

**Submission by the Jacob Blaustein Institute for the Advancement of Human Rights
on the Global Digital Compact**

February 11, 2023

Procedural Comments: Ensuring Transparency and Facilitating Civil Society Engagement

We are grateful to the co-facilitators, Ambassadors of Rwanda and Sweden, for having invited civil society organizations to share perspectives on the Global Digital Compact at an early stage of the process of its elaboration. We offer the following further recommendations:

- Future elaborations of the co-facilitators’ “roadmap” should make it clear that CSO consultations will be a regular feature of this process.
- CSOs should have opportunities to address each of the subjects of the “deep dives” convened in the coming months, and the subjects should be announced sufficiently in advance.
- The texts that States will be considering during the negotiations stage should be made public to ensure that we are able to provide targeted, realistic, reactions to States in a timely way.

Substantive Comments: Ensuring a Human Rights-Based Approach to Combating Online Harm

At the initial consultation on the Global Digital Compact, several Member States expressed the view that the Global Digital Compact should address **the negative human rights impacts of online expression**, including those resulting from the spread and amplification of misinformation, disinformation, and hate speech. We offer the following recommendations on this point:

Some online expression does indeed give rise to very real harm to rights holders, but so too do overbroad restrictions on online expression. If the Global Digital Compact addresses this subject, it must do so using a **human rights-based approach** reflecting both of these concerns. This subject should be the subject of at least one of the “deep dives” that the co-facilitators plan to convene.

In setting out parameters for this discussion, we hope the co-facilitators will refer to two recent United Nations products that contain detailed recommendations on countering and addressing antisemitism and Holocaust and genocide denial and distortion online using a human rights-based approach, and which were informed by stakeholder consultations convened by the Jacob Blaustein Institute: (1) a follow-up [Action Plan](#) by the UN Special Rapporteur on Freedom of Religion or Belief, published in May 2022 and (2) a [Policy Paper](#) on Combating Holocaust and Genocide Denial by the Office of the Special Adviser to the UN Secretary-General on Prevention of Genocide, published in June 2022.

The guidance set out in these documents addresses specific categories of harmful online expression – antisemitism and Holocaust and genocide denial and distortion – but it is relevant to and can inform guidance on combating other forms of identity-based hatred online as well. The guidance is particularly valuable as both UN documents stress the need to ensure that regulatory initiatives undertaken for the purpose of addressing harmful online speech do not result in overbroad or illegitimate restriction of online expression, i.e., restriction of expression for purposes other than protecting members of targeted groups from harm.

Based on these documents, JBI recommends that the Global Digital Compact:

- Call on social media and technology companies to ensure that their algorithms do not promote or direct users to harmful content, including content that is antisemitic or denies or distorts the Holocaust or genocides or that glorifies perpetrators of these crimes.

- Encourage social media and other technology companies to take affirmative efforts to prohibit harmful content, including antisemitic content and Holocaust and genocide denial and distortion, according to clearly articulated, narrowly-defined policies and through varying forms of content moderation, including but not limited to content removal, with effective safeguards.
- Affirm that States should not prohibit content, and social media companies should not employ their content restrictions or other techniques for the purpose of prohibiting content, for illegitimate aims such as to protect the reputation of States or their policies; to protect religions and belief systems or religious or historical figures from criticism or ridicule; or to chill legitimate historical inquiry, journalism, or efforts to memorialize atrocity crimes.

Relevant recommendations from “Taking Action to Combat Antisemitism: Follow-up Action Plan for Advancing the Implementation of the Recommendations of the UN Special Rapporteur on Freedom of Religion or Belief in his 2019 Report to the UN General Assembly,” (A/74/358), published May 2022.¹

“6. Curb the spread of harmful antisemitic narratives online while appropriately safeguarding freedom of expression

- a. Social media companies should ensure that their community guidelines clearly convey that all forms of antisemitic content and Holocaust denial and distortion are not permitted, and that these guidelines are transparent and easily accessible to users, and more broadly that they are taking effective action necessary to uphold human rights and protect targeted individuals and groups from physical or mental harm, in accordance with international standards. They should consult with representatives of Jewish communities regarding the contents of their guidelines in order to understand what content is harmful in different contexts.
- b. Social media and other internet technology companies should ensure that their algorithms do not promote antisemitic content or narratives or content that denies or distorts the Holocaust to users, without exception.
- c. Internet technology companies should not facilitate public access to platforms, sites or applications that could or are being used to spread antisemitic content but are not undertaking to prohibit and take action to discourage its spread.
- d. Social media and other technology companies should train and sensitize all personnel, including content moderators, on recognizing antisemitism as well as how to identify and take action on antisemitic content while respecting freedom of expression.
- e. Social media and other technology companies should hire personnel and sufficient, effective content moderators with appropriate language skills and the knowledge and cultural awareness necessary to receive and to act on reports from users about antisemitic content while respecting international human rights standards. They should design and review flagging algorithms to ensure that they recognize coded antisemitic language, and ensure the availability of accessible and easy-to-use complaint procedures.

¹ UN Special Rapporteur on Freedom of Religion or Belief, Dr. Ahmed Shaheed, “Taking Action to Combat Antisemitism: Follow-up Action Plan for Advancing the Implementation of the Recommendations of the UN Special Rapporteur on Freedom of Religion or Belief in his 2019 Report to the UN General Assembly (A/74/358), (May 2022), available at: <https://www.ohchr.org/sites/default/files/2022-05/ActionPlanChanges-May2022.pdf>.

- f. Social media companies should ensure appropriate safeguards to allow for determinations about content reported as antisemitic to be appealed and promptly reviewed to ensure that freedom of opinion and expression, in line with international human rights standards, is upheld.
- g. Internet technology companies should be transparent about the processes they have in place to identify, remove, or reduce antisemitic content and about the practical impact of such processes. Social media companies should regularly publish disaggregated information reflecting the volume of antisemitic content on their platforms; the volume of antisemitic content reported by users; the volume of content acted upon as a result of automatic review; the actions taken; and any outcomes of appeals.
- h. Governments should require social media companies to publish information about the operation of their algorithms and examine impact on the spread of hate speech and to reach agreements with researchers allowing for access to their algorithms on mutually acceptable terms. Governments should regularly commission independent studies of the presence of antisemitic content on social media companies' platforms and their response to users' reports.
- i. Governments should ensure that efforts to regulate social media companies' treatment of content that constitutes hate speech are clear, easy to understand, and are only undertaken for legitimate purposes such as the protection of targeted individuals and groups from harm and are otherwise in line with international standards on freedom of expression.

Relevant recommendations from the [UN policy paper on combating Holocaust and genocide denial](#),² which follows and complements UN General Assembly resolution [76/250](#) on Holocaust denial, adopted by consensus in January 2022.³

- **Ensure that vulnerable victims and communities are protected from harm resulting from Holocaust and genocide denial and distortion online, including by limiting the presence and visibility of such content through narrowly-tailored, context-dependent restrictions.**
 - Online content trivializing the Holocaust and genocides has significant potential to cause harm. It can cause revictimization, repeat historical patterns of discrimination and negative stereotypes, and incite hostility and violence. It can have significant influence on popular culture, public opinion, and politics, and can lead to transnational impacts. Holocaust denial and distortion can also encourage audiences to ascribe to other conspiracy theories and to engage positively with other forms of disinformation, thus not only creating risks for Jewish individuals and communities and undermining collective historical memory, but also weakening the resilience and cohesion of democratic societies.

² "Combating Holocaust and Genocide Denial: Protecting Survivors, Preserving Memory, and Promoting Prevention," available at https://www.un.org/en/genocideprevention/documents/22-00041_OSAPG_PolicyPaper_Final.pdf.

³ UNGA Resolution 76/250 "Urges Member States and social media companies to take active measures to combat antisemitism and Holocaust denial or distortion by means of information and communications technologies and to facilitate reporting of such content," recognizing the "growing prevalence of Holocaust denial or distortion through the use of information and communications technologies" and its potential to violate and abuse human rights. At the same time, it recalls that "all measures taken" to restrict expression "must be in full compliance with international human rights law, in accordance with article 19 of the International Covenant on Civil and Political Rights." It further "not[es] the global and open nature of the Internet and the significant role of social media in spreading information, and their potential to play a positive role in the preservation of the memory of the Holocaust, promoting historically accurate Holocaust education and countering Holocaust denial and distortion."

- Regional human rights mechanisms in Europe and Africa have affirmed that legal restrictions on Holocaust and genocide denial and distortion can serve legitimate purposes: to strengthen democratic societies by reinforcing a culture of victim-centered memory and compassion and to protect survivors of the Holocaust and genocides and their communities from incitement to antisemitic, racial, ethnic, religious hatred, discrimination, and violence.
- Accordingly, social media and other technology companies should be encouraged to take affirmative efforts to mitigate the impact of Holocaust and genocide denial and distortion through varying forms of content moderation, including but not limited to content removal. They should also ensure that their algorithms do not promote or direct users to content that constitutes denial or distortion of the Holocaust or genocide or glorification of perpetrators.
- **Discourage overbroad restrictions on online expression motivated by illegitimate purposes.**
 - So-called “memory laws” that are broader than those prohibiting Holocaust and genocide denial, particularly laws that advance specific narratives denying national or communal complicity in atrocity crimes, including but not limited to the Holocaust, and protect those narratives from criticism or refutation, are not compatible with international standards governing freedom of expression because they limit the right to freedom of expression for the illegitimate purpose of protecting the reputation of a State.
 - States should abide by, and social media companies’ hate speech policies should conform to, international standards governing freedom of expression. They should ensure that restrictions on expression are not employed for illegitimate aims or used to punish and/or chill legitimate historical inquiry, journalism, or efforts to memorialize atrocity crimes.
- **Encourage all stakeholders to capitalize on the power of digital technology to play a positive role in conveying accurate information about the Holocaust and genocides.**
 - The UN-supported [“Protect the Facts”](#) campaign against Holocaust distortion and initiatives by tech companies [direct users](#) searching for information about the Holocaust to accurate sources such as the “AboutHolocaust.org” website are notable positive examples in this regard.