**Meta Oversight Board**

**Inquiry into Use of ‘From the River to the Sea’**

**Case Number 2024-004-FB-UA, 2024-005-FB-UA, 2024-006-FB-UA**

**Submission by Dr Maria O’Sullivan, Associate Professor**

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**Overview**

I make this submission in my role as an Associate Professor in the Deakin Law School in Melbourne, Australia and as a scholar with expertise in international human rights law.[[1]](#footnote-1)

I also do so in light of media commentary I have recently undertaken on the use of the term ‘from the river to the sea’ in the context of student protests on Australian campuses.[[2]](#footnote-2)

My submission focuses on three aspects of the current investigation:

**1. The origin and current uses of the phrase: “From the river to the sea.”**

The “river” and “sea” in the phrase refer to the Jordan River, which runs north to south from the Syrian-Lebanese border to the Dead Sea, and the Mediterranean Sea which is 70 kilometres to the west. Israel and the Palestinian territories are located between those two bodies of water.

It is difficult to pinpoint the precise origin of the term in political and protest discourse. However, it is important to note that the concept used in the term (declaring that the land in question only belong to one sovereign nationality) is **not** merely a Palestinian one. It is in fact included in the Likud Party Platform 1977 which sets out ‘The Right of the Jewish People to the Land of Israel (Eretz Israel)’. That states that:

a. The right of the [Jewish people](https://www.jewishvirtuallibrary.org/judaism) to the land of [Israel](https://www.jewishvirtuallibrary.org/israel) is eternal and indisputable and is linked with the right to security and peace; therefore, [Judea](https://www.jewishvirtuallibrary.org/judea) and [Samaria](https://www.jewishvirtuallibrary.org/jsource/Society_&_Culture/geo/sebaste.html) will not be handed to any foreign administration; **between the Sea and the Jordan there will only be Israeli sovereignty.[[3]](#footnote-3)**

Although this is not an identical/verbatim use of the term ‘from the river to the sea’, I would argue that it reflects a similar sentiment. That is, that only one set of peoples have sovereign claim and habitation of the land which is now the State of Israel.

I now consider the *current uses of the phrase*. My research indicates that there is a significant difference between the perspective of some of the *users* of this term and that of the *recipients* of the phrase.

On one hand, Palestinian writers and pro-Palestinian commentators argue that it is *not* hate speech. For instance, Maha Nassar Associate Professor in the School of Middle Eastern and North African Studies, University of Arizona explains that:

Simply put, the majority of Palestinians who use this phrase do so because they believe that, in 10 short words, it sums up their personal ties, their national rights and their vision for the land they call Palestine. And while attempts to police the slogan’s use may come from a place of genuine concern, there is a risk that tarring the slogan as antisemitic – and therefore beyond the pale – taps into a longer history of [attempts to silence Palestinian voices](https://www.washingtonpost.com/opinions/2023/10/19/palestinian-writers-canceled-censorship-literature/).[[4]](#footnote-4)

Similarly, the Palestinian-American writer Yousef Munayyer argues, the phrase is a means of expressing a desire for a state in which ‘Palestinians can live in their homeland as free and equal citizens, neither dominated by others nor dominating them’.[[5]](#footnote-5) I highlight two excerpts from his analysis of the term in the publication ‘Jewish Currents’:

“From the river to the sea” is a rejoinder to the fragmentation of Palestinian land and people by Israeli occupation and discrimination. Palestinians have been divided in a myriad of ways by Israeli policy. There are Palestinian refugees denied repatriation because of discriminatory Israeli laws. There are Palestinians denied equal rights living within Israel’s internationally recognized territory as second-class citizens. There are Palestinians living with no citizenship rights under Israeli military occupation in the West Bank. There are Palestinians in legal limbo in occupied Jerusalem and facing expulsion. There are Palestinians in Gaza living under an Israeli siege. All of them suffer from a range of policies in a singular system of discrimination and apartheid—a system that can only be challenged by their unified opposition. All of them have a right to live freely in the land from the river to the sea.

The claim that the phrase “from the river to the sea” carries a genocidal intent relies not on the historical record, but rather on racism and Islamophobia.[[6]](#footnote-6)

On the other hand, the New York Times says that ‘the phrase has also been adopted over the years by Hamas, which calls for the annihilation of Israel’.[[7]](#footnote-7)

I would respond to that by noting that just because a particular extremist group uses a term with violent intent does not make that term, *of itself*, hateful or violent. Whilst that may be a relevant consideration in assessing the use of the term, it is not the sole criterion or a definitive factor. The *context* in which it is used in various cases must also be considered.

For instance, in Australia, the term is quite frequently heard at protests expressing concern at the genocide in Gaza. For instance, some student groups recently used the term during encampment protests at Australian universities. To my knowledge, no-one has been convicted in Australia for using that term under domestic racial villifcation or religious tolerance laws.

It may also assist the Board to know that the political and university responses to the use of the term in recent student protests in Australia differed **widely** and there is no clear indication of any consensus on the term constituting hate speech.

For instance, the national broadcaster - the ABC - stated in a [report on the university protests](https://www.abc.net.au/news/2024-05-14/albanese-condems-university-protest-israel-palestine/103843220) on 14 May stated that the use of the term is ‘understood to be a statement that opposes a two-state solution’. On the other hand, the Education minister, [Jason Clare](https://www.theguardian.com/australia-news/article/2024/may/09/peter-dutton-compares-pro-palestine-university-protests-to-hitler-in-deeply-offensive-comments?CMP=Share_AndroidApp_Other), pointed out that the phrase meant different things to various groups and did not classify it as hate speech.

Significantly, Max Kaiser, the executive officer of [the Jewish Council of Australia, a newly-formed group](https://www.theguardian.com/world/2024/apr/01/progressive-australian-jews-opposing-antisemitism-israel-gaza-war) of Jewish academics, teachers, writers and lawyers, told the [Guardian newspaper](https://www.theguardian.com/australia-news/article/2024/may/09/peter-dutton-compares-pro-palestine-university-protests-to-hitler-in-deeply-offensive-comments?CMP=Share_AndroidApp_Other) recently that it should *not* be construed as a threat to Jewish people or Israeli citizens:

‘In our interpretation, and as it’s explained by Palestinian people the world over, is it’s a call for freedom and equality for all people, Jewish and Palestinian. Palestinian leaders in Australia have been very clear when they say freedom from the river to the sea, it extends to all people… It’s definitely not something that should be construed as a threat to Jewish people or Israelis.’[[8]](#footnote-8)

Therefore, in the context of the current Inquiry, I make the following points about the usage of the term:

* Much turns on whether the phrase is interpreted as way of people to call for freedom and equality for Palestinians or a means of inciting hatred of Jewish people. I acknowledge that its use by groups such as Hamas may be interpreted as inciting hatred. However, I would argue that in normal political discourse (on public social media sites and at peaceful protests) it is not being used in that way and can be interpreted as a call for freedom and equality for Palestinians.
* I also believe that the phrase as used in mainstream discourse, constitutes a political remark pertaining to both the foreign and domestic policy of another state – Israel.
* Further, the meaning/interpretation of the term varies so widely that it is difficult to assess it as constituting hate speech (when it is used in public discourse amongst members of the public).
* I note that this appears to be similar to the conclusions of other scholars internationally. For instance, commenting on the use of the phrase by a protestor in Canada, Richard Moon, a Professor in the Faculty of Law at the University of Windsor, stated that: ‘the speech does not, clearly or obviously, count as sufficiently extreme to be regarded as hate speech under the Criminal Code’ and explained that it was not hate speech as ‘its meaning is far too open-ended.’[[9]](#footnote-9)

**Meta’s human rights responsibilities in relation to content using the phrase including freedom of expression, freedom of association, and equality and non-discrimination.**

The removal of the term will have significant impacts for freedom of expression and association. For instance, it will limit the ability for Palestinian and Pro-palestinian supporters to exercise their rights to freedom of expression and association online.

Here it is useful to consider international human rights law treaty provisions and UN guidance.

The International Covenant on Civil and Political Rights[[10]](#footnote-10) – one of the most important UN human rights treaties – protects the right to freedom of expression (Article 19) and association (Article 22). Both of these protections can be limited but only where necessary to respect of the rights of others. In addition to this general limitation clause, Article 20(2) of the Covenant states that any ‘advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law’. It is important to note that the threshold established in this provision is *extremely high*. The term ‘incitement to discrimination, hostility or violence’ may include a wide range of acts and phrases but this must be read in light of the first part of the provision, that is, it must also constitute ‘advocacy of national, racial or religious hatred that constitutes incitement to’ those acts.

As another international human rights law academic has quite rightly noted:

A great many forms of expression may too readily be assumed to fall within the scope of Article 20(2). To qualify they must cumulatively constitute ‘advocacy’ specifically ‘of national, racial or religious hatred’ (other advocacy of hatred may qualify for restriction under Article 19(3)), ‘constituting incitement’ (which denotes deliberate actuation, whether effective or not), ‘to discrimination, hostility or violence’.[[11]](#footnote-11)

In my assessment, the term ‘from the river to the sea’ as used in the posts which are the subject of the present inquiry do not constitute hate speech under Article 20(2) of the International Covenant on Civil and Political Rights.

**State and institutional (e.g., university) responses to the use of the phrase (e.g., during protests) and the human rights impacts of those responses.**

**State responses**

A number of politicians in various jurisdictions have been censured or suspended for saying the term. For instance, In November 2023, Andy McDonald (a UK parliamentarian) said ‘We won’t rest until we have justice, until all people, Israelis and Palestinians, between the river and the sea can live in peaceful liberty’. He used these words at a protest in London organised by the Palestine Solidarity Campaign. He was later suspended from the Labour party for a period.[[12]](#footnote-12) He said that he used the reference as part of a “heartfelt plea” for peace in the Middle East. Subsequently, an internal investigation concluded that he had not engaged in conduct that was against the party’s rulebook but reminded him of the importance of elected representatives being mindful, not only of what they say in public, but how their words may be interpreted.[[13]](#footnote-13)

More recently, in May 2024, a government senator in Australia (Fatima Payman) used the term “from the river to the sea, Palestine will be free” in the Australian Senate. The senator had used the phrase in a statement marking the Nakba – an Arabic phrase meaning “the catastrophe” that refers to the displacement of hundreds of thousands of Palestinians around the time of the establishment of Israel in 1948. She was criticised publicly by the Australian Prime Minister and subject to a formal censure motion in the Senate. The motion said the chant "opposes Israel’s right to exist, and is frequently used by those who seek to intimidate Jewish Australians via acts of antisemitism".[[14]](#footnote-14)

Senator Payman later explained that the term expresses “a desire for Palestinians to live in their homeland as free and equal citizens, neither dominating others nor being dominated over”.[[15]](#footnote-15)

Significantly, a joint statement signed by a range of organisations including the Australian National Imams Council, the Australian Federation of Islamic Councils, the Australian Muslim Advocacy Network, Muslim Women Australia and the Jewish Council of Australia disagreed with the motion passed in the Senate that condemned the phrase “from river to the sea, Palestine will be free”. The statement said ‘It is entirely misconceived and based on an incorrect understanding of the phrase’.[[16]](#footnote-16)

**University responses**

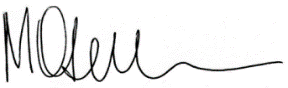
The response by Universities in Australia to use of the term at university protests have been quite different in across institutions. For instance, the head of the University of Sydney stated publicly that the term was not hate speech. Other university leaders pointed to the need to protect the safety of Jewish students.

Therefore, there is no clear consensus by universities in Australia that the term is hate speech.

***Contact information***

Should you have any questions arising from this submission, please contact me at:

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Dr Maria O’Sullivan

1. I hold an LLM in International Human Rights Law from the University of Essex in the UK, a PhD in Law from Monash University and I have published a number of academic papers on the human rights implications of AI: ‘Automated Decision-Making and Human Rights: The Right to an Effective Remedy’ in Janina Boughey and Katie Miller (eds) *The Automated State: Implications, Challenges and Opportunities for Public Law* (Federation Press, 2021) <https://federationpress.com.au/product/the-automated-state/>; Maria O’Sullivan, ‘Artificial Intelligence and The Right to an Effective Remedy’ in Michał Balcerzak and Julia Kapelańska-Pręgowska (eds) Artificial Intelligence and International Human Rights Law: Developing Standards for a Changing World (Edward Elgar, forthcoming August 2024). [↑](#footnote-ref-1)
2. M O’Sullivan, [‘Can university protest camps be removed? What does the law say?’](https://theconversation.com/can-university-protest-camps-be-removed-what-does-the-law-say-229806%20) *The Conversation*, 13 May 2024; [‘The right to protest on university campuses: Freedom of speech, safety, and the role of the modern university’](https://www.abc.net.au/religion/right-to-protest-freedom-of-speech-safety-on-university-campuses/103846854), *ABC Religion and Ethics*, 14 May 2024. [↑](#footnote-ref-2)
3. [Original Party Platform of the Likud Party (jewishvirtuallibrary.org)](https://www.jewishvirtuallibrary.org/original-party-platform-of-the-likud-party)/ [emphasis added]. [↑](#footnote-ref-3)
4. [‘From the river to the sea’ – a Palestinian historian explores the meaning and intent of scrutinized slogan (theconversation.com)](https://theconversation.com/from-the-river-to-the-sea-a-palestinian-historian-explores-the-meaning-and-intent-of-scrutinized-slogan-217491) [↑](#footnote-ref-4)
5. Yousef Munayyer, What Does “From the River to the Sea” Really Mean?, 11 June 2021 <https://jewishcurrents.org/what-does-from-the-river-to-the-sea-really-mean.> [↑](#footnote-ref-5)
6. Yousef Munayyer, What Does “From the River to the Sea” Really Mean?, 11 June 2021 <https://jewishcurrents.org/what-does-from-the-river-to-the-sea-really-mean.> [↑](#footnote-ref-6)
7. [What Does ‘From the River to the Sea’ Mean? - The New York Times (nytimes.com)](https://www.nytimes.com/2023/11/09/us/politics/river-to-the-sea-israel-gaza-palestinians.html) [↑](#footnote-ref-7)
8. Cited in https://www.theguardian.com/australia-news/article/2024/may/09/peter-dutton-compares-pro-palestine-university-protests-to-hitler-in-deeply-offensive-comments?CMP=Share\_AndroidApp\_Other. [↑](#footnote-ref-8)
9. <https://www.cbc.ca/news/canada/calgary/calgary-protest-arrest-palestinian-chant-1.7024279>. [↑](#footnote-ref-9)
10. [International Covenant on Civil and Political Rights | OHCHR](https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights). [↑](#footnote-ref-10)
11. P Taylor, *A Commentary on the International Covenant on Civil and Political Rights* (Cambridge University Press, 2020), 582. [↑](#footnote-ref-11)
12. [‘From the river to the sea’: where does the slogan come from and what does it mean? | Israel-Gaza war | The Guardian](https://www.theguardian.com/world/2023/oct/31/from-the-river-to-the-sea-where-does-the-slogan-come-from-and-what-does-it-mean-israel-palestine) [↑](#footnote-ref-12)
13. [Andy McDonald has Labour whip restored after ‘river to the sea’ remark inquiry | Times Series (times-series.co.uk)](https://www.times-series.co.uk/news/national/24183358.andy-mcdonald-labour-whip-restored-river-sea-remark-inquiry/) [↑](#footnote-ref-13)
14. [Senate condemns 'from the river to the sea' chant after Labor MP broke ranks | SBS News](https://www.sbs.com.au/news/article/senate-condemns-from-the-river-to-the-sea-chant-after-labor-mp-broke-ranks/tfl1qh0u9) [↑](#footnote-ref-14)
15. [Fatima Payman accuses Israel of genocide in Gaza in significant rupture with Labor party position | Labor party | The Guardian](https://www.theguardian.com/australia-news/article/2024/may/15/fatima-payman-accuses-israel-of-genocide-in-gaza-in-significant-rupture-with-labor-party-position) [↑](#footnote-ref-15)
16. [Microsoft Word - 17 May 2024 Joint River to the Sea Statement.docx (anic.org.au)](https://www.anic.org.au/wp-content/uploads/2024/05/17-May-2024-Joint-River-to-the-Sea-Statement-FINAL.pdf) [↑](#footnote-ref-16)