



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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(please quote when answering)  
Note No.: 89/2025

Note Verbale

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organisations 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 of Special Procedures AL DEU 07/2024 transmitted 16 December 2024.

The Permanent Mission of the Federal Republic of Germany is pleased to transmit herewith the answer of the Federal Republic of Germany.

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

Geneva, 27 February 2025

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

**Germany's response to the Joint Communication received from:**

**Irene Khan**

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

**Gina Romero**

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

**Mary Lawlor**

Special Rapporteur on the situation of human rights defenders

**George Katrougalos**

Independent expert on the promotion of a democratic and equitable international order

**Francesca Albanese**

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

**Ana Brian Nougreres**

Special Rapporteur on the right to privacy

**K.P. Ashwini**

Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

**Ben Saul**

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

**Joint Communication from Special Procedures AL DEU 7/2024**

**1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.**

We will address most of the concerns raised in the text in our answers to your questions below. The only issue remaining is the use of the term "extremist" (see page 6 of the Joint Communication from Special Procedures AL DEU 7/2024): There is no legal definition on the term "extremism" in German national law that is applicable for the BfV. Therefore, no legal consequences can and do derive from this term.

**2. Please explain on what legal and factual bases the whole BDS movement has been designated as a suspected (extremist) case or subject of extended investigation to verify a suspicion (“Verdachtsfall”). In particular, please indicate how the BDS call to end Israel’s occupation and dismantle the Wall can be interpreted as an “extremist” call to end Israel’s existence as a State, when such calls are consistent with international law.**

The classification as “Verdachtsfall”, which as a terminology has no legal definition in the BVerfSchG, was based on section 3 (1) nos. 1 and 4 of the Federal Act on the Protection of the Constitution (Bundesverfassungsschutzgesetz, BVerfSchG), already cited in the Special Procedure Communication. In order to assess the BDS movement and classify it as “Verdachtsfall”, other behaviours and statements from relevant stakeholders were evaluated beyond the BDS Call. Some of this behaviours encompass incitement to violence and/or hatred against Jews or Israelis. Claims to put an end to Israel’s state existence have also been regularly promoted in Germany at public gatherings involving groups close to BDS. Following the HAMAS terrorist attacks on Israel on 7 October 2023, BDS-affiliated groups mobilised and often participated in anti-Israel gatherings and called for the boycott of Israeli-related companies and goods. Unfortunately, we cannot share more details because the information is classified.

The BDS Call’s first demand is “Ending the occupation and colonisation of all Arab lands and dismantling the Wall”. (<https://bdsmovement.net/call>, last accessed on 18. February 2025). Asking for ending the occupation of Palestinian territories alone is not considered to be extremist. However, some supporters of the BDS movement understand this BDS Call in a way the call to end to the occupation and colonisation of “all Arab lands” comprises the territory of Israel. This interpretation is based on the idea that Israel was founded on Arab land and has been occupying it since then. Demanding an end to the occupation of “all Arab lands” therefore is understood by some supporters of the BDS movement as demanding an end to the State of Israel. BDS Call’s first demand was formulated in an at least ambiguous way allowing extremist organizations to promote sedition and express hate speech under the umbrella of the BDS movement. The Federal Government has a responsibility to protect Jewish life, not only for historic reasons. As the BDS movement and its ambiguous claims have proved to attract extremist organizations, the Federal government has taken the decision to treat it as a “Verdachtsfall”.

**3. Please indicate how the consequent BfV investigation is a necessary and proportionate restriction under international human rights law, including in relation to the direct or indirect impacts on the rights to freedom of opinion and expression, assembly and association, the right to participate in public affairs, and the rights to privacy and reputation.**

The International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR) – two of the most important human rights treaties – are part of German national law and are respected by the authorities. In addition, the BVerfSchG and the Basic Law (Grundgesetz, the German constitution) apply.

All measures and investigations taken have to comply with the principle of proportionality enshrined in the Basic Law and international human rights law. The BfV must act within the bounds of applicable law and must respect these legal restrictions. Even if fundamental rights were concerned here, interference might be justified. The protection of fundamental rights is always limited by the fundamental rights of third parties. Both sides must be weighed carefully. A democracy must be resilient. This also means that a state must be able to take action if its security is at risk.

In addition, all measures and investigations of the BfV are overseen by multiple supervisory bodies, such as the Parliamentary Control Panel (political supervision), the G10 Commission (in cases of interventions affecting the privacy of telecommunications and posts) and the Federal Commissioner for Data Protection and Freedom of Information. Please note that the BfV does not have any prosecuting, executive or police powers.

**4. Please explain whether the German authorities will discontinue using the discredited IHRA definition of “antisemitism”, in light of the fact that this definition has been heavily and repeatedly criticized as being inconsistent with international human rights law.**

In 2017, the Federal Government adopted the IHRA's legally non-binding working definition of antisemitism. Accordingly, it guides the Federal Government's actions and also forms the basis for its work in other bodies such as the EU, OSCE and UN.

It is regarded as a pragmatic guideline for recognizing and combating antisemitism and is not only recognized as such by the German government, but is also accepted and used by 41 other UN member states, civil society, NGOs, sports associations (i.e. soccer clubs), multinational corporations, educational institutions, museums and law enforcement authorities. The IRHA working definition is open to the respective context. Legitimate criticism of the State of Israel, in particular the policies of the Israeli government, is also possible under the IHRA definition, as the EU handbook on the IHRA definition states. However, a clear line is drawn with regard to the right of the state of Israel to exist. Hence, Germany sees no reason to discontinue using the IHRA definition.

It should also be noted that the IHRA working definition has been embraced by the EU and by the Organization of American States, the Latin American and the Caribbean Parliament and welcomed by the European Commission against Racism and Intolerance (ECRI). It seems possible to even consider or describe this as an emerging state practice.