



May 20, 2024

To: Meta Oversight Board

Re: Public Comments – 2024-004-FB-UA, 2024-005-FB-UA, 2024-006-FB-UA
(River to the Sea cases)

I respectfully submit to you my comments on the fourth topic for which you solicited public reactions – Meta’s human rights responsibilities in relation to posts that include the phrase “from the river to the sea”.

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I have been researching and teaching international human rights law for more than 25 years at the Hebrew University, of Jerusalem, Oxford University, Columbia University, the Graduate Institute in Geneva and other universities around the world. I have served between 2013-2020 as a member of the Human Rights Committee (HRCttee) in Geneva (I was chair of the Committee between 2018-2019). I have also coordinated between 2018-2020 a research project on online content moderation for the Israel Democracy Institute (IDI) and Yad Vashem. The outputs of that research were published in the following online publication – Reducing Online Hate Speech (<https://en.idi.org.il/media/14522/reducing-online-hate-speech-recommendations-for-social-media-companies-and-internet-intermediaries.pdf>).

Content moderation and international human rights law

Both Meta’s Human Rights Policy, which includes a commitment to follow the UN Guiding Principles on Business and Human Rights (UNGPs), and the mandate of the Oversight Board (OSB) to “pay particular attention to the impact of removing content in light of human rights norms protecting free expression” (OSB Charter, art. 2(2)) point towards the application of Facebook’s community standards on Hate Speech by the OSB in a manner compatible with international human rights law (IHRL) standards. Articles 19-20 of the International Covenant on Civil and Political Rights (ICCPR) offer in this regard a particularly useful normative point of reference, as they enumerate a rule – “[e]veryone shall have the right to freedom of expression” – and two sets of exceptions – (1) restrictions provided by law which are necessary “[f]or respect of the rights or reputations of others [and for] the protection of national security or of public order (ordre public), or of public health or morals”; and (2) a legal ban on “[any propaganda for war... [and any] advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”.

While states – and, by implication, Meta – may invoke the first set of exceptions and consider whether to introduce justifiable limits on freedom of expression whenever necessary (and proportionate) to protect one of the enumerated legitimate aims, states, and arguably also Meta, must prohibit by law hate speech and other forms of speech which fall under the second set of exceptions.¹ Offensive speech which does not fully qualify as hate speech under article 20, might still be justifiably limited under article 19, if the conditions for lawful restrictions under paragraph 3 are met.

When extending the normative scheme provided in articles 19-20, which was developed for states, to online platforms like Facebook/Instagram/Thread under the aforementioned legal edifice of commitments, mandates and standards, one has to bear in mind that the regulatory intervention of such platforms in user-generated contents differs qualitatively from state regulatory intervention in that private actors such as online platforms do not apply criminal law nor do they impose civil liability; rather, they introduce a more modest right-restricting measure - i.e., limit the manner in which their own platforms are being used or abused, or restrict the eligibility of certain users to use them. Whereas this qualitative difference might not change

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¹ Cf. Human Rights Committee, General Comment 34 (2011)(GC 34), at para. 52



dramatically the analysis under IHRL tests of legality, legitimacy and necessity of the restriction, it could influence the application of the proportionality test: There might be cases where a speech restriction entailing criminal or civil liability might be disproportionate, while applying a parallel restriction entailing content removal or other forms of content moderation would still be proportionate in nature.²

“From the river to sea” as a potential violation of article 20

Meta’s policy on Violence and Incitement covers both explicit and implicit threats, calls for violence or violent intentions. The policy covers also “coded statements”, implying veiled or implicit threats, containing threat and context signals. Similarly, Meta’s Hate Speech policy looks “at a range of signs to determine whether there is a threat of harm in the content”. These policies are compatible with the manner in which the OSB has dealt in past cases with expressions that *implicitly* refer to, or serve as a *proxy* for, speech that violates Meta policies.³

The Human Rights Committee has followed a similar approach in its caselaw on hate speech, emphasizing the importance of context and implicit messages when applying exceptions under article 19-20 of the Covenant. In the *Faurisson* case, which dealt with an invocation by a state party of the exception found in article 19(3), it held that “the statements made by the author, *read in their full context*, were of a nature as to raise or strengthen antisemitic feelings” (emphasis added).⁴ Similarly, in his partly dissenting opinion in the *Rabbae* case (which dealt with obligations under article 20 of the Covenant), Committee member, Mr. de Frouville, noted that the public statements for which Geert Wilders was prosecuted should be reviewed *in context* in order to ascertain whether the Netherlands met its article 20 obligations.⁵ In the circumstances of the case, he noted that the *contents* of the statements when viewed in context and their *impact* on manifestations of discrimination, hostility and violence against Muslims in the Netherlands place them well within article 20(2) of the ICCPR. Although the Committee held that the Dutch authorities met their obligations under article 20 of the ICCPR by criminally prosecuting Wilders, it did not doubt that the statements in question *prima facie* fell under article 20.

In *Seok-ki-Lee v. Korea*, the Committee accepted that the criminal prosecution of political activists who allegedly engaged in incitement to violent insurrection, including by singing a pro-revolutionary song, did not violate the ICCPR.⁶ Despite its long-standing criticism of article 7 of the National Security Act, on the basis of which the authors were prosecuted, the Committee held that it “is nonetheless mindful

² Cf. *Rafael Marques de Morais v. Angola*, HRCttee Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002 (2005), para. 6.8; *Depiction of Zwarte Pete* (2021-002-FB-UA).

³ See e.g., *Knin Cartoon* (2022-001-FB-UA); *Zwarte Piet* (2021-002-FB-UA); *South Africa Slur* (2021-011-FB-UA); *Holocaust Denial* (2023-022-IG-UA).

⁴ *Faurisson v. France*, Communication No. 550/1993, U.N. Doc. CCPR/C/58/D/550/1993 (1996), at para. 9.6. Even members of the Committee who were concerned by the breadth of the French Holocaust denial law agreed that the restriction was justified in light of the specific context of the case despite attempt to disguise antisemitism as impartial academic research – “The notion that in the conditions of present-day France, Holocaust denial may constitute a form of incitement to anti-semitism cannot be dismissed. This is a consequence not of the mere challenge to well-documented historical facts, established both by historians of different persuasions and backgrounds as well as by international and domestic tribunals, but of the *context*, in which it is implied, under the guise of impartial academic research, that the victims of Nazism were guilty of dishonest fabrication, that the story of their victimization is a myth and that the gas chambers in which so many people were murdered are “magic””. *Ibid*, individual opinion by Evatt et al, para. 6

⁵ *Rabbae v. Netherlands*, Communication No. 2124/2011, UN Doc. CCPR/C/117/D/2124/2011, at para. 6 (de Frouville).

⁶ *Seok-ki Lee v. Republic of Korea*, Communication No. 2809/2016, UN Doc. CCPR/C/130/D/2809/2016 (2021) (views adopted in 2020).



of the specific circumstances of the case, including the particularly serious nature of the authors' utterances on different occasions, their leadership role, the *specific context* in which the State party found itself at the time of the various events and the State party's obligations under article 20 of the Covenant relating to suppression of propaganda for war" (emphasis added). It consequently held that Korea did not violate its obligations under article 19 of the ICCPR.⁷

It appears that an evaluation of whether or not the phrase "from the river to the sea" falls within the article 20 exception – effectively *requiring* Meta to subject it to content moderation – depends on a *contextual* analysis of the contents of the phrase and its foreseeable *impacts* in view of the prevailing circumstances. A full exploration of the history of the phrase and its different possible meanings and impacts exceeds the scope of these comments; hence, only some observations will be offered hereby.

Like other controversial phrases which can have different meanings – *cf.* the term *shaheed*⁸ – some uses and meanings attached to the phrase "from the river to the sea" when applied to the Israeli/Palestinian context are clearly legitimate and fall well within the scope of article 19(2) of the ICCPR. For example, a call for life of equality, freedom and dignity for all persons or all Palestinians living from the river to the sea (e.g., "Palestinians will be free from the river to the sea") is fully compatible with IHRL. Calls for the realization of Palestinian self-determination between the river and the sea as part of a two state solution are also fully compatible with international law, and numerous UN Resolutions.⁹ Even the invocation of the slogan in support of a non-violent implementation of political platform of one state between the river and the sea with equal rights to all, would appear to fall within international freedom of expression standards.

The phrase "from the river to the sea" has also been used, however, in more controversial ways, which can be understood to convey, in certain contexts, a sinister meaning. For example, the phrase has been identified with Palestinian armed struggle aimed at destroying the state of Israel, and with replacing Israel altogether with a Palestinian state from the river to sea. It has also been identified with extreme calls for ethnic cleansing – i.e., removing or eliminating the Jewish population of Israel from the river to the sea. Such meanings clearly appear to violate both paragraphs of article 20 – (1) advocating a war of destruction against Israel – going well beyond any alleged right to resist the Israeli occupation of the internationally recognized Palestinian territories (i.e., territories situated beyond the internationally recognized "Green Line"); and (2) advocacy of hatred that constitutes incitement to violence against Jews in Israel. Another potential problem with the phrase is that, to the extent that it rejects the right of Jews to self-determination, such a rejection might be based on an antisemitic stance that Jews are less worthy of collective rights than other peoples who have been granted the right to self-determination pursuant to common article 1 of the ICCPR/ICESR. The implicit treatment of Jews as "second class people" not entitled to self-determination might also meet the conditions for discrimination and hostility specified in article 20(2) and could also fall within the scope of the exceptions specified in article 19(3)(see below).

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⁷ Note that in a parallel case, *Jung-Hee Lee v. Republic of Korea*, Communication No. 2776/2016, UN Doc. CCPR/C/130/D/2776/2016 (2021) (views adopted in 2020), the Committee held that the decision to dissolve the Unified Progressive Party did not violate article 22 of the Covenant given the very serious circumstances of the case. A few Committee members, including the undersigned, wrote a dissenting opinion stipulating that contrary to the criminal prosecution of specific individuals, the dissolution of the entire party was not shown to be necessary and proportionate in nature.

⁸ PAO-2023-1 Referring to designated dangerous individuals as "*Shaheed*".

⁹ See e.g., SC Res. 1397 (2002).



Contents and impact

The ambiguous nature of the phrase “from the river to the sea”, and its use in different contexts by different speakers (including, incidentally, by Israelis advocating “Greater Israel”, a use which also raises issues under article 20), requires a close inspection of the *context* in which the phrase is being used, in order to ascertain which meaning is implied in the particular circumstances at hand. Such an analysis should be informed by the language of the Rabat Plan of Action, which provides that “[a]nalysis of the context should place the speech act within the social and political context prevalent at the time the speech was made and disseminated”.¹⁰ It is also consistent with the approach found in Meta’s Hate Speech policy, which requires additional information or context in order to enforce certain community standards.

Specific indicators that should inform a contextual investigation of the contents of the phrase in question may include the following aspects:

- Whether or not the speaker using the phrase identifies himself/herself with Hamas or supports violent acts undertaken by Hamas (a designated terror organization in the US, EU, other jurisdictions and a designated “dangerous organization” by Meta). Significantly, the Hamas 2017 Charter update document contains the phrase “from the river to the sea”,¹¹ thus raising concerns about the use of the phrase as a coded form of espousal of Hamas ideology. Note that the updated Charter also calls for the “full and complete liberation of Palestine” (including destroying Israel), advocates armed resistance, rejects the “Zionist project”, calls Zionism a danger to international peace and security and an enemy of Islam, and commits “a struggle against the Zionists that occupy Palestine”. Invocation by speakers using the phrase “from the river to sea” also of other core Hamas messages could serve to associate their use of the phrase with Hamas ideology. Importantly, whereas the 2017 updated Charter draws a distinction between Jews and Zionists, the original Charter from 1988 – which has never been officially revoked – does not make this distinction, and calls for struggle against Jews, also citing a religious text, which seems to encourage the killing Jews wherever they are found.¹² This, in turn, raises the possibility that supporting Hamas ideology, rhetoric and action also constitutes a form of antisemitism. The upshot of this is that use of the phrase “from the river to the sea” in a context that connotes support of Hamas, its ideology or its violent attacks – including the atrocities of 7 October 2023, which may be regarded as an attempt to implement Hamas’s violent “from the river to the sea” agenda – seems to be covered by article 20 and Meta’s Dangerous Organizations and Individuals policy.
- When the phrase “from the river to the sea” is used in conjunction with other slogans that connote threats of violence towards Israelis or Jews as such, or as a part of a “social and political context” where such violent slogans are used, it should also be presumed to contain contents incompatible with article 20, even if not associated specifically with Hamas ideology. Examples of other extreme slogans used in some anti-Israel protests, which could suggest support for violence and/or ethnic cleansing, include “resistance by any means necessary”, “there is one solution – intifada, revolution” and “go back to Poland”. Using the phrase “from the river to the sea” alongside such slogans, or in connection with protest events that give pride of place to such violent

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¹⁰ Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, UN Doc. A/HRC/22/17/Add.4 (2013) (adopted in 2012).

¹¹ <https://www.middleeasteye.net/news/hamas-2017-document-full>, at para. 2, 20.

¹² See e.g., https://avalon.law.yale.edu/20th_century/hamas.asp, introduction, art. 7.



slogans, would appear to violate article 20 standards. In such a social and political context, reference to “Palestine shall be free from the river to the sea” (whose Arabic version, often used in anti-Israel protests, translates to “from water to water, Palestine is Arabic” - من المية للمية / فلسطين عربية -) can be viewed as a not-so-veiled call for the elimination of Jewish presence in Israel/Palestine or the destruction of Israel via violent means.

- When the phrase “from the river to the sea” is used in conjunction with antisemitic slogans, or is part of a “social and political context” where such inflammatory slogans are used, it would constitute a form of hate speech prohibited by article 20 of the ICCPR. Examples of such potentially antisemitic speech include: “F*** Zionism”, “globalize the intifada”, “Khaybar, Khaybar, ya Yahud” (a cry denoting a 7th century battle undertaken by the Prophet Muhammad against Jewish tribes) and calls for Jihad. In this regard, a vast majority of Jews worldwide identify as Zionists – i.e., supportive of Jewish self-determination in Israel – and consider Zionism an important part of their group identity.¹³ The distinction between antisemitism and anti-Zionism is therefore hard to draw in practice, with anti-Zionism sometime used as a coded term or proxy for anti-Jewishness.¹⁴ From the perspective of Jewish Zionists, delegitimization of their right to self-determination is often experienced as a manifestation of hatred.¹⁵

It is against the backdrop of sharp rise in antisemitism speech and violence post-7 October,¹⁶ that the *impact* of slogans with possible discriminatory, hostile or violent meaning appears more serious than before. The fact that many Jews report feeling unsafe and being targeted by antisemitism as a result of the slogans used in protests relating to the war in Gaza,¹⁷ lend support to viewing the slogan “from the river to the sea”, when used in the social and political context of virulent anti-Israel protests as a form of hate speech that should be subject to content moderation.

Relevance of article 19

The relevance of article 19 to the content moderation analysis discussed above depends on whether use of the phrase “from the river to the sea” can be linked, when read in the appropriate social and political context and in light of its actual impact on vulnerable groups, to support of terrorist groups, threats of violence against Jews or Israelis or as antisemitic,¹⁸ and contrary to the right to “live free from fear of an atmosphere of antisemitism”.¹⁹ This would allow Meta to undertake speech restrictions pursuant to its Violence and Incitement, Hate Speech and Dangerous Organizations and Individuals Policies under a number of legitimate grounds specified in article 19(3), including protection of rights and reputations of others and public order, over and beyond its obligations pursuant to article 20 of the ICCPR.

¹³ <https://www.pewresearch.org/religion/2021/05/11/u-s-jews-connections-with-and-attitudes-toward-israel/>

¹⁴ See e.g., Dina Porat, Anti-Zionism as Antisemitism, *The Cambridge Companion to Antisemitism* (Steven Katz ed., 2022) 448.

¹⁵ <https://www.hillel.org/majority-of-jewish-students-dissatisfied-with-universities-lack-of-response-since-oct-7-new-survey-finds/>. See also <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>: “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:... 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”.

¹⁶ <https://www.adl.org/resources/press-release/us-antisemitic-incidents-skyrocketed-360-aftermath-attack-israel-according>.

¹⁷ <https://www.washingtonexaminer.com/news/2931556/jewish-students-feel-unsafe-campus/>.

¹⁸ Cf. Faurisson, *supra* note 4, at para. 9.7.

¹⁹ *Ibid*, at para. 9.6.