



Permanent Mission
of the Federal Republic of Germany
to the Office of the United Nations and
to the other International Organizations
Geneva



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Note Verbale

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to refer to the Joint Communication from Special Procedures, Reference AL DEU 3/2019, dated 18 October 2020.

The Permanent Mission of the Federal Republic of Germany is pleased to transmit herewith a contribution, provided by the Federal Government of Germany.

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 14 Januar 2020



To the
Office of the High Commissioner for Human Rights
Palais Wilson
Geneva

Germany's response to the Joint Communication received from:

Mr David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mr Clement Nyaletsossi Voule

Special Rapporteur on the rights to freedom of peaceful assembly and association

Mr Michael Forst

Special Rapporteur on the situation of human rights defenders

Mr Michael Lynk

Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967

Mr Ahmed Shaheed

Special Rapporteur on freedom of religion and belief

Joint Communication from Special Procedures AL DEU 3/2019

Introduction

On 18 October 2019, five Special Rapporteurs sent a Joint Communication to Germany with the reference number AL DEU 3/2019. The German Government welcomes the opportunity to respond to this Communication. Germany takes its international human rights obligations very seriously and is committed to maintaining a constructive dialogue with UN mechanisms, including the Special Procedures of the Human Rights Council, which are a vital aspect of a strong and effective international human rights system. Germany therefore regularly engages with and strongly supports the Special Procedures.

Germany provides the following information in response to questions 1-5 of the abovementioned communication:

The rights to freedom of opinion and expression, of peaceful assembly and of association are guaranteed, inter alia, by Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights. The Covenant is binding federal law in Germany. Articles 5, 8 and 9 of the Basic Law of the Federal Republic of Germany contain similar guarantees, as does the European Convention on Human Rights. These rights, however, are not absolute. Article 19 (2) and (3) of the Covenant provides, for example, that the exercise of the right to freedom of expression carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary to ensure respect of the rights or reputations of others; the protection of national security or of public order (ordre public), or of public health or morals. Articles 21 and 22 of the Covenant contain similar provisions regarding the rights to peaceful assembly and of association.

On 17 May 2019 the German Bundestag (Federal Parliament) adopted by a large majority the motion by the CDU/CSU, SPD, FDP and Bündnis 90/Die Grünen parliamentary groups: "Resisting the BDS Movement with Determination –

Combating Antisemitism". The political motion condemns the BDS campaign's call for a boycott of Israeli goods and services, Israeli scientists, artists or athletes in particular.

The motion stipulates that the Bundestag (not the Federal Government) shall not make the premises and facilities administered by the German Bundestag available to organisations which express antisemitic sentiments or question Israel's right to exist. The motion calls on various governmental bodies not to support events organised by the BDS movement or groups actively pursuing its aims.

Regarding the provision of financial support, the motion differentiates between organisations and projects: the motion calls on the Federal Government not to financially support any organisations that question Israel's right to exist and not to financially support any projects which call for a boycott of Israel or which actively support the BDS movement.

At the outset, it should be noted that as a principle, mere political motions adopted by the German Bundestag cannot – as such - impair individual rights, as they do not affect the rights of an individual. Rather, specific decisions by a governmental body (e.g., a German city or municipality) on requests by supporters of the BDS movement for financial support or for the use of facilities could have such an effect.

If, however, in the context of BDS activities or purported affiliation with BDS, an individual or group perceives his or her rights violated by such an individual decision, it is always possible to take legal action. It is then the responsibility of the German judiciary to determine whether the activities in question are within the scope of the aforementioned rights and whether they were violated.

Additional information is available on the website of the German Bundestag: <https://www.bundestag.de/dokumente/textarchiv/2019/kw20-de-bds-642892>

Regarding the BDS movement, the German Federal Government has stated that it strongly opposes any calls for a boycott of Israel, and it categorically condemns any form of antisemitism. The German Federal Government will always speak out when Israel's right to exist is called into question. The German Federal Government also believes that supporting internationally agreed and UN-backed positions on the two-state-solution does not delegitimise Israel. To make a distinction between Israel in the borders of 1967 and the occupied Palestinian territories is in line with international law.

The German Government concurs with the Rapporteurs that as such it is not antisemitic to criticise the Israeli Government. However, where there is evidence of antisemitic intent in campaigns, advocacy or practices, such acts can and must be condemned.

The protection of human rights defenders remains at the core of Germany's human rights policy. The German Government remains committed to supporting the important work done by human right defenders and civil society organisations that is geared towards a peaceful resolution of the Israeli-Palestinian conflict. This support encompasses the protection of civic space to express legitimate grievances.