

# LA MARTINIÈRE MODEL UNITED NATIONS, 2023



THE DECENNIAL EDITION

UNITED NATIONS HUMAN  
RIGHTS COUNCIL

BACKGROUND GUIDE

PRINTABLE FORMAT

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# CONTENTS

1. MANDATE OF THE UN HUMAN RIGHTS COMMISSION
2. DELIBERATING UPON THE RIGHT TO FREEDOM OF SPEECH AND IT'S LIMITATIONS ON GROUNDS OF LAW AND PUBLIC ORDER AND ITS IMPACT ON FREEDOM OF PRESS
3. WITH REFERENCE TO INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR), ADDRESSING THE ISSUE OF RIGHTS OF PRISONERS WHILE LAYING EMPHASIS ON SOLITARY CONFINEMENT

# MANDATE OF THE UN HUMAN RIGHTS COMMISSION

The Office of the High Commissioner for Human Rights (UN Human Rights) is mandated by the UN General Assembly to promote and protect the enjoyment and full realization, by all people, of all human rights. The Charter of the United Nations, the Universal Declaration of Human Rights, and international human rights laws and treaties established those rights.

UN Human Rights was created by the General Assembly in 1993 through its resolution 48/141 which also details its mandate.

UN Human Rights is mandated to:

- Promote and protect all human rights for all
- Recommend that bodies of the UN system improve the promotion and protection of all human rights
- Promote and protect the right to development
- Provide technical assistance to States for human rights activities
- Coordinate UN human rights education and public information programmes
- Work actively to remove obstacles to the realization of human rights and to prevent the continuation of human rights violations
- Engage in dialogue with Governments in order to secure respect for all human rights
- Enhance international cooperation for the promotion and protection of all human rights



- Coordinate human rights promotion and protection activities throughout the United Nations system
- Rationalize, adapt, strengthen and streamline the UN human rights machinery



# Deliberating Upon The Right To Freedom Of Speech & It's Limitations On Grounds Of Law & Public Order And Its Impact On Freedom Of Press

## Introduction

Every citizen in the world has the fundamental right to freedom of expression. Everyone has the right to their own opinions as well as the freedom to look for, receive, and exchange information and ideas. This right is crucial for journalists in their pursuit of and dissemination of the truth.

They are unable to interview residents or request information from public servants without this freedom. They cannot enable people to openly express their views and opinions. Additionally, they are unable to provide citizens with accurate information that they can rely on to make life-changing decisions. They are unable to contribute significantly to the growth of democracy and effective government. And ultimately, we are unable to stop violations of human rights.

Without freedom of expression, it is impossible to provide people with accurate information that they can rely on to make wise decisions about their life. We are unable to contribute significantly to democracy, development, or decent government. In the end, we are powerless to reveal violations of human rights.



In addition to requiring freedom of expression in order to do their duties, journalists also assist others in exercising their right to free speech by giving the public pertinent, relevant, and reliable information on which to base their ideas and opinions. For these rights to be fully realized, media outlets must be permitted to function freely, without censorship or arbitrary limitations.

Though as it is with most human rights, there are limitations and restrictions even to speech. The right to freedom of expression is not only restricted by law, but it also must be necessary to attain one of the following purposes, i.e.: (a) to respect the rights or reputations of others; (b) to protect national security; (c) to protect public order; (d) to protect public health; and (e) to protect public morals. HRC states that the right to freedom of expression is of paramount importance in any democratic society and any restrictions to the exercise of this right must meet a strict test of justification.

### **Defining Freedom Of Speech**

Freedom of expression is a fundamental human right as stated in Article 19 of the Universal Declaration of Human Rights:

*“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”*

Media freedom and access to information feed into the wider development objective of empowering people. Empowerment is a multi-dimensional social and political process that helps people gain control over their own lives. This can only be achieved through access to accurate, fair and unbiased information, representing a plurality of opinions, and the means to actively communicate vertically and horizontally, thereby participating in the active life of the community.



However, in order to make freedom of expression a reality, there must be:

- a legal and regulatory environment that allows for an open and pluralistic media sector to emerge;
- a political will to support the sector and rule of law to protect it;
- laws ensuring access to information, especially information in the public domain; and
- the necessary media literacy skills among news consumers to critically analyze and synthesise the information they receive to use it in their daily lives and to hold the media accountable for its actions.

These elements, along with media professionals adhering to the highest ethical and professional standards designed by practitioners, serve as the fundamental infrastructure on which freedom of expression can prevail. On this basis media serves as a watchdog, civil society engages with authorities and decision-makers, information flows through and between communities.

### **International Developments in Right to Free Speech and Media**

Article 19 of UDHR proclaims the general principle of the right to freedom of information and expression for all individuals without any interference. This includes the right to seek, receive and impart information and ideas through any media and regardless of frontiers. Art 19 of UDHR does not impose any limitations on the exercising of this freedom. Article 29(2) and (3) include the general limitations on all rights and freedoms contained in the UDHR, including the freedom of expression. It is Article 19 of ICCPR that precisely puts out this freedom together with limitations, which read as: Everyone shall have the right to hold opinions without interference.



It includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other medium of his choice.

The right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (public order), or of public health or morals.

The ICCPR also establishes the Human Rights Committee which monitors the implementation of rights found under the Covenant (Part IV of ICCPR), The Procedures for bringing the Complaint under it.

Freedom of opinion and expression are fundamental rights that contain both a personal and a social dimension. They are considered “indispensable conditions for the full development of the person”, “essential for any society” and a “foundation stone for every free and democratic society”. All forms of communication are protected, including “political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching and religious discourse”. Under the ICCPR, freedom of expression includes the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of a person’s choice”. This protects expression in all forms, including spoken, written and sign language, and non-verbal expressions through artworks.

Without free speech, the enjoyment of other rights is not possible. Thus, freedom of expression plays an important role upholding other human rights. Transparency and accountability for human rights abuses are enhanced by freedom of expression, making it an essential precondition to ensuring the proper protection of rights.





## International Law Around Free Speech

The right to freedom of expression and opinion is a right of the International Covenant on Civil and Political Rights and described as an essential test right, the enjoyment of which illustrates the degree of enjoyment of all human rights enshrined in the United Nations Bill of Rights, that comprises the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and reflects a country's standard fair play, justice and honesty.

This right has a dual dimension (individual and collective form of freedom of expression). An individual dimension, consisting of the right of each person to express her own thoughts, ideas and information, and collective dimension, consisting of society's right to obtain and receive any information, to know the thoughts, ideas and information of others, and to be well-informed. It includes freedom of access to the State and freedom from the State. The former refers to the participation of the individual in matters of the state.

The latter refers to the realm of privacy of the individual and requires absolute protection against any undue external interference. The legal obligation imposed by Article 2 of ICCPR is that, the State must respect, protect and refrain from interference in these rights either by the State organs itself or by third parties. However, freedom of expression is currently under assault across the world. In October 2016, the UN expert on freedom of expression reported that individuals seeking to exercise their right to expression face all kinds of government-imposed limitations that are not legal, necessary or proportionate, noting that the "targets of restrictions include journalists and bloggers, critics of government, dissenters from conventional life, provocateurs and minorities of all sorts'. Recent laws and policies show that western democracies are not immune from this trend, with governments increasingly willing to limit the freedom of civil society to participate in public debate and discussion.



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# Threats To Freedom Of Speech of Public and Press

## Diminishing space of resistance

Free speech and assembly are both exercised during protests. People will use both vocal and nonverbal communication during protests, such as waving banners or placards, to communicate their opinions. Recently, a number of nations have reinforced their rules on the freedom to protest in a variety of ways, including by giving police carte blanche to make arrests as they see fit, harshly punishing protesters, imprisoning dissidents without due process, among other things.

The right to peaceful social protest is included in the freedoms of expression and assembly, and this right is crucial to maintaining the "freedoms treasured in a democratic society." Nations must uphold and safeguard their democracies and maintain the delicate balance between preserving places of resistance and protecting law and order.

## Metadata Laws

Metadata retention rules, which put free speech and press freedom in jeopardy and may discourage people from sharing information on topics of public interest, are another concerning development in western democracies. Freedom of expression necessitates a free, unrestricted press that can inform the public and comment on current events without hindrance or restriction. The ability to access information and maintain the safety and confidentiality of sources while doing so is a core principle of journalism. Yet through increased surveillance of people's telecommunications metadata, governments in western democracies put the privacy of journalists' sources in danger.



In certain cases, metadata retention regulations are purposefully applied to track down the sources of journalists, endangering press freedom. This is because authorities may easily identify sources and whistleblowers by looking at a journalist's phone or email information, which shows who has contacted them.

The legal practice of freedom of expression runs the risk of being discouraged due to the vast, intrusive nature of data collecting regimes and the lack of transparency regarding who bodies can access it and for what purposes.



## Censorship in the Digital Space

The Internet has provided unprecedented opportunity for people's exercise of the right to freedom of expression. However, censorship and surveillance of the Internet may also lead to the repression of journalists, human rights defenders and other individuals. States should ensure that restrictions on online expression are lawful, necessary and proportionate. Companies also have a responsibility to respect the freedom of expression of end users throughout their operations, from technology design to the development of policies governing user behaviour.

Additionally, many countries have been resorting to increased internet shutdowns to not only deny freedom of expression and access to information, but to facilitate and conceal other severe human rights violations, from mass arrests and killings of dissenting voices. This is particularly the case during politically sensitive moments, such as elections or protests.

## Prosecution and Unjust Imprisonment of Journalists

We are constantly seeing human rights defenders, journalists, academics, artists, and other civil society actors prosecuted and imprisoned under often broad and vague laws premised on combating misinformation or so-called "false news". The UN High Commissioner herself has raised alarm in a statement at the abuse of such measures to crackdown on free expression during the COVID-19 pandemic. Ultimately, these tools create a climate of fear which promotes self-censorship and impedes access to information.



Additionally, over recent years, States have increasingly used counter-terrorism and violent extremism measures not against terrorists, but human rights defenders, journalists, and other civil society actors. These measures share in common ambiguous definitions of “terrorism” and “extremism”, often disconnected from intent of the accused to cause violence, or the likelihood of it occurring, allowing authorities to broadly target groups and individuals engaged in dissent or political opposition. This trend has its roots in the international security narrative since 2001 that has pushed States to adopt strong counter-terrorism measures without equal attention to their human rights effects and for the role of human rights in addressing the underlying causes of terrorism. The lack of civil society engagement with the UN counter-terrorism and security architecture have at times contributed to this dynamic.

### **Use of surveillance technologies**

The widespread abuse of surveillance technologies not only have significant chilling effects on freedom of expression, but have been shown to lead to severe human rights violations such as arbitrary detention, torture and even extrajudicial killings. The UN Special Rapporteur on freedom of opinion and expression, alarmed at poor controls on exports and transfers of surveillance technologies and the subsequent widespread abuse, has called for an immediate moratorium on their export, sale, transfer, use or servicing until a human rights-compliant safeguards regime for them is in place.



## Vague Laws Surrounding Freedom of Speech

A tactic certain nations have used of late to crackdown on freedom of speech is the introduction of vague laws that leave room for a large scope of interpretation. Many countries have been seen to not appropriately describe instances that “incite all forms of violence, hatred, discrimination and hostility, inter alia, racism, xenophobia, negative stereotyping and stigmatisation”. This has often given space to politically motivated charges against press leading to further censorship.

## Conclusion

Freedom of expression is a fundamental human right that must be upheld in democratic societies. Yet there is a worrying global trend of governments unjustifiably limiting freedom of speech, targeting journalists, protesters and other people considered to be dissenting from government views. Even in western democracies, laws are curtailing protest activities and threatening press freedom and free speech through various ways. It is imperative that civil societies across the globe are vigilant in defending freedom of expression. This is necessary for the enhancement of people’s lives and the creation and maintenance of strong, healthy democratic societies.

The right to freedom of expression enjoys fairly broad protection in international law. However, since this right is not absolute, it must be balanced in consideration of other rights, notably the right to privacy and the right to non-discrimination.



The exercise of freedom of expression, as well as the freedom to seek information, is capable of encroachments upon other rights. Thus, these responsibilities obligate the opinion makers not to abuse their power at the expense of others and obligate the state to interfere in such cases where the rights of others are violated. State parties must establish an optimal balance between various human rights claims and that it is an interplay between the principle of freedom of expression and such limitations and restrictions which determine the actual scope of the individual's rights.

### Questions To Consider

- One of the first steps to take when looking for a way to solve the problem is to critically analyse what is going on and to ask questions. For example, how can the UN and its member states encourage states to honour freedom of expression and press?
- How does the international community assist in protecting the impunity, freedom and safety of journalists?
- Should minimal censorship be enforced everywhere, and if so, how can we achieve this?
- What means of censorship are appropriate?
- How do issues of sovereignty intersect with freedom of press, especially concerning foreign correspondents?
- What action should be taken towards nations that are suppressing their citizen's freedom of speech?





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# With reference to International Covenant on Civil & Political Rights (ICCPR), Addressing the issue of rights of prisoners while laying emphasis on solitary confinement

In international law, the term “prisoners” typically refers to individuals who have been captured, detained, or imprisoned as civilians, or as “prisoners of war” (combatants during armed conflicts, whether international or non-international).

The treatment and protection of prisoners are governed by various international treaties and conventions, with the most significant in the context of “prisoners of war” being the Third Geneva Convention of 1949. These treaties establish specific rights and protections for PoWs, including humane treatment, medical care, and protection from violence and reprisals. They also outline the responsibilities of detaining authorities, including regular inspections by the International Committee of the Red Cross (ICRC) to ensure compliance with the conventions.

It’s important to note that international law distinguishes between prisoners of war and other categories of detainees, such as civilians or combatants who do not meet the criteria for PoW status. The treatment of these individuals is also governed by international humanitarian law, which seeks to minimize suffering and protect the rights of all persons affected by armed conflicts.



The rights of prisoners are a critical aspect of international legal governance, given that prisoners are accorded the same due dignity as awarded to human beings in general. More specifically, Article 10 of the International Covenant on Civil and Political Rights (ICCPR), which came into force in March 1976, reads:

1. *All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*
2. (a) *Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;*  
(b) *Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.*
3. *The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.*

**This guarantee is supplemented by Articles 6(1) and 7 of the ICCPR, which state:**

Article 6(1): Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.



However, the ICCPR isn't a lone instrument in safeguarding the rights of prisoners. There is a long list of provisions within general instruments such as the Universal Declaration of Human Rights (UDHR), the four Geneva Protocols of 1949 (along with its two Additional Protocols of 1977), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, as well as within more specific instruments such as the Basic Principles for the Treatment of Prisoners of 1990, the Standard Minimum Rules for the Treatment of Prisoners of 1977, and the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) of 2015. Regional instruments such as the European Convention on Human Rights of 1950 and the Inter-American Convention on Serving Criminal Sentences Abroad of 1993 also lay down provisions for the dignity and security of prisoners under the ambit of their jurisdiction.



Some key provisions within the abovementioned ‘Standard Minimum Rules’ with regard to the various rights accorded to prisoners are as follows:

### 1. Contact with persons outside the prison

Rule 37 of the Standard Minimum Rules, provides that “prisoners shall be allowed under necessary supervision to communicate with their family and friends at regular intervals, by correspondence and by receiving visits.”

According to rules 38 (1) and (2) of the Standard Minimum Rules, Prisoners who are foreign nationals “shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong,” or “with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.”

Rule 92 of the Standard Minimum Rules states that “An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.”

Rule 93 of the SMRs further states: “Contacts between a lawyer and his clients are privileged and confidential and this basic rule also continues to apply when the clients are deprived of their liberty.”



## 2. Practice of religion

Rule 6 (1) of the Standard Minimum Rules for the Treatment of Prisoners, Principle 2 of the Basic Principles for the Treatment of Prisoners, and Principle 5(1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment prohibit discrimination on the basis of religion.

Rules 41 and 42 of the Standard Minimum Rules contain the following more detailed regulations in this respect: In the first place, “if the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis” [Rule 41(1)]; “A qualified representative so appointed or approved “shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times” [Rule 41(2)].



### 3. Principles and Rules pertaining to Solitary Confinement

Solitary confinement refers to the practice of isolating prisoners in a small cell for 22 to 24 hours a day, often with minimal human contact or environmental stimulation. International law recognizes that prolonged or indefinite solitary confinement can amount to cruel, inhuman, or degrading treatment or even torture, depending on the circumstances.

While the general human rights conventions contain no details of the requirements with regard to the accommodation of detainees and prisoners, Rules 9-14 of the Standard Minimum Rules for the Treatment of Prisoners (1977) regulate, in particular, sleeping, working, and sanitary conditions. These say:

Rule 9 (1) provides that “Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself or herself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.”

Rule 10 further says that “All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.” This provision, specifically, upholds that accommodation requirements for prisoners must be hygienic at all times, and should stretch across enough area to provide adequate light, heating and ventilation.



Many aspects of solitary confinement as a form of punishment are not just inhuman and degrading overall, but also violate principles set out in these SMRs.

**Additional protections against the perils solitary confinement can be interpreted as encoded in:**

Rule 11: “In all places where prisoners are required to live or work,  
(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;  
(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.”

Rule 12: “The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.”

This is, however, not to say that solitary confinement is illegitimate. Rule 37 of the UN SMRs (2015) clearly provides:

**The following shall always be subject to authorization by law or by the regulation of the competent administrative authority:**

- (a) Conduct constituting a disciplinary offence;
- (b) The types and duration of sanctions that may be imposed;
- (c) The authority competent to impose such sanctions;





(d) Any form of involuntary separation from the general prison population, such as solitary confinement, isolation, segregation, special care units or restricted housing, whether as a disciplinary sanction or for the maintenance of order and security, including promulgating policies and procedures governing the use and review of, admission to and release from any form of involuntary separation.

Rule 45 (1) adds, “Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner’s sentence.”

Hence, solitary confinement is accorded a place in international law as an act considered necessary for the maintenance of order in prison only if it is authorized by a competent national authority. Hence, inmates may be protected from arbitrary solitary confinement by prison guards if such authorization is not obtained from immediate administration authorities like wardens, national detainment authorities, police, magistrates, etc.

Rule 43 of the UN SMRs also adds that while solitary confinement for brief durations is acceptable as required authoritatively for law and order, the following is prohibited and is considered cruel treatment or even torture:

- (a) Indefinite solitary confinement;
- (b) Prolonged solitary confinement;
- (c) Placement of a prisoner in a dark or constantly lit cell



Here, defining terms becomes important. To that end, one can refer to Rule 44, which states: “For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.”

It’s important to note that the interpretation and application of these principles and rules may vary among different countries and international bodies. Nevertheless, the trend in international law is toward increased scrutiny of solitary confinement practices and a focus on ensuring that it is used only in exceptional circumstances and in a manner that respects human dignity and rights.

**What to read next:**

[https://www.echr.coe.int/documents/d/echr/Guide\\_Prisoners\\_rights\\_ENG](https://www.echr.coe.int/documents/d/echr/Guide_Prisoners_rights_ENG)

The European Human Rights Court has published elaborate analytical work on what constitutes prisoners’ rights and cruel, inhumane and degrading treatment in this regard.



On solitary confinement in specific, ECHR case law argues:

- A prohibition of contact with other prisoners for security, disciplinary, or protective reasons does not in itself amount to inhuman treatment or punishment (*Ramirez Sanchez v. France* [GC], 2006, § 123). On the other hand, complete sensory isolation, coupled with total social isolation, can destroy the personality and constitutes a form of inhuman treatment that cannot be justified by the requirements of security or any other reason.
- Solitary confinement, even in cases entailing only relative isolation, cannot be imposed on a prisoner indefinitely and should be based on genuine grounds, ordered only exceptionally with the necessary procedural safeguards and after every precaution has been taken (*A.T. v. Estonia* (no. 2), 2018, § 73). In order to avoid any risk of arbitrariness, substantive reasons must be given when a protracted period of solitary confinement is extended.
- The imposition of solitary confinement must take into account the state of health of the person concerned (*Jeanty v. Belgium*, 2020, § 117). Furthermore, a system of regular monitoring of the prisoner's physical and mental condition should also be set up in order to ensure its compatibility with continued solitary confinement (in *Csüllög v. Hungary*, 2011, §§ 37-38, the Court found that no substantive reasons had been given by the authorities when the solitary confinement was applied or extended. Arbitrary restrictive measures applied to vulnerable individuals like prisoners inevitably contribute to the feeling of subordination, total dependence, powerlessness and, consequently, humiliation).



- By contrast, in *Rohde v. Denmark* (2005, §§ 97-98) concerning some eleven months of the applicant's solitary confinement, ECHR found no violation of relevant rights having regard to the following conditions: the overall conditions of the applicant's detention were adequate; he had access to newspapers and was not totally excluded from association with other inmates and made use of the outdoor exercise option or the fitness room.

**Hence, delegates are required to make careful analysis, keeping in mind the law of the land, to determine their stances on solitary confinement.**





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