

## NETHERLANDS

### LEGAL BASIS

**1. Has your State signed and/or ratified the *United Nations Convention on special missions (1969)*? If not, does your State intend to sign/ratify the Convention?**

The Netherlands has not signed and/or ratified the United Nations Convention on special missions, nor does it have the intention to do so at this moment.

**2. Does your State apply other international legal instruments in this area (ex.: bilateral, multilateral agreements or headquarters agreements)?**

On the basis of various multilateral conventions and headquarters agreements with International Organisations, representatives of member states of International Organisations generally enjoy full immunity from criminal jurisdiction when attending meetings of the organisation. Examples include:

- Article 4 of the Convention on the Privileges and Immunities of the United Nations; and
- Article 21 of the Headquarters Agreement between the ICC and The Netherlands.

**3. Has your State adopted a specific national legislation in the field of immunities of special missions?**

No, there is no specific legislation. In general, Article 13A of the Act on General Provisions (*Wet Algemene Bepalingen*) states that the jurisdiction of the courts and the execution of judicial decisions and deeds are subject to exceptions recognised in international law. That covers both treaties entered into by the Netherlands and customary international law. Article 3A of the Bailiffs Act (*Gerechtsdeurwaarderswet*) stipulates that bailiffs must inform the Minister of Justice before proceeding with acts that might be incompatible with the obligations of the State under international law. Article 3A empowers the Minister of Justice to intervene in case of such acts, whether or not prompted by the bailiff.

In addition, the International Crimes Act (*Wet Internationale Misdrijven*) stipulates that (section 16):  
'Criminal prosecution for one of the crimes referred to in this Act is excluded with respect to:

- (a) foreign heads of state, heads of the government and ministers of foreign affairs, as long as they are in office, and other persons insofar as their immunity is recognised under international law;
- (b) persons who have immunity under any convention applicable to the Netherlands within the Kingdom.'

**4. Have the authorities of your State released official statements, reports or any other document concerning the status and the immunities of special missions? If so, please provide any relevant information relating to these documents.**

In May 2011 the Advisory Committee on Issues of Public International Law (*Commissie van advies inzake Volkenrechtelijke Vraagstukken*, CAVV) produced an Advisory report on the immunity of foreign state officials.<sup>1</sup> In this report, immunity in the case of special missions is discussed in detail. By letter to the parliament of 26 April 2012<sup>2</sup>, responding to the Advisory report on behalf of the government, the Minister of Foreign Affairs has described the status and immunities of special missions (referred to as “official missions” by the government of the Netherlands).

**5. Does your State consider that certain obligations and/or definitions regarding immunity of special missions derive from customary international law? If so, please provide a brief description of the main requirements of customary international law in this respect.**

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<sup>1</sup> The report is available in English on the website of the CAVV: [www.cavv-advies.nl/publications](http://www.cavv-advies.nl/publications) .

<sup>2</sup> Tweede Kamer, vergaderjaar 2011–2012, 32 635, nr. 5; an unofficial English translation of the merits is to be found on the website of the CAVV, *supra*.

In the view of the Netherlands, there is sufficient basis to conclude an obligation exists under customary international law to accord full immunity to the members of official missions. The underlying reason for the immunity of members of official missions is to facilitate the smooth conduct of international relations. Members of official missions may be seen as 'temporary diplomats'. They, like diplomats, require this immunity in order to carry out their mission for the sending state without interference. Unlike diplomats, members of special missions only require this immunity for a short period, namely the duration of the mission to the receiving state. Therefore, members of official missions enjoy immunity in the Netherlands based on the provisions of Dutch law as mentioned in answer 3. above.

It is doubtful that all of the provisions of the Convention on Special Missions have the status of customary international law. In particular, in the view of the Netherlands, its provisions on privileges and facilities should not be considered as reflecting customary international law.

**6. Please provide information on the scope of the immunities of special missions, in particular:**

**a. The extent of the privileges and immunities granted to special missions and to their members;**

Members of official missions enjoy full immunity - for the duration of the mission - for all their acts, whether performed in an official or in a private capacity, provided that the Dutch authorities have, at the very least, consented to the mission and have been informed of its composition. That includes immunity for international crimes on the basis of section 16 of the International Crimes Act.

**b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);**

The members of an official mission need not be state officials. The immunity of members of an official mission is not linked to the office and term of office, but to the presence of the relevant mission, representing another state, in the Netherlands. Members of an official mission may be non-state officials, such as parliamentarians or business persons. The members may also represent an opposition faction in an internal conflict visiting another state to conduct peace negotiations. In this last example the members of the official mission would not enjoy full immunity if the sending state does not consent or notify the receiving state of the official mission. Family members of the members of an official mission who travel together and have been accepted as such by the receiving state also enjoy full immunity.

**a. The scope *ratione materiae*, in particular by specifying if there are exceptions to the granting of the immunity;**

All the members of the official mission enjoy full immunity.

**b. The temporal limits of the immunities accorded to special missions.**

The full immunity applies only for the (short) duration of the mission.

## **NATIONAL PRACTICE AND PROCEDURE**

**7. Is there national case law in the field of immunities of special missions? If so, please provide information on these decisions (date of the judgment, authority that issued the judgment, name of the parties, main points of law, French or English translation of the judgment or summary of the judgment in English or in French).**

There is no national case law on this issue in the Netherlands.

**8. Is there a mechanism of formal agreement of special missions, namely a process under which your State can accept in advance that an official visit constitutes or not a special mission?**

- a. If yes, which authority delivers these agreements? What weight do the courts attach to such agreements? Is there a formal notification or communication procedure between the governmental authorities and the courts?**
- b. In the absence of such a formal agreement, can an implied consent derive from the behaviour of the governmental authorities?**

In the Netherlands, there is no requirement to give an explicit decision in advance designating a foreign delegation as an official mission. In the letter to the Parliament of 26 April 2012 the minister of Foreign Affairs describes when an official visit from state officials to the Netherlands qualifies as an official mission. For a visit to be an official mission, four conditions need to be met:

1. temporary character
2. the special mission must represent another state
3. visiting another state
4. consent to visit from the receiving state.

If the above mentioned four conditions are met, the mission is legally speaking an official mission. The consent, mentioned under 4., may be in the form of an official invitation or an agreed agenda for a visit. However, holding a visa (for countries that still need a visa to visit the Netherlands) is not enough to qualify as an official visit with the status of an official mission.