

Answer

of the Federal Government

to the minor interpellation tabled by Members of the Bundestag Sevim Dagdelen, Inge Höger, Jan van Aken, further members of the Bundestag and the Left Party parliamentary group.

– Printed paper 17/318 –

The colonial conflict over Western Sahara and persistent human rights abuses

Preliminary remark of the questioner

On 13 November 2009, the Saharawi human rights activist, Aminatou Haidar, was arrested at the airport of Laayoune, the capital of Western Sahara, and denied entry into the occupied territories of Western Sahara, having refused to sign a declaration stating that she was a Moroccan citizen. Mrs Haidar was returning from the USA where she had received a human rights award. Her passport was seized and she was forced against her will to board an airplane bound for the Canary Islands. There she was assured by the Spanish authorities that she would be able to take the next flight home where her two children were waiting for her, whereupon she agreed to leave the airplane.

Once she had set foot on Spanish soil, however, the Spanish authorities refused to allow her to fly back to the occupied territories because she had no passport. This is all the more astonishing in view of the fact that she had been allowed to enter the country without a passport.

Since 14 November Mrs Haidar has been on hunger strike at the airport in Lanzarote in order to draw attention to her situation and to human rights abuses in the occupied territories of her home country. According to eye-witness reports, her health is now giving cause for concern.

This is a new, glaring violation of human rights which, following on from the arrest of seven Saharawi human rights activists on 8 October 2009, makes it clear that the Moroccan Government is now making

no attempt to disguise its attitude to human rights in the occupied territories of Western Sahara. The Moroccan authorities, however, have been committing serious human rights violations ever since they invaded and occupied Western Sahara in October 1975, directly after the International Court of Justice had rejected Morocco's claims. The invasion also sparked the beginning of the flight of Saharawis into exile in Algeria. The supply situation there is, however, precarious. Although Spain withdrew from the region on 28 February 1976, it transferred sovereignty, against UN demands for a process of decolonisation, to Morocco. Since 1979, the Kingdom of Morocco has occupied large parts of the Saharawi Arab Democratic Republic, proclaimed by the *Frente Polisario* (Polisario Front) in February 1976. In the meantime over 80 countries have recognised the Saharawi Arab Democratic Republic which, in contrast to Morocco, is also a founding member of the African Union. Morocco has erected a mined wall (a 5-metre high wall running for more than 2,600 kilometres), separating the territories effectively occupied by it from the eastern third of the country which, like the refugee camps in Algeria, is controlled by Polisario. Morocco continues to lay claim to the entire area.

Since 1991, Morocco has been blocking the UN's efforts to hold a free and fair referendum on the future of Western Sahara, thereby inter alia contravening UN Security Council Resolution 1754 (2007) which provides for a referendum on the status of Western Sahara and in pursuit of the implementation of which the UN MINURSO mission has been working on the ground since 1991.

Intensive mining of minerals, particularly phosphate, is carried on in the territories occupied by Morocco. Morocco is the world's largest exporter of phosphate, some of which is mined in Western Sahara, and of phosphoric acid. Further mineral deposits, including uranium, are suspected but have yet to be exploited. There are thought to be oilfields off the coast of Western Sahara. Fleets of European fishing vessels are already exploiting the fishing grounds off Western Sahara, which is further impoverishing the local population.

Apart from their suspected and known mineral deposits, the regions of Sahara and West Africa have in recent years fallen under the security spotlight of the USA as well as the EU because of piracy, suspected Al Qaida activities, illegal trafficking in arms, drugs and cigarettes and, in particular, as regions of origin and transit of migrants and refugees. While the international community has shown little commitment to finding a political solution to the Western Sahara conflict, the growing frustration in the refugee camps and the training and arming of Moroccan and West African security forces threaten to escalate the situation.

1. What is the Federal Government's assessment of the continuing annexation of Western Sahara by Morocco in contravention of international law and the current status of Western Sahara with respect to international law?

The status of Western Sahara with respect to international law is unclarified.

2. What is the Federal Government's assessment of the current status regarding the holding of a referendum, as demanded by the UN Security Council, in which the Saharawi people have an opportunity to decide, on the basis of the right to self-determination, on their independence or their integration into Morocco?

What does the Federal Government believe are the main reasons for the failure of MINURSO?

The Federal Government continues to support the efforts of the United Nations to find a peaceful solution to the conflict in Western Sahara which has the backing of those involved and which is based on existing UN resolutions. The Federal Government appeals to all parties to resume the talks under the aegis of the UN Secretary-General's Personal Envoy, Christopher Ross, as soon as possible.

The mandate of MINURSO, the UN Mission for the Referendum in Western Sahara, includes monitoring the ceasefire between Morocco and Polisario, as well as organising a referendum on the status of the territory. The Mission is also mandated to support the exchange of prisoners-of-war, the return of refugees and the clearing of land mines. The Mission carries out its duties.

The conflict in Western Sahara is regularly the subject of political talks and contacts conducted by the Federal Government and the European Union, particularly with partners in the region.

3. Does the Federal Government share the view that the "autonomy plan" put forward by the Moroccan Government blocks the referendum demanded by the UN Security Council since it forestalls a decision on the independence or integration of Western Sahara and hence creates a "precondition" which clearly conflicts with the UN Security Council's guidelines?

Please refer to the first part of the answer to question 2.

The Federal Government points out that the UN Security Council takes note of the Moroccan autonomy proposal and Polisario's proposal in its resolution 1871 (2009). Like Security Resolution 1754 (2007), Resolution 1871 (2009) calls on the parties to continue negotiations directly and without preconditions.

4. Does the Federal Government intend to recognize the Saharawi Democratic Arab Republic as a sovereign state?

If so, when?

If not, why not?

Please refer to the first part of the answer to question 2.

5. How many and which member states of the African Union recognise the Saharawi Democratic Arab Republic, which is a member of the AU?

The Federal Government does not keep a systematic list of states which recognise the “Saharawi Democratic Arab Republic”.

6. How many and which states outside the AU recognise the Saharawi Democratic Arab Republic?

Please refer to the answer to question 5.

7. To the knowledge of the Federal Government, in which EU member states are there cross-party associations (groups of parliamentarians, circles of friends, etc) which have a special interest in relations with Western Sahara, similar to the Western Sahara Group in the British Parliament (please list if possible)?

The Federal Government does not have a list of cross-party associations with an interest in Western Sahara in the parliaments of EU member states. The organisation of parliamentary work is a matter for the respective parliaments.

8. What are the sources for the statement made by the Federal Foreign Office in its progress report of December 2009 on the subject of Western Sahara that the Moroccan passport of the Saharawi human rights activist, Aminatou Haidar, “was retained by the Moroccan authorities apparently at her own wish”, whereas the version disseminated almost universally in the press was that Mrs Haidar’s passport was confiscated (e.g. *Tagesspiegel*, 3 December 2009)?

Accounts regarding the exact details of Mrs Haidar’s attempt to enter the country at the airport in Laayoune on 13 November 2009 are contradictory. The Federal Foreign Office also points this out in its progress report of December 2009, which was made available to the Bundestag as background information.

9. Is the Federal Government aware that the chairman of the AU Commission, Jean Ping, has condemned the expulsion of the Saharawi human rights activist, Mrs Aminatou Haidar, and, like the UN Secretary-General, Ban Ki-moon, has expressed his concern at the growing tensions between the parties to the conflict in Western Sahara (cf. <http://allafrica.com/stories/200912060001.html>)?

Yes

10. What knowledge does the Federal Government have about concrete activities on the part of the Swedish presidency of the Council with regard to resolving the conflict with the Moroccan authorities over the expulsion of the Saharawi human rights activist, Aminatou Haidar?

The Federal Government welcomes the fact that Mrs Haidar was allowed to return to Laayoune on the night of 18 December 2009.

The Swedish presidency of the EU Council issued a public declaration on 10 December 2009 which, among other things, appealed to the Moroccan authorities to work with the Spanish authorities to seek a positive outcome. Mrs Haidar's case was also raised during the political discussions on 7 December 2009 in the framework of the EU-Morocco Association Council.

11. What concrete initiatives has the Federal Government taken to bring its influence to bear on the Moroccan Government with respect to resolving the conflict with regard to the expulsion of the Saharawi human rights activist, Aminatou Haidar?

During Mrs Haidar's hunger strike, the Federal Government was in close contact with Moroccan agencies and with other parties involved, including our Spanish partners, and pressed for an amicable agreement allowing Mrs Haidar to return to Laayoune. It was also in response to a German request that Mrs Haidar's case was raised with Morocco by the EU Association Council.

12. To what extent does the Federal Government believe that the expulsion of Aminatou Haidar signals an intensification of the repression of the Moroccan authorities which King Mohammed VI of Morocco signalled by his pronouncements that "One is either a patriot or a traitor" and "the enemies of the homeland" do not deserve citizenship (*Die Presse*, 14 December 2009)?

The Federal Government is concerned about increasing tensions and calls on all parties concerned to resume the UN-sponsored talks on resolving the Western Sahara as soon as possible.

13. In view of the growing relations between the EU and Morocco, to what extent will the Federal Government exert pressure for the advanced status of relations between the EU and Morocco to be suspended until such time as Morocco ceases the political persecution of the Saharawi people and releases all those who have been arbitrarily arrested for attempting to assert their basic civil and political rights, and until such time as Morocco holds the referendum demanded by the EU Security Council?

The subjects of human rights, democracy and the rule of law are regularly raised in the context of the European Neighbourhood Policy and also the advanced status with Morocco. The political dialogue in the context of the Action Plan with Morocco provides for this, as does the Association Agreement which accords fundamental importance to human rights for the domestic and foreign policy of the EU and Morocco.

14. What specific initiatives has the Federal Government taken to “bring its influence to bear on both parties to the conflict, particularly on the Kingdom of Morocco, in order to overcome the delays to the peace process”, as the German Bundestag demanded in the resolution adopted on 16 June 1999 in which the German Bundestag committed itself to the UN Peace Plan and the referendum demanded in it (Printed paper 14/1151)?

If not, why not?

The Federal Government is in continuous talks with the parties to the conflict and believes that the United Nations continues to have a key role to play in resolving the Western Sahara conflict.

15. Does the Federal Government control the export of less lethal weapons such as shields, batons, CS and pepper sprays, water cannons, rubber bullets and stun guns to Morocco, with which the Moroccan armed forces, particularly the police and gendarmerie forces, are equipped, since these have been responsible for numerous documented human rights abuses in the territory occupied by Morocco?

If so, which of the items and what quantity have been exported to Morocco in the past ten years?

Depending on the technical specification of the items, the export of CS and pepper sprays, stun guns, electroshock shields and stun batons to Morocco is controlled by Council Regulation (EC) No. 1236/2005 (“Torture regulation”) and of rubber bullets by the Foreign Trade and Payments Ordinance in conjunction with Part I, Section A of the Export List. Other shields and batons as well as water cannons do not require an export permit. No export permits to Morocco were issued for the items in question in the period in question.

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16. Is the Federal Government pressing within the UN for an arms embargo and further sanctions against Morocco until the conflict in Western Sahara has been resolved or is it considering such measures?

If not, why not?

Please refer to the answer to question 2.

17. What programmes run by the EU and its member states to improve the control of migration from Africa, within the context of which Moroccan security forces receive support, equipment and training, is the Federal Government aware of?

What precautions are taken to ensure that this transfer is not used by Morocco as a further way to maintain the occupation of Western Sahara in contravention of international law?

The Federal Government does not run any programme which corresponds to the criteria described. As far as the Federal Government is aware, the EU does not run any corresponding programme at this time. The Federal Government has no knowledge of any bilateral programmes run by other member states of the European Union.

18. Were German representatives involved in the EU Commission's technical mission to Morocco on illegal immigration in October 2005 and in the Euro-African Ministerial Conference on Migration and Development in July 2006, subsequent to which the EU provided the Moroccan Government with money to improve border management capacities?

Did the German representatives use this occasion to raise the subject of the human rights situation in Western Sahara?

What is the Federal Government's assessment of the cooperation of Germany, the EU and its member states with the Moroccan authorities in the "fight against illegal immigration" against the background of the Western Sahara conflict?

In July 2006, Morocco hosted the first Euro-African Ministerial Conference on Migration and Development, which was also attended by Germany. At this Conference and in the context of the EU's Global Approach to Migration, the final declaration included a political action plan for the West African migration route. The final declaration contains a clear commitment on the part of the conference participants to protecting refugees.

Please refer to the answer to question 2.

19. Were or are the Moroccan military involved in Bundeswehr training programmes, for example, within the framework of the International General/Admiral Staff Officer Course (*Lehrgang internationaler Generalstabs- und Admiralstabsdienst - LGAI*)?

If so, which members of the Moroccan armed forces were involved in what courses and what is the Federal Government's view on this in the light of the Western Sahara conflict?

Morocco has been receiving military assistance since 1966. In recent years, most of the training provided for members of the Moroccan armed forces has been on courses in the areas of logistics and NBC defence. Study courses were also offered to and successfully completed by Moroccan officers at the Bundeswehr universities.

Morocco is a regular dialogue partner in North Africa, particularly in the context of the deployment of German naval units in the Strait of Gibraltar. In addition, Germany's military engagement is aimed at strengthening Moroccan involvement in the Mediterranean dialogue forums.

Please refer to the answer to question 2.

20. Have members of the Moroccan security forces received training at the Center of Excellence for Stability Police Units (CoESPU), which was set up in Italy at the Sea Island Summit, under the "Action Plan: Expanding Global Capability in Peace Support Operations", with the consent of the Federal Government (2004) as a member of the G8, and was mandated with the training of gendarmerie forces in third states?

To the knowledge of the Federal Government, what role do human rights play in the training provided at CoESPU?

Is the Federal Government aware of whether, under the auspices of CoESPU, there were visits and exchanges of Carabinieri to/with Moroccan gendarmerie forces?

Does the Federal Government endorse the involvement of the Gendarmerie Royale Marocaine in the European Gendarmerie Force (EUROGENDFOR)?

What is its reaction to the fact that Moroccan gendarmerie forces were involved in exercises conducted by EUROGENDFOR?

The Federal Republic of Germany is not involved in the "Center of Excellence for Stability Police Units" or the "European Gendarmerie Force". The Federal Government does not comment on other countries' bilateral agreements.

21. In the light of the Western Sahara conflict, how does the Federal Government assess the fact that in 2008 Morocco was promised advanced status in the European Neighbourhood Programme and that 224 million euro were made available, with the prospect of a further 682 million euro in the period 2007-2010?

Will the Federal Government work to ensure that future grants under the European Neighbourhood Programme are made contingent on a resolution of the conflict over Western Sahara?

Please refer to the answers to questions 2 and 13.

22. Does the Federal Government share the view expressed in 2002 by the UN Under-Secretary-General for Legal Affairs from March 1994 to March 2004, Hans Corell, that any future exploration and extraction of natural resources against the will and interests of the people of Western Sahara would breach the principles of international law governing mineral resource activities in non-self-governing territories (cf letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, S/2002/161)?

If so, how has the Federal Government ensured and how will it in future ensure that with respect to treaties which also affect Western Sahara, the will and interests of the people of this non-self-governing territory carry due weight?

The Federal Government shares the view expressed by the former Legal Counsel in the UN Secretariat, Hans Corell, in the letter quoted that recent state practice illustrates the legal view that where resource exploitation activities in non-self-governing territories are concluded for the benefit of the peoples of these territories, on their behalf, or in consultation with their representatives, they are considered compatible with the Charter obligations of the administering power (see point 24 of the letter quoted).

The scope of application of international treaties may in some cases have to be established by interpretation. To the extent that bilateral treaties between Germany and Morocco do not contain any explicit definition of the scope of application, the Federal Government will, as it deems necessary, make a unilateral declaration with regard to the status of Western Sahara under international law.

Both in its bilateral relations and through the EU, the Federal Government is at pains not to pre-empt a definition of the status of Western Sahara under international law.

Please refer to the answer to question 2.

23. Does the Federal Government share the view that the plundering of the natural resources of Western Sahara is in blatant contravention of international law, as established in particular in resolutions of the UN General Assembly (e.g. 62/120 and 63/111), as well as in Article 1 of both the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights, both of which were ratified by the Kingdom of Morocco?

The principle of the sovereignty of peoples over their natural resources was confirmed in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (both of 19 December 1966). In its resolutions 62/120 of 17

December 2007 and 63/110 of 18 December 2008, the UN General Assembly urges the administrative powers to take effective measures to safeguard and guarantee the inalienable rights of the peoples of non-self-governing territories to their natural resources (section 11 of both of the resolutions).

Please refer to the answer to question 22.

24. Will the Federal Government press in the European Council for a new version of the EU/Morocco Fisheries Partnership Agreement, which includes a ban on outside use of the Saharawi coastline?

If so, when?

If not, why not?

The Fisheries Partnership Agreement between the Community and Morocco covers the period from 28 February 2007 to 27 February 2011. It carries funding of 36.1 million euro per year, 13.5 million euro of which are designated for the support of fisheries policy in Morocco and for promoting sustainability in Moroccan waters. Article 12 of the Agreement specifies that the Agreement is automatically renewed by four years unless notice of termination is given beforehand.

25. What is the Federal Government's assessment of the support provided by GTZ and KfW in the expansion of the use of wind energy in Morocco in the light of the fact that one of the biggest wind power facilities is currently under construction in the occupied city of Laayoune?

To the knowledge of the Federal Government, are any German firms involved in this?

The Federal Government is not providing funding for any project in Western Sahara.

The Federal Government has no knowledge of any involvement of German firms in the construction of a wind farm in Laayoune.

Please refer to the answer to question 23.

26. Has the Federal Government supported the efforts of Chemische Fabrik Budenheim KG, which has a stake in the largest phosphate processing factory in Jorf Lasfar through the Joint Venture Emaphos (Euro-Maroc Phosphore), together with the Moroccan monopoly, Office Chérifien des Phosphates (OCP), and the Belgian company, Prayon-Rupel, to set up a cooperation agreement with OCP for the mining of phosphate in Western Sahara?

If so, in what form?

The Federal Government has no information regarding the efforts of the German firm in question.

27. Did the Federal Government inform Chemische Fabrik Budenheim KG that involvement in the exploitation of mineral resources from Western Sahara is contrary to international law or is at least contentious under international law?

If not, why not?

Please refer to the answer to question 26.

28. Has the Federal Government followed up reports that ships from German shipping companies have been or are involved in the removal of phosphorus/phosphoric acid from the occupied territories?

If not, why not?

Yes

29. From the standpoint of the Federal Government, would the involvement of German companies supported by it in activities in Western Sahara prejudice the status of the area and convey the impression that the cooperation signals a change in the EU's attitude to the conflict in Western Sahara?

If not, why not?

The general activities of companies in the private sector are not a matter for government and do not influence the position of the Federal Government or the European Union on the status of Western Sahara.

Please refer to the second part of the answer to question 22.

30. Will the Federal Government press, within the framework of the Stockholm Programme and the efforts to "enhance cooperation including the swift conclusion of readmission agreements", in particular in Morocco, for the will and interests of the people of Western Sahara as a non-self-governing territory to carry due weight?

In September 2000, the Commission received a mandate to conduct negotiations with Morocco on the conclusion of a Community readmission agreement. The negotiations began in April 2003. Although agreement on the substance of the agreement was reached in a round of negotiations in January 2009, the negotiations were resumed, at

Morocco's request, to deal with questions relating to evidence and the time limits for responding to requests for readmission.

Please refer to the answers to questions 2 and 13.

31. Does the Federal Government take the view that only individual cases give cause for concern with regard to the human rights situation in Western Sahara (cf. Bundestag printed paper 16/13557, answer to question 1) or is it a case of systematic human rights abuses?

The Federal Government is vigilant in monitoring the upholding of human rights in the region by all parties involved in the conflict in Western Sahara. In this process, it also relies on the reports of international organisations and non-governmental organisations.

32. To what extent is the Federal Government aware that despite signing the Geneva Refugee Convention of 1951, Morocco refuses to accept the ID cards issued by UNHCR as valid and to accord to those in possession of them the rights conferred by them, particularly as regards residence, work, access to public services and freedom of movement?

The Federal Government is aware that the Moroccan Government is critical of the practice of the United Nations High Commissioner for Refugees (UNHCR) in the issuing of identity cards for refugees. To the knowledge of the Federal Government, Moroccan law does not allow holders of UNHCR refugee ID cards to be deported.

As far as people recognised as refugees by UNHCR are concerned, the Federal Government is aware of problems in the issuing of residence permits and access to the labour market, education system and health care. As far as the Federal Government is aware, working unofficially is tolerated in many instances. To the knowledge of the Federal Government, those refugees in greatest need receive assistance from charitable organisations.

33. To what extent is the Federal Government aware that in many instances the Moroccan authorities refuse to issue residence permits to refugees recognised by UNHCR, thereby denying them access to the labour market, the education system, health care and other public services?

Please refer to the answer to question 32.

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34. To what extent is the Federal Government aware that beyond this, recognised refugees and asylum seekers are also repeatedly being detained and shipped off to Oujda on the Algerian border and to Western Sahara because the Moroccan security forces do not recognise the papers issued by UNHCR?

As far as the Federal Government is aware, refugees recognised by the UNHCR and in possession of the corresponding papers should not in principle expect to be arrested in police raids and taken to the Algerian border. A few NGOs have reported exceptional cases. UNHCR runs an office on the Algerian border at Oujda which, according to the Federal Government's information, assists in these cases.

Please refer to the answer to question 32.

35. To what extent is the Federal Government demanding consequences in terms of the cooperation between the EU and Morocco in relation to measures to prevent "illegal immigration" and to secure the EU's external borders in the light of the systematic abuse of human rights in Western Sahara and on the part of the Moroccan authorities vis-à-vis refugees and migrants?

The challenges posed by migration on the southern sea borders of the EU can only be successfully tackled in close cooperation with countries of transit and origin. The EU Global Approach to Migration forms the political framework of the EU's actions in this respect. It specifies the need to strike the right balance between all aspects of migration: containing illegal immigration, exploiting the opportunities of legal migration, linking migration and development. Within the framework of this migration dialogue, the EU regularly presses for adherence to international norms and standards with respect to refugee protection and is participating in efforts to help the countries of origin and transport to build structures to absorb and protect refugees.

36. To what extent is the Federal Government aware that a total of 250 of the approximately 600 (830 in June 2008) refugees recognised by UNHCR have submitted an application for resettlement to UNHCR and have written letters to various embassies; have corresponding applications and letters on the part of UNHCR or those affected also been received by the German Embassy?

If so, how many and with what outcome?

The Federal Government is aware that some of the refugees recognised by UNHCR have submitted an application for resettlement to UNHCR. According to the information available to the Federal Government, only a very small proportion of these fulfil the criteria for resettlement. No applications of this nature have been received by the Embassy of the Federal Republic of Germany in Rabat.