



## Public Comment Appendix for 2022-008-FB-UA

Case number

Case description

In April 2022, a Facebook user in Latvia posted a photo and text in Russian to their News Feed. The photo shows a street view with a person lying still, likely deceased, on the ground. No wounds are visible. In the text, the user comments on alleged crimes committed by Soviet soldiers in Germany during the Second World War. They say such crimes were excused on the basis that soldiers were avenging the horrors that the Nazis had inflicted on the USSR.

The user draws a connection between the Second World War and the invasion of Ukraine, arguing that the Russian army "became fascist". They write that the Russian army in Ukraine "насилловать девочек, резать их отцов, пытаться и убивать мирных людей мирных окраин Киева" ("rape[s] girls, wound[s] their fathers, torture[s] and kill[s] peaceful people.")

The user concludes that "after Bucha, Ukrainians will also want to repeat... and will be able to repeat" such actions. At the end of their post, the user shares excerpts of the poem "Kill him!" by Soviet poet Konstantin Simonov, including the lines: "kill the fascist so he will lie on the ground's backbone, not you"; "kill at least one of them as soon as you can"; "Kill him! Kill him! Kill!".

The post was viewed approximately 20,000 times. The same day the content was posted, another user reported it as "violent and graphic content". Based on a human reviewer decision, Meta removed the content for violating its [Hate Speech Community Standard](#). Hours later, the user who posted the content appealed and a second reviewer assessed the content as violating the Hate Speech policy.

The user appealed to the Oversight Board. As a result of the Board selecting the appeal for review on 31 May 2022, Meta determined that its previous decision to remove the content was in error and restored it. On 24 June 2022, 24 days after the content was restored, Meta applied a warning screen to the photo in the post under the Violent and Graphic Content Community Standard, on the basis that it shows the violent death of a person.

In their appeal to the Board, the user states that the photo they shared is the "most innocuous" of the pictures documenting the "crimes of the Russian army in the city of Bucha", "where dozens of dead civilians lie on the streets". The user says that their post does not call for violence and is about "past history and the present". They

say that the poem was originally dedicated to the "struggle of Soviet soldiers against the Nazis", and that they posted it to show how "the Russian army became an analogue of the fascist army". As part of their appeal, they state that they are a journalist and believe that it is important for people to understand what is happening, especially in wartime.

The Board would appreciate public comments that address:

- How Meta's policies should treat hate speech or incitement to violence on the basis of nationality in the context of an international armed conflict, including when potentially targeted at the military?
- How Meta should take into account the laws of armed conflict when moderating content about armed conflict.
- Whether Meta's policy should distinguish between attacks on institutions (such as the army or military) and individuals within those institutions (such as soldiers).
- Insights related to Meta's moderation of content that includes commentary from journalists and/or artistic expression, particularly art that may address sensitive themes such as war.
- The work of Konstantin Simonov, the context surrounding it and how it is referenced today, including in relation to the current conflict.
- Insights related to the sharing and visibility of photographs depicting potential human rights violations or war crimes in armed conflicts on Meta's platforms.

In its decisions, the Board can issue policy recommendations to Meta. While recommendations are not binding, Meta must respond to them within 60 days. The Board welcomes public comments proposing recommendations that are relevant to this case.



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The Oversight Board is committed to bringing diverse perspectives from third parties into the case review process. To that end, the Oversight Board has established a public comment process.

Public comments respond to case descriptions based on the information provided to the Board by users and Facebook as part of the appeals process. These case descriptions are posted before panels begin deliberation to provide time for public comment. As such, case descriptions reflect neither the Board's assessment of a case, nor the full array of policy issues that a panel might consider to be implicated by each case.

To protect the privacy and security of commenters, comments are only viewed by the Oversight Board and as detailed in the [Operational Privacy Notice](#). All commenters included in this appendix gave consent to the Oversight Board to publish their comments. For commenters who did not consent to attribute their comments publicly, names have been redacted. To withdraw your comment, please email [contact@osbadmin.com](mailto:contact@osbadmin.com).

To reflect the wide range of views on cases, the Oversight Board has included all comments received except those clearly irrelevant, abusive or disrespectful of the human and fundamental rights of any person or group of persons and therefore violating the [Terms for Public Comment](#). Inclusion of a comment in this appendix is not an endorsement by the Oversight Board of the views expressed in the comment. The Oversight Board is committed to transparency and this appendix is meant to accurately reflect the input we received.



Public Comment Appendix for  
Russian poem (2022-008-FB-UA)

Case number

8

Number of Comments

Regional Breakdown

0	0	3	1
Asia Pacific & Oceania	Central & South Asia	Europe	Latin America & Caribbean
0	0	4	
Middle East and North Africa	Sub-Saharan Africa	United States & Canada	

2022-008-FB-UA

Case number

PC-10614

Public comment number

Europe

Region

Maksym

Commenter's first name

Dvorovyi

Commenter's last name

English

Commenter's preferred language

Digital Security Lab Ukraine

Organization

Yes

Response on behalf of organization

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Short summary provided by the commenter

In light of our experience during the ongoing Russian-Ukrainian war, DSLU recommends Meta:

- 1) To amend its hate speech and incitement to violence policies with a view to prioritize the analysis of intent of the user and the likelihood of violence occurring for qualification of statements under these policies in the times of armed conflict;
- 2) To establish an international crimes exception from its violent and graphic content policies to preserve the content bearing potential evidentiary value for international tribunals;
- 3) To provide more protection to artistic speech on Meta platforms;
- 4) To create a dedicated team on content moderation issues for each significant international armed conflict.

Full Comment

Digital Security Lab Ukraine (hereinafter - DSLU) is a digital rights organisation in Ukraine. We have additionally contributed as trusted flaggers for major online platforms since February. Our experience throughout the last five months evidences that online platforms were ill-equipped to answer the pressing issues of moderation, including the contextual understanding of hate speech, the application of violent and graphic content policies, and the alleged coordinated behaviour from the users representing the warring parties.

Under the UN Guiding Principles on Business and Human Rights, the responsibility of business enterprises to respect human rights refers to internationally recognized human rights, including freedom of expression. Departing from this principle, DSLU will answer the following questions relying on international freedom of expression standards:

How Meta's policies on hate speech, incitements to violence, and graphic content should be tailored to the international armed conflicts;

How artistic speech should be balanced with hate speech;

How Meta should treat content moderation during an international armed conflict.

As to the first question, DSLU acknowledges that international armed conflicts are marked by the rise of harmful content posted online. It is natural for users who spend a significant amount of their spare time to reflect emotionally on current events, especially when their state is under attack. Such statements may infrequently involve calls for hostility, violence, and discrimination. Other users, such as media, NGOs and other watchdogs, will use social media for advocacy of their causes, be it international crimes reporting, criticism of governments of opposing parties, calls for international aid for one of the belligerent parties or calls for peace at all costs. This may involve depictions of atrocities, such as decomposed bodies and dismembered parts.

It is undoubtful that such content is harmful to the general public and, more specifically, to minors: two categories of content widely recognized as clearly unlawful, in the words of the ECtHR in *Delfi AS v Estonia* and subsequent case-law.

It is also clear that any calls for international crimes, such as genocide, war crimes, and crimes against humanity shall be prohibited notwithstanding the context.

Further analysis shall be conducted on other types of hateful statements.

Under the UN Rabat Plan of Action, six factors should be taken into account when analyzing the capacity of a hateful statement to lead to harmful consequences, and, thus, be prohibited. Two factors which gain significance during the international armed conflict are the intent of the speaker and the likelihood of harm, including imminence. In a heated social context, some words belonging to a low register of style shall be treated as emotional disapproval or rejection of the ongoing situation and has to be given less weight (see *Savva Terentyev v Russia*).

A similar view of the intent's importance was supported by the ECtHR in *Kilin v Russia* even outside the war context. The Court outlined that such intent is key and might be established where there is an unambiguous call by the person using hate speech for others to commit the relevant acts or it might be inferred from the strength of the language used and the previous conduct of the speaker. We conform to this view and call on Meta to adopt it when deciding on future hate speech cases related to international armed conflicts or modifying its policies.

In the context of the ongoing Russian-Ukrainian war, DSLU witnessed the removal from the platforms of posts depicting mass killings in Bucha, Irpin and other cities in the vicinity of Kyiv. Instagram has even blocked several hashtags (such as #buchamassacre) for a limited amount of time, presumably since it linked to such pictures. By doing so, it restricted users' access to public interest content. In our view, also supported by the Ukrainian civil society statement from 12 April 2022, content depicting violence or nudity may gain public interest during international armed conflicts and shall thus be preserved on the platforms. For instance, it may bear potential evidentiary value for legal tribunals dealing with international crimes. Thus, we call on Meta to design a carve-out from its rules aimed at the preservation of such content.

As to the second question, DSLU argues that artistic speech deserves additional protection under international law. This is the principle which has to be preserved but has to be carefully balanced with hate speech. In the context of the Russian-Ukrainian war, since 2014 Meta tended to treat this content overcautiously, by deleting caricatures depicting Putin and other Russian politicians under hate speech rules and banning users. Guidance to establish this balance may be extracted from the ECtHR decision in *M Bala M Bala v France*. There, the Court that satire and use of artistic expression to criticise reality is permissible insofar it does not amount to the abuse of conventional values, such as denying crimes against humanity and other international crimes, promoting Islamophobia and Antisemitism. A mere insult of the person or even a group of persons by the social media post shall not suffice for the respective policy violation and may amount to the disproportionate restriction of users speech. Thus, we call on Meta to provide clarity to its policies to provide artistic expression with the necessary protection granted by international law.

Finally, we would suggest Meta create a dedicated team on content moderation issues for each significant international armed conflict. It should consist of people with a proper contextual understanding of the situation and serve as a unified point of contact for local trusted partners. It should also be prepared to respond fast to the incidents, such as bans of popular users and journalists, who infrequently fall prey to coordinated attacks.

Link to Attachment

[PC-10614](#)

2022-008-FB-UA

Case number

PC-10627

Public comment number

United States and Canada

Region

Nadine

Commenter's first name

Farid Johnson

Commenter's last name

English

Commenter's preferred language

PEN America

Organization

Yes

Response on behalf of organization

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Short summary provided by the commenter

It is PEN America's view that the decision to remove the subject post, protesting Russian war crimes in Ukraine by sharing excerpts of the poem *Kill Him!* by Konstantin Simonov as well as associated images and messages, was an inappropriate act of censorship. The post in which these elements were shared was originally taken down on account of the post being flagged as hate speech or a potential incitement to violence. We believe that this was a mistaken classification, and the resulting removal was an incorrect decision.

Full Comment

To the members of the Oversight Board,

Thank you for this opportunity to comment on case number 2022-08-FB-UA, Russian poem. PEN America, the United States based chapter of the PEN International movement, stands at the intersection of literature and human rights to protect free expression in the United States and around the globe. Our PEN Charter calls us to uphold the principle of unhampered transmission of thought within each nation and between all nations. We champion the freedom to write and work to unite writers and their allies to celebrate creative expression and defend the liberties that make it possible.

It is PEN America's view that the decision to remove the subject post, protesting Russian war crimes in Ukraine by sharing excerpts of the poem *Kill Him!* by Konstantin Simonov as well as associated images and messages, was an inappropriate act of censorship. The post in which these elements were shared was originally taken down on account of the post being flagged as hate speech or a potential incitement to violence. We believe that this was a mistaken classification, and the resulting removal was an incorrect decision.

Context matters in the determination of whether expression is deemed hate speech or an incitement to violence. Considerations should include whether particular



people are referenced and specific harmful acts are called for, whether there is an explicit or implied call for violence, and the party behind the expression. References to violence in artistic or journalistic expression are contextually unlikely to constitute an implied threat or hate speech, particularly in the documenting of situations of international conflict such as that in Ukraine. Artistic expression often emerges out of, and can be a reflection of, one's direct lived experience. In a time of war especially one characterized by numerous human rights and international law violations art that is shared or produced in this environment may contain references to violence. Even if some people perceive the references to be glorifications of violence, this still does not rise to the level of a credible threat and incitement. Meta's policies must have ways of accounting for this fact.

Heinous acts committed during armed conflicts are repeated because they are often unreported and unnoticed. To this end, artists and journalists play a uniquely important role in the struggle to create and maintain a humane international sphere. The voices of those on the ground help us move beyond an overly legalistic approach to international conflict. Human rights groups have noted the need to view international conflicts as constituted not just by the breaking of rules, but by the suffering of very real people. In documenting war crimes and sharing their findings, artists and journalists help us achieve this end. Documenting human rights violations, achieved in part by the bringing forward of images depicting proof of abuses or other human rights violations, also creates a record for post-conflict investigations and efforts to bring perpetrators to justice.

Highly graphic imagery depicting such war crimes may be distressing for those who view them. Yet censoring them outright is not a sustainable practice, nor one aligned with free expression principles. The sharing and visibility of photographs depicting potential human rights violations or war crimes in armed conflicts on Meta's platforms both supports free expression and carves a potential path to acknowledgement and justice for perpetrators of human rights abuses. As such, Meta has a responsibility to allow such content to be shared. We support the steps Meta has taken to allow such content to be shared, while applying a warning screen informing users that the images may contain graphic content. This serves the end of documenting and sharing the atrocities that are committed during times of war, and it protects those who may be affected by such images and have not consented to see them.

In sum, content containing seemingly violent rhetoric is not automatically hate speech or a potential instigation of violence, particularly when put forth as artistic or journalistic expression. In fact, such content often serves a crucial role in times of war or conflict. Meta's policies concerning such content ought to reflect these facts, and to do so consistently.

The Board also inquires as to whether incitements to violence should be treated differently whether they refer to institutions or individuals. To be clear, posts like the one at issue should not be considered incitements to violence, for the reasons

stated. In a case where something is a clear incitement to violence, there should not be a distinction between calls to harm institutions and individuals. Individuals may be targeted only as representatives of a particular movement or institution. As such, a policy that allowed incitations of violence against institutions might place groups of individuals at significant risk.

The bar should be high for what we consider an incitement to violence. If something meets that bar, it should make no difference whether it is directed to an individual or an institution.

Link to Attachment

[PC-10627](#)

2022-008-FB-UA

Case number

PC-10634

Public comment number

United States and Canada

Region

Jason

Commenter's first name

Steinhauer

Commenter's last name

English

Commenter's preferred language

History Communication Institute

Organization

Yes

Response on behalf of organization

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Short summary provided by the commenter

We agree with the original content moderators that this post should have been removed. This post is wartime propaganda. It posts a photograph out of context, without attribution to a source or corroboration of what it shows. The post draws a specious analogy to the Second World War. It purposefully casts doubt on well-documented war crimes by Soviet soldiers at the end of WWII, and falsely claims such crimes were excused. It cites a well-known Soviet propagandist, Konstantin Simonov. And it suggests that retaliatory killings of Russians by Ukrainians, even after military hostilities have concluded, would be permissible. As such, we agree with the decisions of the original content moderators.

Full Comment

### Executive Summary

We agree this post should have been removed. It posts a photograph without attribution. It draws a specious analogy to WWII. It purposefully casts doubt on well-documented war crimes at the end of the war, and falsely claims such crimes were excused. It cites Soviet propagandist Konstantin Simonov. And it suggests that retaliatory killings would be permissible. As such, we agree with the decisions of the original content moderators.

### Analysis

#### Images as war propaganda

Propaganda is a defining aspect of modern warfare. On social media, war propaganda includes images posted online to sway public opinion. Often, they are paired with provocative text in order to inflame emotions or incite violence. It has been a common practice to post images from other conflicts and claim they are from a current one. More information is needed to determine where this image is from.

Alleged and excused are misleading

The crimes committed by Soviet soldiers at the end of WWII are well-documented. The word alleged casts doubt on a topic on which there is no ambiguity.

As the Soviets advanced on Berlin, their troops exacted revenge against German soldiers and civilians by raping women; destroying property; and murdering POWs and civilians.

Russian propagandists excused these crimes as legitimate retaliation against Nazism. But war crimes against civilian populations are never excusable. Today, crimes committed during and after WWII by the Soviet Union are being investigated by historians, scholars and activists.

WWII comparisons

We must recognize that appeals to WWII function as political tools. For Russia, referring to the invasion of Ukraine as de-Nazification situates the conflict as an extension of The Patriotic War that defends Russia against barbarous enemies. For Ukraine and its allies, harkening to WWII is meant to rally governments and citizens against a madman before he attacks the rest of Europe. These are political arguments as much as they are historical ones.

Russian War Crimes and Ukrainian Retribution

Documenting war crimes are critical aspects of war reporting. There have been multiple reports of war crimes committed by Russian soldiers in Ukraine and the international community has an obligation to hold Russian leadership accountable. Retaliatory killings, however, would not be a justifiable response. Any calls to murder Russian civilians as retribution or murder Russian soldiers taken captive as POWs would be an incitement to commit war crimes, which are never excusable. Any posts that claim the inevitability of such revenge killings as justification for the invasion itself would also be propaganda.

Konstantin Simonov

Simonov was a favored reporter of the Soviet government, often flown in by Communist leadership to document events with the expectation that he would parrot the party line. Simonov was also an anti-Semite. Simonov was the first journalist to witness a Nazi Death Camp, touring Majdanek in 1943; his accounts were published in Soviet newspapers. However, Simonov deliberately downplayed the deaths of Jews in the camps, refusing to write that the Final Solution had the extermination of European Jewry as its principal purpose. In later years, Simonov wrote extensively about the Soviet failures in the early years of WWII, but always with an eye towards The Patriotic War narrative and Russian superiority. His Kill! poems were penned as atrocity propaganda in the official newspaper of the Soviet Ministry of Defense, Krasnaya Zvezda.

How do we know this user is a journalist?

This Facebook user identifies themselves as a journalist. How do we know? Does Meta have a definition of who is considered a working journalist? If this person is a journalist, s/he must be held to a higher standard. Journalists are meant to act in the public interest and act as a check on government, not to incite war crimes or repeat government propaganda.

Answers to the Board's questions

A1: Rallying cries to defend against illegal invasions of sovereign borders would seem to be protected speech, especially amid an ongoing conflict. Incitement to commit war crimes against non-combatants, prisoners of war, or uniformed soldiers after hostilities have ceased would seem to cross the threshold.

A2: Meta should defer to the Geneva Convention's principles around armed conflicts.

A3: We see the distinction as between proclamations and attacks. Internet users must be free to criticize institutions and individuals who threaten or undermine their human rights, especially in times of war. However, social media should not be a planning ground for attacks against military or civilian targets, or as a platform for justifying war crimes.

A4: We believe that journalists should be held to a higher standard than the general public. As agents acting in the public interest, journalists must accurately identify the sources of their material and not parrot government propaganda, especially in times of war.

A5: We do not believe Simonov's work should be banned or censored, especially since his work documenting the Holocaust is critical to WWII scholarship. What is needed is broader historical literacy to understand Simonov's role as a spokesman for the Soviet regime. URLs within Facebook linking to peer-reviewed scholarship on Simonov would be helpful.

A6: Visual documentation of the horrors of war are critical to education and justice efforts. Such imagery should not be censored. However, it is a common tool of war propaganda to take images out of context from prior conflicts and use them to sway public opinion. Posted photographs must be verifiable and attributable, especially if posted by journalists.

The critical role of historians

Historical expertise is critical to moderating online content. The History Communication Institute stands ready to work with the Oversight Board to ensure the social web promotes accurate information about the past.

Link to Attachment

[PC-10634](#)