



Kingdom of the Netherlands

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Secretary General to the United Nations

International Law Commission  
Room: DC2-0566

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The Permanent Mission of the Kingdom of the Netherlands to the United Nations presents its compliments to the Secretary General to the United Nations and to the International Law Commission, and has the honour to refer to its report regarding the International Law Commission (A/73/10).

On the instruction of the Netherlands Government, the Permanent Mission of the Kingdom of the Netherlands to the United Nations has the honour to submit hereby its comments and observation on the ILC Draft Conclusions on *Immunity of State officials from foreign criminal jurisdiction*.

The Permanent Mission of the Kingdom of the Netherlands realize that the deadline has already passed, but hopes its comments and observations can still be taken into consideration.

The Permanent Mission of the Kingdom of the Netherlands to the United Nations avails itself of this opportunity to renew to the Codification Division of the Office of Legal affairs, and to the International Law Commission the assurances of its highest considerations.



## **ILC Immunity of State officials from foreign criminal jurisdiction**

### **Comments and observations by the Kingdom of the Netherlands**

1. In accordance with paragraph 34 of the Report of the International Law Commission (ILC) at its 70th Session (A/73/10), the Kingdom of the Netherlands appreciates the opportunity to submit its comments and observations on the ILC Draft Articles on immunity of State officials from foreign criminal jurisdiction. The Kingdom of the Netherlands would like to express its gratitude to the Special Rapporteur, Ms. Concepción Escobar Hernández, as well as to the ILC as a whole for their work on this topic.
2. The Netherlands would like to reconfirm its position on the immunity of State officials from foreign criminal jurisdiction in case of espionage. Acts of espionage are performed by a State official on behalf of a State. State officials engaging in espionage therefore act in an official capacity and should be granted immunity *ratione materiae*. These State officials cannot be prosecuted for engaging in these activities, as they would be immune from legal process.
3. The Netherlands recognizes that immunity *ratione materiae* is not absolute, and that exceptions exist to immunity *ratione materiae*. This would be the case with the commission of international crimes. However, the Netherlands does not consider the commission of espionage to constitute an accepted exception, that is, an exception accepted as a rule of customary international law.
4. As a result, a State official should enjoy immunity *ratione materiae* for acts of espionage when instructed to commit espionage by a sending State. The act should, as a consequence, be attributed to the sending State and it is the sending State that should bear international responsibility for the commission of any internationally wrongful act.