

FREEDOM OF EXPRESSION ON SOCIAL MEDIA  
PLATFORMS: FACEBOOK’S MODERATION  
BEHAVIOR ON PALESTINE’S MAY 2021  
MOVEMENT

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Throughout May of 2021, Palestinians, mainly from the eastern part of Jerusalem and Gaza that are occupied by Israel in violation of international law,<sup>1</sup> documented Israeli aggression committed against Palestinians across social media platforms, particularly through live streams hosted on Instagram. The sequence of events leading to the movement began with confrontations between Palestinians and Israeli police at Damascus Gate in Jerusalem in April 2021, when Israeli forces blocked Palestinians from entering the area.<sup>2</sup>

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1. See S.C. Res. 242 (Nov. 22, 1967) (calling for the withdrawal of Israeli forces from occupied territories).

2. The area surrounding Damascus Gate constitutes the main social space for Palestinian Youth in Jerusalem. Mahmoud Muna, *Youth-Led Protests Can Make a Difference for Palestinians*, INDEP. (May 4, 2021), <https://>

The events culminated in May with Israeli settlers' attempts to forcibly displace Palestinians residing in the Sheikh Jarrah neighborhood, backed by Israeli court decisions,<sup>3</sup> followed by attacks on hundreds of unarmed worshippers praying at Al-Aqsa mosque during Muslims' holy month of Ramadan.<sup>4</sup> Instagrammers streaming live allowed an unprecedented audience to witness these acts of aggression first-hand. This expanded audience helped foment a shift in the events' narrative from the perspective of the occupiers to the occupied, which led more observers than ever to stand in solidarity with the rights of the Palestinian people to the land.

However, success in changing the predominant narrative was met with censorship by Facebook (or Meta),<sup>5</sup> Instagram's parent company. Many Palestinian influencers were threatened with the deletion of their accounts.<sup>6</sup> Content in solidarity with the Palestinian cause was frequently removed, much of the time without explanation.<sup>7</sup> Content subject to deletion or censorship included educational posts describing the injustices faced by the Palestinian people,<sup>8</sup> while posts supporting the Israeli narrative were not similarly subject to deletion or restriction,<sup>9</sup> multiplying online incitement against

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[www.independent.co.uk/voices/jerusalem-damascus-gate-palestinians-b1841708.html](http://www.independent.co.uk/voices/jerusalem-damascus-gate-palestinians-b1841708.html).

3. Rami Ayyub et al., *East Jerusalem's Sheikh Jarrah Becomes Emblem of Palestinian Struggle*, REUTERS (May 10, 2021), <https://www.reuters.com/world/middle-east/east-jerusalem-sheikh-jarrah-becomes-emblem-palestinian-struggle-2021-05-10/>.

4. Press Release, Gen. Assembly, Palestinian Rights Committee Gravely Concerned by Violence at Al-Aqsa Mosque, Escalation in Gaza, Calling for Efforts to 'Salvage Prospects' for Peace, U.N. Press Release GA/PAL/1437 (May 10, 2021).

5. *Introducing Meta: A Social Technology Company*, META, <https://about.fb.com/news/2021/10/facebook-company-is-now-meta/> (Oct. 28, 2021) (Introducing Meta as the new name for the Facebook company beginning October 2021).

6. AMLEH – THE ARAB CTR. FOR THE ADVANCEMENT OF SOC. MEDIA, THE ATTACKS ON PALESTINIAN DIGITAL RIGHTS: PROGRESS REPORT, MAY 6-19, 2021, at 4-5 (May 21, 2021), <https://7amleh.org/storage/The%20Attacks%20on%20Palestinian%20Digital%20Rights.pdf>.

7. *Id.* at 5.

8. *See, e.g.*, KEY48 (@key48return), INSTAGRAM, <https://www.instagram.com/p/COv5XbIsC2F/> (last visited Oct. 9, 2021) (Instagram post explaining the origins of the events from a Palestinian perspective).

9. Ryan Mac, *Amid Israeli–Palestinian Violence, Facebook Employees are Accusing Their Company of Bias Against Arabs and Muslims*, BUZZFEED NEWS

Arabs and Muslims by a factor of 15 during May 2021 compared to May 2020.<sup>10</sup> The company took a similar position Facebook.<sup>11</sup> Instagram cited a “technical issue”<sup>12</sup> as the reason for the deletion and restriction of Palestinian content, but this explanation was belied by the volume of reports of Facebook’s restrictions on posts and accounts after the company announced it fixed the bug.<sup>13</sup>

In response, Palestinian activists and civil society organizations undertook several efforts, including the launch of campaigns like the “End Digital Execution” campaign,<sup>14</sup> as well as a letter signed by a number of civil society organizations to Facebook’s COO Sheryl Sandberg opposing its censorship.<sup>15</sup> These efforts asserted that Facebook’s policies violated users’ right to freedom of expression. This claim raises complex questions: is Facebook legally required to respect human rights? Who determines what violates Facebook’s content policies? Where should people go to raise claims of disparate treatment by Facebook? This paper explores and critiques the varying answers to these questions in the context of the events of May 2021.

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(May 27, 2021) <https://www.buzzfeednews.com/article/ryanmac/facebook-employees-bias-arabs-muslims-palestine>; *see also* Press Release, Rashida Tlaib, Congresswoman, House of Representatives, Tlaib Urges Social Media Platforms to Cease Censorship of Palestinian Political Speech (May 25, 2021) <https://tlaib.house.gov/media/press-releases/tlaib-urges-social-media-platforms-cease-censorship-palestinian-political> (noting that Tlaib referred to a recent report showing that extremist Israeli groups were openly using WhatsApp, owned by Facebook, to coordinate attacks on Palestinians).

10. *Index of Racism and Incitement: An Increase in Racism and Incitement Against Palestinians & Arabs During the Last Israeli Aggression*, 7AMLEH – THE ARAB CTR. FOR THE ADVANCEMENT OF SOC. MEDIA (Jun. 15, 2021), <https://7amleh.org/2021/06/15/index-of-racism-and-incitement-an-increase-in-racism-and-incitement-against-palestinians-and-arabs-during-the-last-israeli-aggression>.

11. THE ATTACKS ON PALESTINIAN DIGITAL RIGHTS, *supra* note 7, at 6.

12. Instagram Comms, (@InstagramComms), TWITTER (May 6, 2021, 2:42 PM), <https://perma.cc/8Q5L-XRNT>.

13. THE ATTACKS ON PALESTINIAN DIGITAL RIGHTS, *supra* note 7, at 4 (“Despite [Instagram’s tweet], 7amleh continued to receive large numbers of reports of violations daily. Indeed, the number of reports received after this tweet accounts for 68% of the total reports.”).

14. فيسبوك يعدمنا (@enddigitalexecution), INSTAGRAM, <https://www.instagram.com/enddigitalexecution/?hl=EN> (last visited Oct. 9, 2021)

15. *Movement Letter to Facebook*, FACEBOOK, WE NEED TO TALK. (May 26, 2021), <https://facebookweneedtotalk.org/letter>.

I. “TERMS OF SERVICE” AS A CONTRACTUAL RELATIONSHIP AND THE FACEBOOK OVERSIGHT BOARD

Facebook is a private company that owns different platforms like Instagram and Facebook, providing social media services for its users and an advertising space for many corporations. At the beginning of Facebook’s Terms of Service (“ToS”) and Instagram’s Terms of Use (“ToU”), which users bind themselves to upon signing up, the company states that “businesses and organizations pay us to show you ads for their products and services”.<sup>16</sup> The relationship between the company and its users is a contractual one, and the ToS and ToU act as private contracts. Such contracts refer to Facebook’s Community Standards or Instagram’s Community Guidelines as the content moderation policies.<sup>17</sup>

In 2018, Facebook (company) established an oversight board to make decisions on content moderation on the Facebook and Instagram platforms. This board was formed to help the company make decisions on keeping or removing content, aiming to “promote freedom of expression.”<sup>18</sup> The board makes reference to the Facebook platform’s “Community Standards” as guiding the review of both Instagram and Facebook cases.<sup>19</sup> Such standards were criticized for being too broad to be of value.<sup>20</sup> The board’s apparent objective is not to provide due process or meaningful review of the appropriateness of content policy, but rather merely to reduce “mistakes”<sup>21</sup> and increase the public legitimacy of Facebook<sup>22</sup> in

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16. *Terms of Service*, FACEBOOK, <https://www.facebook.com/terms.php> (last visited Aug. 30, 2021); and similarly in *Terms of Use*, INSTAGRAM HELP CENTER, [https://www.facebook.com/help/instagram/581066165581870/?helpref=HC\\_fnav](https://www.facebook.com/help/instagram/581066165581870/?helpref=HC_fnav) (last visited Nov. 26, 2021).

17. *Id.*

18. *The Purpose of the Board*, OVERSIGHT BD., <https://oversightboard.com/> (last visited Aug. 30, 2021).

19. *Id.*

20. Evelyn Douek, *Facebook’s ‘Draft Charter’ for Content Moderation: Vague, but Promising*, LAWFARE (Jan. 31, 2019, 11:39 AM), <https://www.lawfareblog.com/facebooks-draft-charter-content-moderation-vague-promising>.

21. Evelyn Douek, *Facebook’s ‘Oversight Board:’ Move Fast with Stable Infrastructure and Humility*, 21 N.C. J. L. & TECH. 1, 5–6 (2019).

22. Evelyn Douek, *Why Facebook’s ‘Values’ Update Matters*, LAWFARE (Sept. 16, 2019, 12:05 PM), <https://www.lawfareblog.com/why-facebooks-values-update-matters>.

order to maintain its viability as a desirable advertising platform.

In the context of pro-Palestinian content on Facebook and Instagram platforms, the existence of the oversight board appears to reinforce the disparate censorship and restriction of such content. Indeed, one of the appointed board members is Emi Palmor, a former director of the Israel Ministry of Justice's Cyber Unit which worked directly to increase social media takedowns of pro-Palestinian content.<sup>23</sup> The appointment of Palmor illustrates how Facebook's amorphous "Community Standards" presents opportunities for discrimination and abuse. Evidently, the motivation to protect Palestinian expression will not come from within Facebook; for Palestinian rights to be respected, external forces are needed to influence Facebook's behavior.

## II. MARKET PRESSURE, COMPETITION, AND CONTENT MODERATION

Despite Facebook's claimed goal of enabling free expression, Facebook remains a corporation that exists primarily for the purpose of generating profit. Profit-motivated corporations desire environments that lack competition so that they may be the sole option for consumers. Facebook enjoys near-total freedom from competitive pressure; its acquisitions of Instagram and WhatsApp not only solidified its position as the dominant social media platform, but even incited investigations by the U.S. Congress in 2020, placing a public spotlight on Facebook's anti-competitive behavior.<sup>24</sup>

The potential for harm caused by the lack of competitors to Facebook's platforms was prominently displayed in the context of the Palestinian movement of May 2021. As Palestinian content creators grappled with censorship of their content and accounts by Facebook, some activists called for users to

23. *Israel State Attorney Claims Censorship of Social Media Content, Following Cyber Unit Requests, Isn't an 'Exercise of Gov't Authority'*, ADALA (Nov. 11, 2019), <https://www.adalah.org/en/content/view/9859>; See also *Facebook: Drop Emi Palmor, Stop Censoring Palestinians*, JEWISH VOICE FOR PEACE, [https://act.jewishvoiceforpeace.org/Nd838QohI0Os1qxybL\\_EeA2](https://act.jewishvoiceforpeace.org/Nd838QohI0Os1qxybL_EeA2) (last visited Aug. 31, 2021).

24. *Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google: Hearing Before the Subcomm. on Antitrust, Com., and Admin. L. of the H. Comm. on the Judiciary*, 116th Cong. (2020).

migrate to the Arabic platform “Baaz” to continue live streaming Israeli aggression on the ground without restrictions.<sup>25</sup> These efforts, however, failed to achieve their desired results, as Facebook’s long-term development of a vast, global audience has made the creation of a competing platform of comparable scale nearly impossible.

Unsurprisingly, however, market pressure, when exerted by effective powers, does appear to influence Facebook’s behavior. Facebook reared its anti-competitive head when it banned the Facebook News feature for Australian users,<sup>26</sup> after the Australian government-imposed laws requiring Facebook to pay fees to news organizations.<sup>27</sup> While Facebook eventually lifted the ban,<sup>28</sup> its actions laid bare the primacy of economic considerations, and the ability of states with significant market power to influence Facebook’s behavior.<sup>29</sup>

For marginalized groups, their voices can easily go ignored by Facebook’s content moderators. For example, genocidal content towards the stateless Rohingya people remained on Facebook, as Rohingya were unable to exert adequate market pressure to motivate Facebook to take any action.<sup>30</sup> These same problems plague Palestinian Facebook users who have not achieved full statehood and are, simultaneously, oppressed by Israel, which receives immense economic support from a

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25. Safeyyah Amer, *Arab Immigration to the “Baaz” Platform, Rejecting Censorship and Prejudice*, AL ARABY (May 28, 2021), <https://perma.cc/Z8JQ-K88R>.

26. *How Facebook News Works*, FACEBOOK, <https://www.facebook.com/news/howitworks> (last visited Sept. 10, 2021, 11:00 AM).

27. Carolina Are, *Facebook’s Free Speech Myth Is Dead—and Regulators Should Take Notice*, THE CONVERSATION (Feb. 23, 2021, 5:04 AM), <https://theconversation.com/facebooks-free-speech-myth-is-dead-and-regulators-should-take-notice-153119>.

28. *Id.*

29. David Kaye, *The Republic of Facebook*, JUST SECURITY (May 6, 2020), <https://www.justsecurity.org/70035/the-republic-of-facebook/> (arguing that communities lacking the economic power of North American and European states suffered neglect by Facebook in policing harassment and hate speech).

30. *Id.*; see also Poppy McPherson, *Facebook Says It Was ‘Too Slow’ to Fight Hate Speech in Myanmar*, REUTERS (Aug. 15, 2018), <https://www.reuters.com/article/us-myanmar-facebook-rohingya-idINKBN1L1066> (referring to a prior Reuters story which revealed that Facebook only employed two people who spoke Burmese in content moderation, and identifying over one thousand anti-Rohingya posts that were not removed).

global superpower, the United States.<sup>31</sup> This situation creates tangible economic pressure on Facebook to silence Palestinian content. When economic power determines the parameters of freedom of expression and hate speech, content moderation can quickly become an additional tool to reinforce existing patterns of discrimination.

Despite these obstacles, Palestinian and Arab activists employed creative means to apply some market pressure on Facebook in May 2021's movement by organizing a ratings "brigade" on Apple Store and Google Play. The campaign involved giving Facebook and Instagram apps a "one-star" rating and inserting hashtags of the Palestinian movement in the comments section.<sup>32</sup> The campaign achieved some success, inspiring Facebook to internally classify the campaign as "SEVI", indicating that there was a "major issue".<sup>33</sup> However, relying on market pressure to secure the right to speech should not be the rule in a world that respects the dignity of the powerless.

### III. GOVERNMENT REGULATION OF CONTENT MODERATION ON SOCIAL MEDIA PLATFORMS

Facebook's content moderation behavior is further influenced by a variety of government restrictions on content that can be shared on social media.<sup>34</sup> For platforms to avoid legal orders and significant financial liability by violating such laws, they are "inclined to err on the side of safety by over-censoring potentially illegal content."<sup>35</sup> Beyond regulatory restrictions,

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31. *U.S. Relations with Israel: Bilateral Relations Fact Sheet*, U.S. DEP'T OF STATE: BUREAU OF NEAR E. AFFAIRS (Jan. 20, 2021), <https://www.state.gov/u-s-relations-with-israel/> ("[T]he United States annually provides \$3.3 billion in Foreign Military Financing . . .").

32. Olivia Solon, *Pro-Palestinian Activists Target Facebook with 1-star App Store Reviews*, NBC NEWS (May 22, 2021), <https://www.nbcnews.com/tech/social-media/pro-palestinian-activists-target-facebook-1-star-app-store-reviews-n1268258>.

33. *Id.*

34. Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Rep. of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 39, U.N. Doc. A/HRC/17/27 (May 16, 2011) ("Many states have adopted laws which impose liability of intermediaries if they do not filter, remove or block content generated by users which is deemed illegal.")

35. *Id.* at ¶ 42.

governments also informally request social media platforms to remove content and justify removals as a breach of their ToS's.<sup>36</sup> The distinctions between content that is removed due to bias, to avoid legal liability, or to respond to government pressure become blurred when social media platforms are not sufficiently transparent about their content moderation decisions.<sup>37</sup> Although the Community Standards' guidelines are published, the actual "rulebook" for content removal, which employees responsible for moderation follow, has never been shared with the public,<sup>38</sup> and Facebook's most recent transparency reports continue to be strongly criticized for their vagueness regarding content removal.<sup>39</sup>

Further, ostensibly to avoid negative consequences on expression, many states have adopted regulations exempting social media companies from liability for illegal content posted by users, instead imposing liability only when companies are aware of the content but fail to act. Two prominent examples of this move are the European Union's E-Commerce Directive and the United States' Digital Millennium Copyright Act.<sup>40</sup> Though these schemes appear geared towards maximum expression, they in fact delegate significant speech-regulating power to social media companies. In order to minimize arbitrariness in content moderation by private actors, the U.N. Special Rapporteur for Freedom of Expression has recommended that content restrictions imposed by social media platforms follow a court order,<sup>41</sup> a practice that has been exercised in Chile and Brazil.<sup>42</sup> Hence, social media companies actively attempt to avoid regulation by characterizing themselves as "platforms" to appear as neutral, egalitarian hosting floors, so as to be "rewarded for facilitating expression but not liable

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36. *Side-Stepping Rights: Regulating Speech by Contract*, ARTICLE 19, at 16 (2018), <https://www.article19.org/wp-content/uploads/2018/06/Regulating-speech-by-contract-WEB.pdf>.

37. *Id.* at 14.

38. Kyle Langvardt, *Regulating Online Content Moderation*, 106 GEO. L. REV. 1353, 1356 (2018).

39. Mathew Ingram, *Facebook "Transparency Report" Turns Out to Be Anything But*, COLUM. JOURNALISM REV. (Aug. 26, 2021), [https://www.cjr.org/the\\_media\\_today/facebook-transparency-report-turns-out-to-be-anything-but.php](https://www.cjr.org/the_media_today/facebook-transparency-report-turns-out-to-be-anything-but.php).

40. La Rue, *supra* note 35, at ¶ 41.

41. *Id.* at ¶ 43.

42. *Id.*

for [their] excesses . . . .”<sup>43</sup> The “platforms” thus protect their business interests by maintaining favorable policies while preserving public popularity.

#### IV. VIOLATION OF FREEDOM OF EXPRESSION LAWS BY PLATFORMS

The role of freedom of expression is critical in the interplay between governments and social media platforms. Do platforms, who execute millions of contracts with end users, violate the law by removing content that would otherwise be protected by free speech laws, like the First Amendment in the United States? At the outset, the right to freedom of contract is traditionally recognized in democratic societies, but has in many situations been deemed superseded by the greater public interest.<sup>44</sup> With respect to the right to freedom of speech within social media platforms, the scope of permissible government intervention remains open. Two key questions arise in relation to this issue. The first concerns whether protection of speech should be imposed on private contracts, weighing individual users’ First Amendment rights, in the context of the United States for example, against the right of the parties to contract. The second questions the very nature of the “space” contained within social media websites, and asks whether it should even be considered private in the first place.

One approach that prioritizes freedom of expression is put forward by the U.N. Human Rights Committee. The Committee has observed that states have an obligation to ensure that freedom of speech of their citizens is safeguarded in every form, including internet-based expression.<sup>45</sup> Applying this standard to social media platforms would require states and

43. Tarleton Gillespie, *The Politics of ‘Platforms’*, 12 *NEW MEDIA & SOC’Y* 347, 351 (2010).

44. In *W. Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), where the Supreme Court upheld a minimum wage law for women, for example, the Court’s holding reflected a determination that “liberty of contract was merely a subset of liberty and could be abrogated in the public interest”. David E. Bernstein, *Freedom of Contract* 8 (George Mason Univ. Sch. of L. Working Paper, Paper No. 08-51, 2008), [https://www.law.gmu.edu/assets/files/publications/working\\_papers/08-51%20Freedom%20of%20Contract.pdf](https://www.law.gmu.edu/assets/files/publications/working_papers/08-51%20Freedom%20of%20Contract.pdf).

45. Human Rights Committee Gen. Comment 34, U.N. Doc. CCPR/C/GC/34, at ¶ 11–12 (July 29, 2011).

courts to prioritize freedom of speech of social media users over the freedom of platforms and users to contract with one another.

Another approach was furthered by the U.S. Supreme Court in *Packingham v. North Carolina*, 137 S. Ct. 1730 (2017), wherein it was held that access to social media platforms is constitutionally protected. When a sex offender was prohibited from accessing social media platforms as part of his punishment, the Court found that this prohibition:

bar[red] access to what for many are the principal sources for knowing current events. . . checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge. These websites can provide perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard.”<sup>46</sup> The Court concluded that “to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights.”<sup>47</sup>

Beyond merely upholding the First Amendment rights of the petitioner in the context of contracts with social media platforms, the Court thus recognized these platforms as a civic space by outlining the role they play in performing activities essential to one’s well-being. As such, individuals’ First Amendment rights would be violated if they are deprived of the ability to access and express themselves through these platforms.

Carolina Are has advanced a similar view, arguing that social media platforms have become the main venue for social life and exchanging ideas, rendering access to social media platforms a need rather than a luxury, especially during the COVID-19 pandemic. Are has called for “redefin[ing] publicness” of these platforms by considering their role in public life rather than merely considering their ownership by a government or corporation.<sup>48</sup> The nature of the space approach is considered similarly in Public Accommodation laws that compel businesses to provide services indiscriminately, yet the fact that the service in the case of the platforms is hosting speech makes it distinct.

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46. *Packingham*, 137 S. Ct. at 1737.

47. *Id.*

48. Carolina Are, *A Corpo-Civic Space: A Notion to Address Social Media’s Corporate/Civic Hybridity*, 25 *FIRST MONDAY* 1, 49–50 (2020).

## V. SOCIAL MEDIA AND THE COMMUNICATION CHANNEL WITH THE GLOBAL NORTH

The importance of social media platforms as a venue of expression is particularly salient for those who have little power to change but through their words. The success of Palestinians' May 2021 movement can be attributed largely to the Instagram live streams run by the Palestinian diaspora hosting Palestinians documenting the events on the ground. In her article "Migrants Can Make International Law", Ama Ruth Francis identified the diaspora of environmental refugees in the global North as valuable non-state actors in fomenting changes in immigration policies in favor of environmental refugees.<sup>49</sup> A similar scenario has largely occurred for the Palestinians in May 2021.

Palestinian diaspora members not only had the commitment and tools to keep live streams running for days, but also had the necessary connections to allow the content to reach their peers who enjoy more robust political rights in the West. The widespread awareness led to protests and created pressure that proved too great to not have an impact.<sup>50</sup> The importance of maintaining a communication channel with the West to effect change, though, reinforces the unfortunate truth that the operational lab of international law and policy is the global North.

## VI. METHODS OF REGULATING SOCIAL MEDIA PLATFORMS

A number of different methods have been proposed to better regulate the ever-evolving world of social media with respect to content moderation and speech. One approach "recommends" that social media platforms respect human rights. This approach does not compel social media companies to comply with international law, instead urging them to do so, given their economic significance and role in society. A leading example of this approach is the Business and Human

49. Ama Ruth Francis, *Migrants Can Make International Law*, 45 HARV. ENVTL. L. REV. 99, 144–45 (2021).

50. *Protesters in major US cities decry airstrikes over Gaza*, ABC NEWS (May 16, 2021, 5:30 AM), <https://abcnews.go.com/Politics/wireStory/protesters-major-us-cities-decry-airstrikes-gaza-77716912>; *Thousands Rally Across Europe to Back Palestinians*, FR. 24 (May 15, 2021, 6:06 PM), <https://www.france24.com/en/live-news/20210515-thousands-rally-across-europe-to-back-palestinians>.

Rights Guidelines (BHRG) that target states as well as local and transnational businesses.<sup>51</sup> The Guidelines, when speaking directly to businesses, commands them to respect human rights, separating their human rights obligations from states' "abilities" and/or "willingness" to fulfill those rights.<sup>52</sup> Such a recommendation might encourage social media platforms to make human rights a core consideration in formulating their policies. Facebook in particular has responded to this approach by issuing its own Corporate Human Rights Policies, committing itself to the BHRG as well as other human rights guidelines and conventions.<sup>53</sup> The significance of these policies remains unclear, however. It is easy for self-regulating companies to "commit" themselves to human rights without the existence of an outside arbiter to determine whether the rights of marginalized or stateless groups are protected with equal vigor to other users.

The Global Network initiative presents a more practical, non-legally-binding tool in conducting independent assessments annually to check whether technology companies are following their stated principles of safeguarding free speech and privacy rights.<sup>54</sup> An initiative of this sort might be better suited to satisfactorily review content moderation than an entity like the Facebook Oversight Board, given its total independence from social media platforms.

A typical, state-centric approach aims to compel states to regulate platforms like Facebook to ensure their commitment to human rights through treaties and domestic legislation. The BHRG incorporate this approach in their provisions aimed at states.<sup>55</sup> According to the Guidelines, however, states are not compelled to regulate the extraterritorial activities of

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51. Office of the High Commissioner for Human Rights, *Guiding Principles of Business and Human Rights*, at 1 (2011), [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf).

52. *Id.* at 13.

53. *Corporate Human Rights Policy*, FACEBOOK, <https://about.fb.com/wp-content/uploads/2021/03/Facebooks-Corporate-Human-Rights-Policy.pdf> (last visited Aug. 30, 2021) (incorporating, for example, the International Bill of Human Rights and the Convention on the Rights of the Child).

54. *About GNI*, GLOB. NETWORK INITIATIVE, <https://globalnetworkinitiative.org/> (last visited Sept. 10, 2021).

55. *Guiding Principles of Business and Human Rights*, *supra* note 52, at 3.

companies located in their territory.<sup>56</sup> Beyond the fact that the internet possesses no borders, and limiting responsibility to national jurisdiction fails to adequately prevent human rights abuses, this approach also presumes that all people have governments that represent them and respect their freedom of expression. People like the Palestinians, Rohingya and the world's refugees cannot rely on governments to protect their rights. Compounding the problem for Palestinians in particular is that their rights are directly opposed by other governments.

A third ambitious approach could be inspired by Kyoto Protocol. Although the project relied on states as signatories, its direct consequences targeted corporations.<sup>57</sup> If a similar project existed to hold social media corporations accountable, it would be less demanding from states. This approach accounts for the extraterritorial nature of these platforms and the strength and technical expertise they possess, which often makes it difficult for governments to effectively regulate their behavior. Most importantly, it removes the burden of characterizing social media platforms as either private or public spaces, and allows for the protection of users' right to freedom of expression no matter how platforms are defined. Yet, since political speech is a sensitive issue, it is doubtful that states would agree to such project.

Until any effective approach takes place, resistance online and on the ground, similar to the one relentlessly run by the believers on the Palestinian cause, is the only catalyst for the consideration of more just regulatory methods moderating on-line content.

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56. *Id.* at 3–4 (“At present States are not generally required under international human rights law to regulate the extraterritorial of businesses domiciled in their territory and/or jurisdiction.”).

57. Benedict Kingsbury et al., *The Emergence of Global Administrative Law*, 68 L. & CONTEMP. PROBS. 24, 18–19 (2005).