



Permanent Mission of the  
Kingdom of the Netherlands to  
the United Nations

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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 11 August 2022 with no. LA/COD/40, has the honour to inform the Office of Legal Affairs as follows.

In this Note Verbale, the Government wishes to respond to the information requested by the International Law Commission on sea-level rise in relation to international law as stipulated in Chapter III of its report from 2022. The comments and observations on sea level rise relating to (a) the subtopic of statehood and (b) the subtopic of protection of persons affected by sea-level rise are included in the Annex and the corresponding Appendix.

The Government reserves the possibility to send complementary comments and observations relating to the other countries within the Kingdom of the Netherlands at a later stage.

The Permanent Mission of the Kingdom of the Netherlands to the United Nations avails itself of the opportunity to renew to the Office of the Legal Affairs of the United Nations the assurances of its highest consideration.

## Annex I

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

#### **(a) in relation to the subtopic of statehood, information on the practice of States, international organizations and other relevant entities, and other pertinent information concerning:**

##### **i. appraisals and/or practice on the requirements for the configuration of a State as a subject of international law and for the continuance of its existence in the context of the phenomenon of sea-level rise;**

According to the Netherlands, state practice shows that the criteria for statehood are not applied in the same manner to cases of the creation of States and cases of the continuity or extinction of States. This state practice demonstrates the existence of a strong presumption in favor of the continuity of statehood, even in cases in which one or more criteria are no longer met. In this regard, the Netherlands, in accordance with the practice of the great majority of States, has, on the basis of the presumption of continuity, acknowledged the continuance of statehood of Kuwait during the occupation by Iraq in 1990-1991<sup>1</sup> and of Albania in the period 1997-1998 even though it was impossible to speak of effective government during this period of implosion of Albanian state structures.<sup>2</sup> The same applies with respect to Somalia since 1991.<sup>3</sup> Also, most States did not recognize the annexation of the Baltic States by the USSR *de jure* and continued to recognize their *de jure* statehood during their *de facto* incorporation into Soviet Union. For instance, on 27 August 1991, the EU stressed the "restoration of the sovereignty and independence of the Baltic States".<sup>4</sup> In respect of the differences between the creation of States and their continuance, it is also noted that the relative strictness of the application of the criteria for statehood in the case of the creation of states is inextricably linked with the prohibition on premature recognition. In those cases in which a territorial entity is created on the territory of another State, premature recognition may lead to a violation of the principles of non-intervention and territorial integrity. Such a prohibition and such legal consequences do not apply in regard of those cases in which an entity is continued to be recognized as a State while one or more of the criteria for statehood are no longer met.

##### **ii. appraisals and/or practice regarding the nature of the territory of a State, including therein the land surface and the jurisdictional maritime zones, particularly in the context of the sea-level rise;**

As the Netherlands is largely situated under mean sea level, coastal defense is very important. In recent years, various major projects were undertaken which had a large impact on the territory and baselines of the Dutch coast. A first example of such project relevant in this context is the construction of Maasvlakte 2 (see Annex I), an extension to the Rotterdam harbour which was built on land that was reclaimed from the North Sea. As a result of this construction, the outer limit of the territorial sea was extended almost three miles. The outer limit of the

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<sup>1</sup> See also UNSC Resolution 661 of 6 Augustus 1990.

<sup>2</sup> See also UNSC Resolution 1101 of 28 March 1997.

<sup>3</sup> See also, e.g., UNSC Resolution 897 of 4 February 1994 (emphasizing "respect for the sovereignty and territorial integrity of Somalia", while also referring to "the exceptional circumstances, including in particular absence of government in Somalia").

<sup>4</sup> Quated in British Yearbook of International Law, Vol. 62, 1991, p. 558.

exclusive economic zone remained unchanged due to boundary treaties with neighbouring states. Another example of a project (see Annex I) which had effect on the baselines of the Netherlands is the Sand engine or Sand Motor ('Zandmotor' in Dutch). Close to the city of The Hague, a large amount of sand was used to create an extension to the beach, extending almost one kilometre from the original coastline. The outer limit of the territorial sea was extended by one kilometre as well. The aim of this project is to provide sand nourishment of the beaches northward, and make annual maintenance no longer necessary. Both projects were presented and discussed by the Netherlands Hydrographic Office at the ABLOS conference (2012) where experts on the law of the sea meet every two years.

**iii. practice related to the protection of the rights of peoples and communities, as well as to the preservation of their identity, that may contribute with elements or be considered by analogy when addressing the phenomenon of sea-level rise;**

As stated by the Netherlands in *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, the right of self-determination of peoples is not exhausted by a one-off exercise, but a permanent, continuing, universal and inalienable right with a peremptory character.<sup>5</sup> According to the Netherlands, under international law, a distinction must be made between situations in which the right of self-determination is exercised in a manner that preserves international boundaries (internal self-determination) and in a manner that involves a change of international boundaries (external self-determination).<sup>6</sup> In the post-colonial context, the population of a State has a continuing entitlement to internal and external self-determination. This means that the population of a State is entitled to choose, in full freedom, for the continuance of the independence of the State, or for association with or integration in one or more other States. The latter option can only be realized when the peoples of the other State or States express, in full freedom, their approval with such a construction.

In this respect, it is also noted that, in the *East Timor* case, the International Court of Justice held:

"[i]n the Court's view, Portugal's assertion that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable." (*ICJ Reports 1995*, p. 90, at para. 29).

In the view of the Netherlands, this finding of the Court is of an essentially different nature than the Court's statements in the *Barcelona Traction* case and the *Wall* case (in which the Court stated that the right of self-determination entails an obligation *erga omnes* to respect that right), and is of fundamental importance to the legal protection of the right of self-determination of peoples

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<sup>5</sup> Legal Consequences of the Separation of the Chagos Archipelago From Mauritius in 1965, Written Statement of the Kingdom of the Netherlands, 27 February 2019, para. 1.5.

<sup>6</sup> Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo, Written Statement of the Kingdom of the Netherlands, 17 April 2009, para. 3.5.

under international law. In the view of the Netherlands, the Court's qualification of the right of self-determination as a *right* that shall be respected *erga omnes* means that a people is not only entitled to respect for its right of self-determination *vis-à-vis* the State within which international boundaries that people resides, but also *vis-à-vis* all other States and, indeed, the international community as a whole. In turn, the members of the international community are under a corresponding obligation to respect the right of self-determination of peoples residing in another State. According to the Netherlands, given the Court's statements in the *Barcelona Traction* case and the *Wall* case and because of the fundamental character of the right of self-determination under international law, the corresponding obligation on the part of the members of the international community must be deemed to have an *erga omnes* character as well.<sup>7</sup>

**(b) in relation to the subtopic on protection of persons affected by sea-level rise:**

**i. Measures relating to risk reduction specific to the mitigation of the adverse impacts of sea-level rise;**

Mitigating the adverse effects of sea-level rise and the measures related thereto on the risk reduction are assessed through water management laws, programmes, and plans. Water management in the European part of the Kingdom of the Netherlands is the joint responsibility of the central government, provinces, municipalities and water authorities. The Netherlands believes that collaboration is an important prerequisite for effective action.

*A. National legal framework*

The framework for the modernisation of Dutch water management consists of the Dutch Water Act and the Delta Act. These acts created a framework for the modernisation of Dutch water management that is required in the coming decades. This integrated framework simplifies the implementation of the European Union Water Directives. This applies, among other things, to the Water Framework Directive, which is based on the management of international transboundary river basins (rivers, lakes and deltas), the Directive on the Assessment and Management of Flood Risks, and the Marine Strategy Framework Directive.

Per 1 January 2024, with the Environment and Planning Act (*Omgevingswet*), the existing laws on spatial planning, housing, infrastructure, the environment, nature and water are combined, integrated and modernised again. The Water Act will be incorporated into the Environment and Planning Act. The Delta Act will be continued separately from the Environment and Planning Act.

*B. National plans and programmes on watermanagement*

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<sup>7</sup> Cf. Legal Consequences of the Separation of the Chagos Archipelago From Mauritius in 1965, Written Statement of the Kingdom of the Netherlands, 27 February 2019, paras. 4.1. - 4.5.

Policies on water management in the form of plans and programmes lay down the goals for the Netherlands for the upcoming years. The Delta Programme, the River basin Management Plans, the Flood Protection Programme, the flood risk management plans for the four basins of the Rhine, Meuse, Schelde and Ems rivers are all examples of programmes and plans which, together, are energetically tackling water challenges. Two of them are key to the questions posed:

- The National Water Programme lays down the central government's strategic goals for water management;
- The aim of the Delta Programme is to ensure that flood risk management, freshwater supply, and spatial planning will be climate-proof and water-resilient by 2050, so that the Netherlands will continue to be able to cope with increasing weather extremes.

### C. Flood risks

The European Union Floods Directive obliges Member States to assess the flood risk, to map the extent of assets and humans at risk, and to reduce these risks by taking adequate and coordinated measures. The Directive does not prescribe specific safety standards. The competence to design flood risk management standards in the Netherlands (as in any other Member State of the European Union) therefore remains a national one. Since 2017, Dutch legislation, in particular the Annexes II and III of the Dutch Water Act, contains concrete safety standards for each dyke segment based on the costs of dyke strengthening and the potential consequences of a flood. Overall, the safety standards aim at:

- a) Providing a basic level of protection for the population living behind the dyke (probability of casualties due to a flood of 1 in 100,000 years);
- b) Limiting the total number of casualties; and
- c) Preventing substantial economic damage.

The standards for primary flood defences are based on the flood risk approach, which takes account of both the likelihood that a flood will occur and its impact. Flood defences have been divided into stretches – lengths of levee, dam or dune. The maximum probability that the defences will breach, flooding the land beyond, has been determined for each stretch (this is the lower threshold). The stretches of levee with the most stringent standards are those where the impact would be greatest because many people live there, or a flood would cause a lot of damage. In these places, the likelihood of flooding may not be any greater than one in a million per year. Water management authorities must ensure that all primary flood defences meet the standards required by 2050, and that basic protection is guaranteed. To ensure that flood defences are reinforced in time, an alert value has also been set by law. If the probability of flooding along a stretch of levee exceeds this value, this indicates that the protection afforded by this particular element is declining. This may be caused by a number of things, ranging from subsidence or higher river discharges to new knowledge or new policy.

Primary flood defences are managed by the water authorities and (to a small extent) by a central agency (*Rijkswaterstaat*). They constantly monitor the flood defences by performing inspections. If necessary, they carry out physical management and maintenance work, in good time, to control any risk. This 'duty

of care' for flood defences is laid down by law. Every twelve years, the management authorities report to the Minister of Infrastructure and Water Management how the flood defences in their region are faring, on the basis of information on water levels provided by the central government, and using specially developed technical guidelines and software. These resources are updated regularly to incorporate new insights and data. If a stretch of levee does not meet the required standard, this does not mean there is an acute risk, simply that timely measures must be taken, such as extra levee monitoring in the event of high water levels.

The current round of assessment will be completed in 2022 and reported to parliament in 2023. The next round will start in 2023 and end in 2034.

#### *D. Coastal management*

In mitigating the adverse impacts of sea-level rise, the Kingdom of the Netherlands focusses on coastal management. With regard to the European part of the Kingdom, of which a substantial part is situated below sea level, the Netherlands' emphasis is on managing its coast with sand nourishment the coming decades, in order to guarantee the safety of the Netherlands in the future.

Beach nourishment of the Dutch coast with large volumes of sand has proven itself to be an effective and sustainable method to counter the effects of coastal erosion. The Dutch Government (Directorate-General for Public Works and Water Management) has been implementing sand nourishment for many years and aims to further improve this approach to address sea-level rise. A solid knowledge base was developed in the 1990s through the first coastal research programme named "Coastal Genesis".

For better coastal management, the Netherlands will need to gain more knowledge enabling the optimization of the maintenance and management of the Dutch sandy coastline in the future. Therefore, a coastal research programme had been developed, named "Coastal Genesis 2.0". This programme did not only deal with issues concerning the safety of people protected by the coast, but also focused on coastal economy and ecology. Subsequently, the Netherlands has set up a 'Knowledge Programme on Sea-Level Rise', studying the consequences of sea level rise for the Dutch safety infrastructure, both along the coast and further inland. The final results of this programme are expected in 2026.

#### *E. Bonaire, Sint Eustatius and Saba*

The Caribbean parts of the Netherlands, the public bodies Bonaire, Sint Eustatius and Saba (the BES-islands or Caribbean Netherlands), have their own BES-laws and legislation, except for one article in the Water Act regarding the powers of the Minister of Infrastructure and Management in the event of flooding.

Topics related to sea-level rise are covered in various instruments. BES-laws and legislation does contain a basis for measures on climate change and sea level rise, as these can be found in the Environmental Act BES, Nature Protection Act BES,

and the Spatial Planning Act BES which apply to the areas of water management, nature management and housing and spatial planning. On the basis of these laws and regulations, a Nature and Environmental Policy Plan for the Caribbean Netherlands 2020-2030 has been adopted, which also contains measures concerning climate change.

The public bodies Bonaire, Sint Eustatius and Saba do not have a system of water safety standards. This is related to the fact that the BES-islands are located above sea level and are not densely populated. There are no deep polders such as is the case in the European part of the Kingdom of the Netherlands. The European Union based Dutch flood risk management standards are linked to the protection of areas inside the dykes by primary flood defenses. There are no polders in the BES-islands that need to be protected through primary defences. Therefore, this standard is not applicable to Bonaire, Sint Eustatius and Saba. Where in the European part of the Kingdom of the Netherlands the emphasis is placed on protection against floods, the attention for the BES-islands is the timely warning of the residents and the timely deploying of the crisis organization so as to be prepared for storms and hurricanes. Spatial design and spatial regulation provide guidelines for local authorities to implement flood risk management to protect the BES-islands.

Investments are being made for more scientific research in obtaining more insight in order to be able to make a good assessment of the specific risks and needs on the islands due to sea-level rise, storms and droughts. In the first phase of the Nature and Environmental Policy Plan for the Caribbean Netherlands (NMBP), several studies and projects are funded that relate to erosion control, rain water management, spatial planning, and nature and coral restoration. These insights will then be taken into account for the assessments of specific risks and needs.

**ii. Human rights implications of the adverse impacts of sea-level rise;**

As also laid down in article 21 of the Constitution of the Kingdom of the Netherlands, it shall be the concern of the authorities to keep the country habitable and to protect and improve the environment.

The Government must therefore ensure the habitability of the country. This also includes care for water, the defense of the land against the water and the protection and improvement of the living environment. Care for the "living environment" refers to all measures that can be regarded as environmental protection in the broadest sense. This duty of care has been translated into several laws on, for example, water management as set out under (i).

The Kingdom of the Netherlands does presently not expect any human rights implications, because there is currently no real and immediate threat of persons affected by sea-level rise in the near future.

**iii. regulation of the displacement of persons affected by sea-level rise; and**  
**iv. prevention of statelessness arising from the displacement of persons affected by sea-level rise**

The Kingdom of the Netherlands does not provide for specific laws and regulations of the displacement of persons affected by sea-level rise nor the prevention of statelessness arising from the displacement of persons affected by sea-level rise. There is no specific policy for displacement of persons or statelessness of people

affected by sea-level rise, but there is a variety of crisis management options for the protection of persons in the event of a threatening situation or if a dyke breaks.

v. **International cooperation regarding humanitarian assistance to persons affected by sea-level rise**

The Delta Programme and the Dutch Water Act, as such, deal with the protection of the European part of the Kingdom of the Netherlands against flood. Disaster responses, emergency aid and humanitarian assistance in case of a flood is a separate matter, though it can be considered to be highly connected to water management.

A. *National crisis plans*

The National Crisis Centre (NCC) of the Ministry of Justice and Security of the Netherlands in cooperation with the Departmental Crisis Management Coordination Centre (DCC) of the Ministry of Infrastructure and Water Management are tasked with preventing disasters and crises, and minimizing their impact. The NCC also ensures that regional authorities are given enough information to take a harmonized approach. The National Coordinator for Counterterrorism and Security (NCTV) of the Ministry of Justice and Security of the Netherlands works on the basis of the National Safety and Security Strategy to identify security risks at the national level. This includes the risk of flooding.

The DCC has drafted the National Crisis Plan for Floods ('Landelijk Crisisplan Hoogwater en Overstromingen') which elaborates on the governance, scenarios and processes to be followed in the occasion of a flood. Subsequently, the NCC and DCC determine a particular approach of the issue, which could include preventive measures, but might also include establishing emergency response and evacuation plans in place in case a disaster would occur.

Two specific (legal) issues are important to highlight in respect of disaster response in case of a flood. Firstly, the Dutch Safety Regions Act ('Wet veiligheidsregio's') lays the foundation for the organisation of disaster and crisis management with the aim of better protecting citizens against risks. The Safety Regions Act seeks to achieve an efficient and high-quality organisation of the fire services, medical assistance and crisis management under one regional management board. The boards of the Safety Regions, at the local level, and the NCC, at the national level, also provide public information on crises and disasters, including information on a particular incident and on ways for people to reach safety.

As for the Dutch Caribbean Islands, the BES islands, the Dutch Water Act (Article 5.32) and the various BES-acts cover the protection of the Caribbean parts of the Netherlands against flood. The Safety Act BES is in place for the organisation of disaster and crisis management on the islands. For the Caribbean parts, the DCC works closely with the Royal Netherlands Meteorological Institute (KNMI) and has protocols ready for tsunamis and tropical storms/hurricanes. In addition, an interdepartmental crisis handbook (*Handboek crisisbeheersing voor de Caribische delen van het Koninkrijk 2020*) has also been drawn up under the supervision of the NCTV. Exercises are being held by the DCC, Rijkswaterstaat and the local authorities on what to do in case of an emergency.



### *B. International level*

On the international level, the Kingdom of the Netherlands, as an expert on water management, contributes to international cooperation in offering (humanitarian) assistance to other countries preventing flooding disasters worldwide. Together with other countries that also have a lot of expertise on water management, the Netherlands seeks to further supply specialists on emergency aid in case of high water or flood. These specialists can offer aid and assistance to countries that do not have that specialist knowledge. Within the Ministry of Infrastructure and Water Management, expertise and resources are available to deploy national and international emergency aid in the event of high water or a flood:

- Dyke inspectors (from Rijkswaterstaat);
- Hydrologists (from Rijkswaterstaat);
- Specialists on risk assessment for public health and the environment (from the National Institute for Public Health and the Environment (RIVM));
- Drinking water experts (from RIVM);
- High capacity pumps (emergency pumps), including two permanent and EU certified emergency pump experts (from DCC).

**Appendix: Information on sea-level rise in relation to the law of the sea**

1. Maasvlakte 2 – October 2009 and July 2012



2. Sand engine – January 2012 and May 2012

