

**Geneva Support Group for the Protection and Promotion
of Human Rights in Western Sahara**

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**FEDERAL REPUBLIC OF
GERMANY**

**Violation of the right to
self-determination**

(Common art. 1 ICCPR and ICESCR)

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Geneva Support Group for the Protection and Promotion of Human Rights in Western Sahara

The Geneva Support Group is a platform that was created in September 2017 at the request of the Saharawi human rights defenders present at the 36th session of the Human Rights Council. Today the Group counts with more than 300 member-organisations from around the world.

As its name explicitly indicates, the aim of the coalition is to advocate for the protection and promotion of human rights in the Non-Self-Governing Territory of Western Sahara, with a particular attention to the part of the territory illegally occupied and illegally annexed by the Kingdom of Morocco.

The Geneva Support Group also pays a particular attention to the systematic violations of International Humanitarian Law norms and human rights law in the occupied Western Sahara, notably the right to self-determination, the free exercise of which is the precondition to the enjoyment of all fundamental freedoms and rights.

Finally, the Geneva Support Group also pay a particular attention to policies implemented by third countries towards the occupied Non-Self-Governing Territory of Western Sahara, notably when those policies weaken or prevent the free exercise of the right to self-determination by the Saharawi people.

A. The right to self-determination

1. The right to self-determination is enshrined in article 1 of the UN Charter.
2. It took on a particular value in reference to colonial countries and peoples in December 1960 with the adoption by the UN General Assembly of resolution 1514 (XV) entitled "Declaration of the Granting of Independence to colonial peoples and countries", which states in its Operative par. 1 that "*The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights*".
3. Operative par. 4 stresses that "*All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.*"
4. Operative par. 7 underscores that "*All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.*"
5. In December 1962, in adopting resolution 1803 (XVII), entitled "Permanent sovereignty over natural resources" the UN General Assembly declared that "*The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities*".
6. Furthermore, the General Assembly declared that "*Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations*".
7. Subsequently, the right to self-determination was consecrated in common Article 1 of the International Covenant of Economic, Social and Cultural Rights (ICESCR) and of the International Covenant on Civil and Political Rights (ICCPR) adopted in December 1966 and entered into force, respectively, in January and March 1976.
8. First paragraph of article 1 reads: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."
9. While paragraph 3 of article 1 reads: "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United

Nations."

10. The principle of equal rights and self-determination of peoples, included in UN General Assembly resolution 2625 (XXV), adopted in October 1970, states that *"Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order to bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned."*
11. In its annually adopted resolution, entitled "Universal realization of the rights of peoples to self –determination", the UN General Assembly *"reaffirms that the universal realization of the right of all peoples, including those under colonial, foreign and alien domination, to self-determination is a fundamental condition for the effective guarantee and observance of human rights and for the preservation and promotion of such rights."*
12. The UN General Assembly also *"requests the Human Rights Council to continue to give special attention to violations of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation."*

B. General comment No. 12 of the Human Rights Committee on the Right to self-determination (21st session – 1984)

13. Follows here below some abstracts of General comment No. 12 that are relevant to the violation of common Article 1 of the ICCPR and of the ICESCR by France:

The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as article 1 apart from and before all of the other rights in the two Covenants.

Article 1 enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2.

Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to "dispose of their natural wealth and resources... This right entails corresponding duties for all States and the international community.

Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but vis-à-vis all peoples which have not been able to exercise or have

been deprived of the possibility of exercising their right to self-determination.

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The obligations exist irrespective of whether a people entitled to self-determination depend on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination.

C. UN General Assembly resolution “ Economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories”

14. In its annually adopted resolution, the UN General Assembly calls upon all Governments that have not yet done so to take legislative, administrative or other measures in respect of their nationals and the bodies corporate under their jurisdiction that own and operate enterprises in the Non-Self-Governing Territories that are detrimental to the interests of the inhabitants of those Territories, in order to put an end to such enterprises.

D. The Court of Justice of the European Union’s judgments on the agreements between the EU and its members States on one side and the Kingdom of Morocco on the other side

15. On 21 December 2016, the Grand Chamber of the Court of Justice of the European Union (CJEU) decided that the Association Agreement and the Liberalisation Agreement between the EU and Morocco were not applicable to Western Sahara.
16. On 27 February 2018, the Grand Chamber of the CJEU concluded that neither the Fisheries Partnership Agreement between the European Community and Morocco nor the Protocol between the EU and Morocco setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the EU and Morocco are applicable to the waters adjacent to the Territory of Western Sahara.
17. On 30 November 2018, the 5th Chamber of the CJEU, concluded that, taking into account that the territory of Western Sahara is not part of the territory of Morocco; the Air Services Agreement must be interpreted as meaning that Western Sahara and the waters adjacent to it do not fall within the territorial scope of that Agreement.
18. On 29 September 2021, the General Court annulled the Council decisions concerning, first, the agreement between the European Union and Morocco amending the tariff preferences granted by the European Union to products of Moroccan origin and, second, the Sustainable Fisheries Partnership Agreement.¹

¹ General Court of the European Union - PRESS RELEASE No 166/21 (29/09/2021)

19. The Court of Justice inferred from the principle of self-determination and the principle of the relative effect of treaties clear, precise and unconditional obligations towards Western Sahara in the context of its relations with Morocco, namely both to respect its separate and distinct status and to secure the consent of its people in the event of the implementation of the Association Agreement in that territory.
20. Furthermore, the Court concluded that the contested decisions directly concern the legal situation of the Polisario Front as an internationally recognised representative of the people of Western Sahara.

E. The right to self-determination of the Saharawi people

21. In 1963, the UN General Assembly approved² the report presented by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and thereafter included Western Sahara in the list of Non Self-Governing Territories paving the way for the People originating from the Territory to freely exercise their inalienable Right to Self-determination.
22. On 16 October 1975, the International Court of Justice (ICJ) released its Advisory Opinion³ determining that the materials and information presented to the Court do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco. The very same day, King Hassan II of Morocco announced the launching of the Green March in order "to recover the integrity of the Kingdom's territory", thus disregarding the conclusions of the ICJ.
23. On 6 November 1975, the Moroccan army opened the way to the Moroccan population for the occupation of Western Sahara.
24. In 1991, after 15 years of war between the Polisario Front and the Kingdom of Morocco, the parties agreed on a cease-fire and the holding of a referendum. Thereafter, the UN Security Council approved the creation of the UN Mission for the Referendum in Western Sahara (MINURSO).
25. Since that time, the Kingdom of Morocco has spared no effort to impede the holding of a free referendum of self-determination in Western Sahara.

² UN General Assembly resolution 1956 (XVIII)

³ Western Sahara, Advisory Opinion, I.C.J. Reports 1975

F. Germany violations of right to self-determination of the Saharawi people and of its permanent sovereignty over their natural resources

26. For long time, Germany has supported the legality of the process of self-determination of the Saharawi people and the organisation of a free and democratic referendum in Western Sahara.
27. In his position of Personal Envoy of the UN Secretary-General, from April 2017 to May 2019, Former federal President Mr. Hans Köhler, has tried to reactivate the negotiation process between the two parties (the Kingdom of Morocco and the Polisario Front), but finally decided to step down.
28. The last German government, led by Chancellor Scholz has decided to depart from the legal approach and to support the Moroccan proposal of an autonomy statute of Western Sahara under the Moroccan sovereignty, thus actively participating in the delay of the decolonisation process of Western Sahara.
29. Instead of taking legislative, administrative or other measures in respect of their nationals and the bodies corporate under their jurisdiction that own and operate enterprises in the Non-Self-Governing Territories of Western Sahara, which affect the interests of the peoples of the Non-Self-Governing Territory as long as they have not expressed their previous and genuine consent, the German authorities encourage and support the activities of major German companies⁴ that violate the permanent sovereignty of the Saharawi people over their natural resources.
30. In doing so, the Federal Republic of Germany violates article 1 of the two main Covenants.

G. Conclusion and recommendations

31. The Geneva Support Group for the Protection and Promotion of the Human Rights in Western Sahara deeply deplores the attitude of the Federal Republic of Germany towards the Saharawi people and in particular the obstacles it constantly put in place to their free exercise of their inalienable right to self determination and the violation to their permanent sovereignty over their natural resources.
32. The Geneva Support Group for the Protection and Promotion of the Human Rights in Western Sahara calls upon the Federal Republic of Germany to:
 - abide to all international obligations related to the peoples' right to self-determination;

⁴ Non exhaustive list: HeidelbergCement AG, ThyssenKrupp AG, Warnemünder Hochseefischerei GmbH (Doggerbank Seefischerei GmbH), Köster Marine Proteins GmbH, Deutsche Post DHL Group, Siemens Energy AG, Siemens AG, J Müller Weser GmbH & Co. KG, Briese Schiffahrts, Hamburger Lloyd

- implement without delay common Article 1 of the International Covenant of Economic, Social and Cultural Rights (ICESCR) and of the International Covenant on Civil and Political Rights (ICCPR);
- take legislative, administrative or other measures in respect of their nationals and the bodies corporate under their jurisdiction that own and operate enterprises in the Non-Self-Governing Territory of Western Sahara without the prior and genuine consent of the internationally recognized representative of the people of Western Sahara;
- take positive steps in ensuring the implementation of an independent and impartial mechanism of observation of the Human Rights and International Humanitarian Law violations in the Non-Self-Governing Territory of Western Sahara.
