



ELDH European Association of Lawyers for Democracy & World Human Rights

EJDM Europäische Vereinigung von Juristinnen & Juristen für Demokratie und Menschenrechte in der Welt

EJDH Asociación Europea de los Juristas por la Democracia y los Derechos Humanos en el Mundo

EJDH Association Européenne des Juristes pour la Démocratie & les Droits de l'Homme

EGDU Associazione Europea delle Giuriste e dei Giuristi per la Democrazia e i diritti dell'Uomo nel Mondo

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Western Sahara crisis – a solution must be based on international law

ELDH notes with great concern that the status of West Sahara under international law, recognized for decades by the United Nations, has been questioned first by the previous President of the United States of America, Donald Trump, then by the governments of three EU member states (Germany, Spain and France), and now by the High Representative for foreign affairs of the European Union, Mr. Josep Borell. The shameful disregard for international law, and the rights of the Saharawi people, has reached new levels as a result of this political about-face.

The USA recognized Morocco's sovereignty over Western Sahara in December 2020, reiterating the viability of the Moroccan autonomy initiative as a credible and serious solution to end the dispute.

The German Minister for foreign affairs declared in January 2022: "Germany continues to support the search for a just, lasting and mutually acceptable political solution, as provided for in the United Nations mandate." But this was immediately put into perspective when he added: "The autonomy plan proposed by Morocco in 2007 can make an important contribution to moving closer to a solution."

The Spanish government of Socialist Prime Minister Pedro Sánchez has ended nearly five decades of neutrality on the issue by backing Morocco's 2007 proposal that Western Sahara should be granted autonomous status, albeit under the North African country's control. In a letter to Morocco's King Mohammed VI, Sánchez described the plan as "the most serious, credible and realistic basis for the resolution of this disagreement."

The French President Emmanuel Macron echoed Mr Sanchez by stating that Morocco's proposed autonomy plan for Western Sahara is "a basis" on which "serious and credible talks" can be built.

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And finally, Mr. Josep Borell told Spanish television TVE on Friday 1 April 2022 that "Spain's position, opting for the support of Morocco's autonomy initiative, is still within the framework of the UN and the resolutions of the UN Security Council".

It is incomprehensible to ELDH that, after a reference to the United Nations Security Council Resolution 2602 of 2021, which confirmed (as is consistent with previous resolutions) the Sahrawi people's right to self-determination, Morocco's so-called Autonomy Plan for Western Sahara of 2007, can be called an important contribution to a just, lasting and mutually acceptable political outcome based on the aforementioned Security Council Resolution.

We strongly reject these statements, which amount to advocacy on behalf of the occupying power in this last colonial conflict in Africa. The statements deliberately accept violations of international law and human rights. No government can decide the fate of another people, only the Saharawi people will have the right to determine their own future through a referendum.

We all know – and the General Court of the European Union was the most recent international instance to confirm this in September 2021– that Western Sahara is a separate and distinct territory from Morocco, that the latter does not have sovereignty over that area, and that the Frente POLISARIO is the legitimate representative of the Saharawi people.

The ELDH has always held that the solution to the Western Sahara conflict must respect international law and the decisions of the United Nations. In concrete terms, this means that the population of Western Sahara must be involved in the decision on whether Western Sahara should become a sovereign state or a region within the Kingdom of Morocco, with certain regional autonomy rights, through a referendum held under UN supervision. The Kingdom of Morocco has prevented this referendum from taking place for over 40 years. Instead, the vast majority of the territory of Western Sahara has continued to be occupied by Morocco. In violation of international law, and the resources of the Western Sahara are being exploited economically.

The Saharawi people living in the occupied territories have had their freedoms and human rights suppressed. Various member states of the EU participate in the illegal exploitation of the natural resources of the Western Sahara through treaties between the European Union and the Kingdom of Morocco. Decisions of the Court of Justice of the European Union, which declared such treaties invalid, are disregarded or circumvented. In the Security Council of the United Nations, various member states of the EU, as well as the USA, prevented Morocco from being asked to fully tolerate the holding of a referendum on the status of the Western Sahara under international law.

The Saharawi people's right to self-determination must not become the casualty of economic or political interests of other states.

ELDH also deeply regrets the military, financial and political support given to the occupying Power by permanent members of the Security Council and other countries, which reinforce the impunity of the Moroccan authorities for their systematic and serious violations of International Humanitarian and Human Rights Laws.

ELDH calls upon the Kingdom of Morocco to:

- resume negotiations under the auspices of the Secretary-General without preconditions and in good faith for the organisation of a free referendum in accordance with the principles and the spirit of the UN Charter and UN General Assembly resolutions 1514 (XV), 1541 (XV) and 2625 (XXV);

- respect all norms of International Humanitarian Law and in particular the provisions of the Fourth Geneva Convention of 1949;
- immediately release all Saharawi protected persons detained in Moroccan jails;
- immediately lift all measures limiting the freedom of movement and freedom of expression of Saharawi human rights defenders and journalists;
- take all necessary measures to suspend all illegal economic activities affecting the permanent sovereignty of the Saharawi people over their natural resources.

The ELDH calls on the EU and its member states to support the fulfilment of the Saharawi people's right to self-determination and not to support the Moroccan government's proposals for a solution to the Western Sahara crisis on the basis of the current UN resolutions.

The ELDH further calls on the EU and its member states not to conclude any agreements on the exploitation of the natural resources of the territories of Western Sahara illegally occupied by Morocco.

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