



Kingdom of the Netherlands

H.E. Mr. António Guterres
Secretary General to the United Nations

International Law Commission
Room: DC2-0566

Permanent Mission of the
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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 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 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.

General principles of law

The Kingdom of the Netherlands would like to provide the International Law Commission with a selection of judgments of its national courts in which general principles of law are used and of pleadings before international courts and tribunals in which the Netherlands refers to general principles of law (see Annex I).

Sea-level rise in relation to international law

The Kingdom of the Netherlands appreciates the opportunity to submit comments and observations concerning sea-level rise in relation to international law. The Kingdom of the Netherlands would like to express its gratitude to the Study Group, as well as to the ILC as a whole for their work on this topic.

These comments and observations concern the practice of the Kingdom of the Netherlands with regard to ambulatory baselines. This practice occurs only in the European part of the Kingdom. The relevant provisions in the 1982 Convention on the Law of the Sea (UNCLOS) concerning baselines are, with respect to the European part of the Kingdom, implemented through the Netherlands Territorial Sea (Demarcation) Act (*Wet Grenzen Territoriale Zee*) of 1985. This Act describes the method for determining the baselines and consequently the breadth of the

territorial sea. The coastline of the Netherlands consists of normal and straight baselines and closing lines. A normal baseline is defined by the low-water line along the coast. The Act lays down that the low-water line shall be defined as the line indicating the depth of 0 metres on the large-scale Dutch sea charts issued upon the instructions of the Minister of Defence.

The southern North Sea is a relatively shallow sea with a dynamic seabed behaviour. The normal baselines are created from the low water line along the coast, relative to the Lowest Astronomical Tidal chart datum as published in the official charts. Due to a high re-survey frequency and a dynamic seabed, the low water line has a dynamic behaviour. Additionally, low tide elevations within the distance of the 12 NM appear and disappear, causing further changes to the determination of the normal baselines. When such a change occurs at a distance exceeding 0.1 NM, the normal baselines are adjusted accordingly. When a Notice to Mariners or New Edition of a Chart is published, the newly adjusted normal baselines and associated Territorial Sea boundaries are published.

The Kingdom of the Netherlands refers to Annex II for an overview of the changes of the baseline in the Southern North Sea (2007-2009). A full list of the changes in the last five years can be found on the website of the Netherlands' Hydrographic Office.

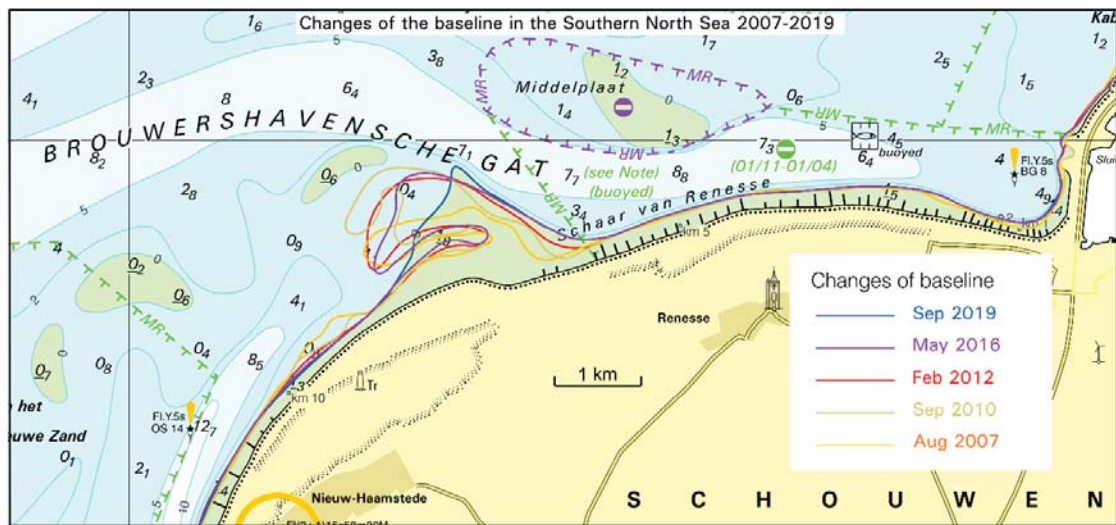
As the Netherlands is largely situated under mean sea level, coastal defense is very important. In recent years, various major projects were undertaken which had a large impact on the baselines of the Dutch coast. The first (see Annex II) is the construction of Maasvlakte 2, an extension to the Rotterdam 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 second project (see Annex II) 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 put on the beach and in front of it, extending almost one kilometre from the original coastline. The aim is to take care of the 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.

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



Annex II: Information on sea-level rise in relation to international law

1. Overview of the changes in the base law in the Southern North Sea (2007-2019)



2. Maasvlakte 2 – October 2009 and July 2012





3. Sand engine – January 2012 and May 2012



