¹⁹ For a recent overview, see Christian Reber, Lara Aharchaou 2020: *Die Kantone und ihre Beziehungen zu Religionsgemeinschaften. Unterschiedliche Strategien im Umgang mit religiöser Vielfalt* (The cantons and their relationship with faith communities. Varying strategies in responding to religious diversity), Institute of Law and Religion, University of Fribourg.

²⁰ The Federal Council will provide an overview in its report in response to postulate 16.3314, Ingold: 'Moderate imams are key figures in countering radicalisation among young Muslims'.

²¹ E.g.: *Runder Tisch der Religionen beider Basel* (Religion round table in the cantons of Basel Stadt and Basel Landschaft), *St. Galler Konferenz zu Fragen von Religion und Staat* (St Gallen Conference on issues relating to religion and the state), *Fachstelle Brückenbauer* established by the City and Canton of Zurich and City of Winterthur police forces, *Schaffhauser Erklärung zum interreligiösen Dialog* (Schaffhausen statement on interfaith dialogue), *Plateforme interreligieuse* (Interfaith platform), Geneva und Vaud.

ZIID), has the explicit objective of combating antisemitism, but their activities contribute to inter-faith dialogue and networking, address concerns, and promote mutual acceptance.

3.5 Evaluation of current measures to combat antisemitism

The Interface report acknowledges the wide-ranging efforts undertaken at federal, cantonal and communal level to combat racism and antisemitism. However, it suggests that this work would be better coordinated and focused if the federal government, cantons and communes were to clarify relevant roles, tasks and responsibilities in combating racism and antisemitism and liaised more closely, enabling them to agree on a common strategic plan. The provision of adequate human resources and funding is essential to ensuring the success of any such strategy.

Switzerland lags behind neighbouring countries in systematically recording racist and antisemitic incidents as problems affecting the whole of society and, in particular, in recording the experiences of victims of discrimination. This makes it difficult to raise awareness and carry out prevention work consistently across a number of areas.

The provision of funding for anti-discrimination work and, in particular, to advice centres, aside from the funding earmarked for migration and integration work (most advice centres are funded from cantonal integration programmes), is essential to ensuring that advice centres are recognisable and available to everyone, not just people of immigrant origin.

Finally, the federal government should work more effectively, alongside the cantons, to protect vulnerable minorities.

The Interface report outlines various measures put forward by experts, as follows:

- Activities to combat antisemitism should be incorporated into a national anti-racism and anti-discrimination strategy.
- An overview of responsibilities at cantonal and communal level would help to clarify the roles and responsibilities of the various actors involved.
- The federal government should, without impinging on the cantons' powers, assume responsibility for coordinating awareness-raising and prevention policy and establish an appropriate framework.
- Interfaith and intra-Jewish dialogue should be stepped up under the auspices of the cantons.
- Regular events, conferences or workshops should be held to facilitate the sharing of experiences and networking between state actors, civil society and the academic community.
- Antisemitism research should be promoted in conjunction with actors such as SERI, the SNSF and the EDK.

- Efforts should be increased to stop the spread of antisemitism on social media and the internet.
- A legislative basis should be established with a view to preventing hate speech, threats and conspiracy theories on the internet.²²
- Consideration should also be given to amending legislation to extend locus standi to organisations in relation to criminal proceedings.²³
- Teaching on antisemitism should not just be confined to National Socialism during the Second World War or the Shoah, but extended to include human rights, discrimination and racism. Antisemitism should also be taught in the historical context of the founding of Israel and the Middle East conflict.
- Erecting a memorial for Holocaust victims could also help highlight the issue of antisemitism in the public arena.²⁴

3.6 Assessment of the use of the IHRA working definition of antisemitism

The experts involved in preparing the Interface report were asked to comment on the extent to which anti-antisemitism measures and activities are guided by the IHRA working definition and how useful they considered the working definition to be.

Different stakeholders use different definitions of racism and antisemitism: the SIG, the Jewish umbrella organisation, and CICAD use the IHRA working definition. The GRA uses 'traditional' definitions of racism and the definition adopted by ECRI,²⁵ while the FCR uses its own definition which makes no reference to the IHRA working definition. The SCRA has the most comprehensive definition, which clarifies, elaborates on and expands the IHRA working definition.²⁶

The relevant authorities in the cantons and communes are either unaware of the IHRA working definition or consider it unsuitable. Opinions are split on the potential usefulness of the IHRA working definition in combating antisemitism.

Some take the view that officially adopting the working definition would have a strong impact. They claim this would signal the government's determination to accept its responsibilities towards the Jewish community, help demonstrate that society's perception of antisemitism is not

²² The Federal Council has commissioned a report from OFCOM on Swiss governance of platform services (including search engines, social media, video platforms) in order to better understand the risks associated with the public dissemination of hate speech and extremist propaganda online. The report will present and analyse empirical findings and existing measures and consider how to provide effective protection against hate speech. The report, which is expected towards the end of 2021, will also put forward possible solutions, including new legal instruments applying to platform services.

²³ In terms of civil law, discussion is currently under way to extend the scope of group actions under Article 89 of the Civil Procedure Code (CPC) to cover all aspects of discrimination (motion 13.3931, Birrer Heimo). In 2017, the National Council rejected a proposal to introduce the 'right to bring a group action' in cases falling under Article 261bis SCC (parliamentary initiative 15.460, Tornare).

²⁴ Procedural requests to this effect have now been submitted to the Council of States and National Council: Jositsch motion (21.3172) and Heer motion (21.3181) 'Memorial site in Switzerland for the victims of National Socialism'.

²⁵ European Commission against Racism and Intolerance (ECRI) 2002/2017: General Policy Recommendation No 7 (revised) on national legislation to combat racism and racial discrimination.

²⁶ See Annex 2

confined to the period ending in 1945, and allow debate on Israeli policy that is not tainted by racism. They also argue it could provide a useful basis for public bodies to develop their own definitions of antisemitism.

However, there are also arguments that the working definition has little value, as it fails to mention conspiracy theories, which are an important component of antisemitism. In addition, the working definition does not refer to discrimination or structural antisemitism and does not address antisemitic incidents that are not based on intent. Finally, some experts claim that the examples are overly polemical and focused on Israeli policy.

4 Recommendations

on the IHRA working definition of antisemitism

The Federal Council recognises the value and practical relevance of the IHRA working definition of antisemitism, which can provide guidance in identifying and documenting antisemitic incidents in practice.

Alongside the antisemitism definition of the Service for Combating Racism (SCRA), set out in Annex 2, the non-legally binding working definition may also serve as a basis for more specific definitions to be used for particular situations and purposes. Any definitions formulated should be specific and adapted to the context, and appropriate provisos made where necessary.

Bearing in mind that all definitions need to be contextualised, the Federal Council recommends that all stakeholders, including state and non-state actors, consider the IHRA working definition in the light of current debate surrounding the definition.

It would be unusual for the Swiss authorities to explicitly endorse a non-legally binding international text once it has been adopted at international level and such a step is not envisaged by the legislature.

Policies and measures to end racism and antisemitism in Switzerland

Within the scope of the powers conferred on it, the federal government performs the role of coordinator and establishes the framework within which synergies can be exploited effectively and a national anti-racism and anti-antisemitism strategy developed. To help achieve these objectives, the SCRA and FCR are tasked with implementing the following measures using the resources currently available.

- The SCRA is responsible for providing an overview of the authorities dealing with antisemitism, or involved in combating antisemitism, at various levels of government and for clarifying the relevant tasks and responsibilities with the cantonal and communal offices concerned.

- The SCRA is working with the cantons and communes on better coordinating all those involved in combating antisemitism at governmental and non-governmental level, using appropriate means (conferences, workshops, networking events, pools of experts, etc.).
- The SCRA and its various partners are jointly developing a coordinated strategy for proactively disseminating information on and raising awareness of racism and antisemitism. The SCRA is working with its partners to ensure that people know where they can report problems and/or antisemitic incidents and obtain proper assistance.
- The SCRA, together with the FSO, is developing appropriate data collection and analysis tools with a view to collating and analysing racist and antisemitic incidents and discrimination and, in particular, personal experiences of discrimination, more systematically.
- The FCR is preparing an analysis of decisions and sentences handed down by various Swiss courts since 1995 under Article 261bis SCC and Article 171c MCC and relate to antisemitism, with a view to improving the monitoring of such offences.
- The FCR is focusing on building awareness of antisemitism among media professionals.
- It is also analysing and evaluating on an ongoing basis types of antisemitic hate speech and the frequency of occurrence as part of a planned pilot project to set up a high-profile and accessible channel for reporting racist hate speech that is posted on the internet and social media. In consultation with other actors, it is developing strategies to counter racist and antisemitic hate speech.

Relevant actors at all levels of government are required to familiarise themselves with this report and to implement the recommended measures to combat antisemitism within their specific areas of responsibility.

List of abbreviations

CERD	Committee on the Elimination of Racial Discrimination Body responsible for implementing and monitoring the ICERD
CICAD	Coordination intercommunautaire contre l'antisémitisme et la diffamation (Inter-Community Coordination against Anti-Semitism and Defamation)
CYCO	Cybercrime Coordination Unit Switzerland
DDPS	Federal Department of Defence, Civil Protection and Sport
DIL	Directorate of International Law (FDFA)
EAER	Federal Department of Economic Affairs, Education and Research
ECRI	European Commission against Racism and Intolerance
ECtHR	European Court of Human Rights
EDK	Swiss Conference of Cantonal Ministers of Education
ESD	Education for sustainable development
EUMC	European Monitoring Centre on Racism and Xenophobia (1995–2007)
FAC-CS	Foreign Affairs Committee of the Council of States
FCR	Federal Commission against Racism
FDF	Federal Department of Finance
FDFA	Federal Department of Foreign Affairs
FDHA	Federal Department of Home Affairs
FDJP	Federal Department of Justice and Police
fedpol	Federal Office of Police (FDJP)
FIS	Federal Intelligence Service (DDPS)
FOJ	Federal Office of Justice (FDJP)
FRA	European Union Agency for Fundamental Rights
FSIO	Federal Social Insurance Office (FDHA)
GAAMAC	Global Action against Mass Atrocity Crimes
GMS	Society for Minorities in Switzerland
GRA	Foundation against Racism and Antisemitism
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
IDES	EDK Information and Documentation Centre
IHRA	International Holocaust Remembrance Alliance
IRAS	Interfaith working group in Switzerland
COTIS	
ITF	Task Force for International Cooperation on Holocaust Education, Remembrance and Research

JDA	Jerusalem Declaration on Antisemitism
KIP	Cantonal integration programme
MELANI	Reporting and Analysis Centre for Information Assurance (part of the NCSC since 2020)
NAP	National Action Plan to Prevent and Counter Radicalisation and Violent Extremism
NCBI	National Coalition Building Institute
NCSC	National Cyber Security Centre
NGO	Non-governmental organisation
OSCE	Organization for Security and Co-operation in Europe
PRHD	Peace and Human Rights Division (FDFA)
SCC	Swiss Criminal Code
SCRA	Service for Combating Racism (FDHA)
SERI	State Secretariat for Education, Research and Innovation (EAER)
SET	Stiftung Erziehung zur Toleranz (Foundation to promote tolerance)
SIG	Swiss Federation of Jewish Communities
SNSF	Swiss National Science Foundation
SSN	Swiss Security Network
ZHAW	Zurich University of Applied Sciences
ZIID	Zurich Institute for Interreligious Dialogue (Zürcher Lehrhaus prior to 2015)

Annex 1²⁷

Speech by Council of States member Paul Rechsteiner dated 12 September 2019

There are good, and indeed compelling, reasons why Switzerland should adopt the International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism as many other European countries have already done.

Switzerland is a member of the IHRA because of the scourge of antisemitism that spread throughout Europe in the past and was also rife in Switzerland. Although Switzerland has never experienced anything like the genocidal form of antisemitism that arose in Nazi Germany, which ultimately amounted to a rupture of civilisation in European history, Switzerland also, unfortunately, has a dreadful track record of hostility towards Jews and antisemitism.

There was widespread hostility to Jews throughout the Christian West. The land base that is now Switzerland also saw repeated pogroms and mass expulsions of Jewish people, for example in Bern in 1294 or Zurich in 1349. Systematic discrimination against Jewish people living in Switzerland did not end when the federal state was established in 1848. Jewish men were not granted the same legal status as Christian men until 1866, while naturalisation policy between the First World War and the end of the Second World War was markedly antisemitic.

The refugee policy in place during the Nazi period marked a nadir of antisemitism in Switzerland. As stated in the report of the Independent Commission of Experts Switzerland – World War II, known as the Bergier Commission, which is still relevant today, Switzerland tightened its policy against Jewish refugees when the Nazi extermination policy was set in motion. The Bergier Commission provides detailed evidence that Switzerland's refugee policy was driven by antisemitism. It is true that many Jewish people fleeing for their lives fortunately found refuge in Switzerland and a number of Swiss nationals, notably Paul Grüninger, a commander of the St Gallen police force, did not turn a blind eye to their plight, but helped them to cross the border. This is evidenced by the quashing of 137 criminal convictions imposed against people who helped Jewish refugees under the Rehabilitation Act then in force. Yet this does not alter the fact that large numbers of refugees whose lives were in danger were turned back at the border and, in some cases, even handed over to their persecutors.

However, antisemitism is not just a problem of the past. It is still prevalent today.

Those of us who are not Jews are perhaps less aware of this than the Jewish people living in Switzerland and neighbouring countries. Recently, negative references to Jewish lobbies and the special powers they are supposed to possess have resurfaced. Jewish Holocaust survivor and billionaire, George Soros, who is using some of his wealth to try and strengthen democratic

²⁷ Official Bulletin, Council of States autumn session 2019, fourth session 12.09.19 8.15am 19.3942 (AB 2019 p. 698 / BO 2019 E 698)

structures in Eastern Europe, has been routinely cast as an evil puppet master orchestrating events. He has even been accused of causing the influx of refugees from the Middle East and Africa. Throughout history, antisemitism has never stopped at national borders. This is just as true today, when conspiracy theories and lies can be spread more easily and rapidly over the internet than ever before.

Switzerland is not an island. We must also rise to the challenge of helping to end antisemitism. That is what this postulate is calling for – nothing more, nothing less.

One final comment: if we show our determination to combat antisemitism by adopting the postulate, this would also send a strong signal of our intention to end other forms of racism, hate speech and prejudice towards minorities, including Yenish and Sinti, homosexuals, and Muslims in Switzerland.

I therefore ask you to adopt the postulate.

Opinion and proposal of Federal Councillor Alain Berset dated 12 September 2019

This postulate addresses a recurring problem that, unfortunately, is still all too prevalent today. Antisemitism is also present in Switzerland, with members of the Jewish minority facing hostility and sometimes even physical attacks.

The report produced by the Service for Combating Racism at the FDHA, which was published last week, provides a comprehensive overview of racism and antisemitism in Switzerland. According to information held by Jewish organisations, 150 antisemitic incidents occurred in 2017 and 174 in 2018. Hate crimes on the internet are also increasing. Unfortunately, these incidents show that the lines between the real and virtual worlds are increasingly blurred.

The SCRA report also presents data from the 'Diversity and coexistence in Switzerland' survey conducted by the Federal Statistical Office (FSO). Nine per cent of respondents to the latest survey in 2018 agreed that they held negative opinions about Jews and 12% endorsed negative stereotypes about Jews. While these values have remained stable for years and are in line with those of neighbouring countries, they are still very worrying and call for a response. Mr Rechsteiner's postulate needs to be seen against this backdrop.

Racism and antisemitism pose threats to social cohesion. Measures are needed in many areas of life – such as at work, in the housing market or in public life – to enable all people, regardless of their origin, religious affiliation or nationality, to participate in society on an equal basis.

The Federal Council has already decided to step up coordination with the cantons on measures to protect particularly vulnerable minorities. Before the end of the year, it will adopt the Ordinance on measures to guarantee the security of minorities in need of special protection, which will also facilitate government funding for instituting protective measures.

Given this context, what benefits will adopting the postulate bring? It is important to remember that the International Holocaust Remembrance Association (IHRA) working definition is not legally binding. Analysing the definition in detail could therefore help us develop and deepen our understanding of antisemitism and provide a framework for initiating appropriate and effective countermeasures. Switzerland takes a considered approach when it comes to international rules and it is therefore right to undertake a detailed legal analysis of the IHRA definition and review Switzerland's antisemitism policy from this standpoint.

The adoption of the Rechsteiner postulate would therefore give the Federal Council the opportunity to speak out clearly and comprehensively against all forms of antisemitism and address the substance of the IHRA working definition. The report could also provide an objective basis for engaging in complex political debate on what constitutes antisemitism. Finally, the report would also facilitate a review of specific antisemitism policies at federal, cantonal and communal level and indicate whether there is a need for changes or further measures to be put forward.

For all the above reasons, the Federal Council recommends that the postulate be adopted.

Annex 2

Service for Combating Racism definition of antisemitism

Antisemitism, or hostility towards Jews, describes a negative outlook or attitude towards people who identify themselves as Jewish or are perceived as such. Antisemitism is now used as a generic term and partly as a synonym for all forms of hostility towards Jews. It is an unusual phenomenon in the context of racism, as it ascribes an ethnic identity (basic feature of antisemitism) to individuals on the basis of their religious affiliation (basic feature of Judaeophobia/anti-Judaism).

Antisemitism is based on a 'them and us' worldview (ideology) that reflects conspiracy narratives and is built on age-old caricatures and negative stereotypes of 'the Jew': 'Jews' are conceived as a (power-hungry, vindictive, bloodthirsty, amoral) collectivity who conspire to harm and/or dominate humanity and remain both alienated from and dangerous to the societies in which they live.

Antisemitism also takes the form of hostile convictions, prejudices and stereotypes that manifest themselves – clearly or otherwise – within a culture, society or in the actions of individuals, and which are intended to insult, humiliate or disadvantage Jewish people and institutions or treat them as fundamentally 'other'.

Antisemitism encompasses

- hate crimes, i.e. racially motivated criminal acts such as attacks on the physical integrity or property of Jewish people and institutions;
- hate speech, i.e. verbal and written communications that, for example, promulgate antisemitic worldviews or incite violence, hatred or discrimination;
- direct, indirect and structural discrimination;
- denying, trivialising and justifying the Holocaust/Shoah (this often goes hand in hand with conspiracy narratives that claim, either explicitly or implicitly, that the Jewish community seeks to capitalise on the genocide, which they are alleged to have invented, and/or to legitimise National Socialism).

Antisemitic speech can be disguised by replacing references to Jewish individuals or organisations with terms such as 'Rothschild' or 'financial oligarchy' that peddle age-old anti-Jewish stereotypes and also terms such as 'Zionists' and 'Israel'. In these instances, the context in which the statement was made is crucial in determining whether it is antisemitic.

Government measures to combat antisemitism should not be focused on protecting the religion as such, but on protecting people.

This definition clarifies and expands the International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism.

Annex 3

Overview of racism and antisemitism monitoring measures in Switzerland

The SCRA systematically monitors all data held in relation to racism and antisemitism in Switzerland.²⁸

²⁸ www.frb.admin.ch > Monitoring and reporting > Data available in Switzerland (de, fr)

Racist discrimination and racism in Switzerland

Diagram showing a range of data collected from various sources

