

The Permanent Mission of the Kingdom of the Netherlands to the United Nations presents its compliments to the Office of Legal Affairs of the United Nations and, with reference to the latter's Note Verbale of 21 August 2019 with no. LA/COD/40, has the honour to inform the Office of Legal Affairs as follows.

The Office of Legal Affairs has invited the Kingdom of the Netherlands to consider the request of the International Law Commission as contained in paras. 29, 30 and 31 of Chapter III of its 2019 Report. The Commission requested the States to provide information on the existence of manuals, guidelines, protocols or operational instructions addressed to State officials and bodies that are competent to take any decision that may affect foreign officials and their immunity from criminal jurisdiction in the territory of the Netherlands as a forum State, to provide information on their practice relating to general principles of law and to submit any information that States could provide on their practice concerning sea-level rise in relation to international law.

*Immunity of State officials from foreign criminal jurisdiction*

The Kingdom of the Netherlands would like to inform the Office that it does not have specific guidelines or protocols addressing its judicial authorities on the question of immunity of foreign State officials. In addition, there is no authority appointed to advise on the application of immunity in cases involving the exercise of jurisdiction over foreign State officials.

Dutch law explicitly provides for compliance by Dutch courts with international law in their exercise of jurisdiction. Article 13 (a) of the Act on General Provisions of the Kingdom Legislation (Wet Algemene Bepalingen) stipulates that the jurisdiction of the courts and the execution of judicial decisions and deeds are subject to the exceptions thereto recognised in international law. Under this law, immunity may constitute an such an exception. This has been confirmed in the case law of Dutch domestic courts. See for instance *Morning Star International Corporation v. The Kingdom of the Netherlands*, judgment of the Supreme Court of 30 September 2016 in response to preliminary questions of the Court of Appeals of Amsterdam, case no. ECLI:NL:HR:2016:2236. This case concerned immunity of execution for pre-judgment measures of attachment, but immunity of foreign State officials would be treated similarly.

In 2017, the Supreme Court of the Netherlands has decided that all courts of the Netherlands must, ex officio, consider whether immunities apply, even in case of a non-appearing State or international organisation (see *Iraq and the Central Bank of Iraq vs. X*, judgment of 1 December 2017, case no. ECLI: NL: HR: 2017 : 3054).

The Kingdom of the Netherlands presumes that the present invitation does not extend to the kind of information provided to members of diplomatic and consular missions and officials of international organisations on the territory of the Kingdom of the Netherlands. This kind of information is contained in the Protocol Guide for Diplomatic Missions and Consular Posts in the Netherlands. The Protocol Guide does include a chapter on immunity, which provides guidance for foreign States and their diplomatic and consular representatives on how to claim Immunity and urges them to claim immunity when they consider that such is appropriate.