

Contextual Issues

It is reasonably assumed that the photos are those of three-year old Syrian Aylan Kurdi which became a symbol of Europe's refugee 'crisis' and its dismal handling by authorities. This image was disseminated throughout social media and even became a focus of a [study](#) which examined how one photograph could create deep emotion five years into Syria's civil war - much greater than any statistical record of the war's victims. This photograph of a child dead on a Turkish beach can reasonably be assumed to be one which seeks to stir emotions of empathy but also dismay at the Syrian refugee crisis (which was mentioned in the post). It can also be considered to be symbolic of any humanitarian crisis and the actions or inactions of States. We propose that the Oversight Board considers the nature of the photo not as one which can be reasonably linked to hatred or violence but rather as an alarming image to trigger concern. The fact that the post also mentioned the Syrian refugee crisis is indicative of the user's intention to shed light on humanitarian issues. Further, the post raises the issue of China's treatment of Uyghur Muslims. As noted by [Amnesty International](#), China has intensified the forced cultural assimilation and political indoctrination of Muslim ethnic groups such as the Uyghurs through 're-education' camps. In [witness statements](#), torture, inhuman and degrading treatment occurs in these camps whilst there have been reports of [forced sterilisation](#) and [forced labour](#). The [Canadian parliamentary committee](#) said that China's policies in Xinjiang amount to genocide against the Muslim Uyghur minority and a [2020 Australian study](#) found that camps have expanded despite claims that Uighurs were being released. 39 countries at the [United Nations](#) condemned China's abuses of Uyghurs. However, beyond oral condemnations, nothing much is really happening to tackle this situation. [The Guardian](#) noted that 'one of the great crimes of the 21st century is being committed in front of our eyes. We see it, yet we don't register it.' The same article characteristically refers to the fact that 'the Muslim-majority countries that raged against Rushdie, Jyllands-Posten and Charlie Hebdo' have decided to stay silent. They use the idea of Muslim solidarity only when it suits them.' By making the comparison with the retaliations in France due to cartoons, it appears reasonable that the user wanted to draw attention to the passive attitude of other Muslim nations towards the Uyghurs as was done in the article referred to above. The post is not inciting violence or hatred against a particular group, it is posing the question of why retaliations occur as a result of the cartoons which were considered blasphemous, yet nothing is done for the Uyghur Muslims. The user is not agreeing with the killings as a result of the cartoons, nor is inciting, promoting or advocating for killings against anyone in China. The user's submission to the Oversight Board appears reasonable if the post is considered in its entirety and summed up below:

- Use of the prolific photo of the dead child on the beach (to stir up emotions of empathy and anger at systemic disfunction)
- The reference to the Syrian refugee crisis indicates that the post wanted to shed light on humanitarian issues

□ The reference to the killings as a result of cartoons with no retaliation taken in respect to the Uyghur Muslim's situation in China and the resulting impassivity of other Muslims (as demonstrated in the article above).

Semantical/Normative Issues

Facebook defines hate speech as a 'direct attack on people based on what we call protected characteristics...We define attack as violent or dehumanizing speech, harmful stereotypes, statements of inferiority, or calls for exclusion or segregation.' No where in the user's post is there an attack against a protected group as defined above. Facebook did not contextualise the post. Had it done so it would be clear that this post was neither a glorification of the violence in France nor an endorsement of such violence in China. Instead it was a post seeking to shed light on the plight of the Uyghur Muslims.

The Oversight Board must take into account the present post in light of Article 19 and Article 20(2) of the International Covenant on Civil and Political Rights and threshold test set out by the [Rabat Plan of Action](#). In fact, this case does not seem to meet even one of the six requirements to the threshold test set out by the Rabat Plan of Action. As noted by the [Special Rapporteur on Freedom of Expression](#) in 2019, hate speech must be narrowly defined to ensure the protection of freedom of expression. The Board must also consider the significance of political speech and the danger of hate speech laws infringing on political dissent was underlined in the Special Rapporteur's 2019 report on Online Hate Speech. A broad interpretation of hate speech and a removal of posts such as the one in this case essentially serves to mute criticism of powerful States, in this instance China which actively censors political criticism. We would recommend the Board to consider a Norwegian Supreme Court judgement ¹in which it noted that one cannot assume that what is said is, in fact, hateful. The majority held that '...The rule of law, and especially the consideration of foreseeability, dictates restraint when it comes to an expansive interpretation based on context. When it comes to punishable expressions the point must be that you can only be punished for what you have said, not what could possibly have said.'

In sum, it is evident that the post is not advocating for violence, hatred or discrimination against a protected group, is not glorifying violence but is, instead, using a situation of a severe reaction in France to demonstrate (through hyperbole) the passivity marking reactions to what is going on in China.

¹ HR- 2001-01428 – Rt-2002-1618, (Saks nr. 361-2002) 17 December 2002