



Kingdom of the Netherlands

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**Enclosed**

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The Permanent Mission of the Kingdom of the Netherlands to the United Nations presents its compliments to the Codification Division of the Office of Legal Affairs of the United Nations and has the honour to refer to paragraph 28, of Resolution 72/114, of the General Assembly of 7 December 2017, requesting the Secretary-General 'to prepare and keep updated a report containing a compilation and a summary table of national provisions, based on information received from Member States since 2007, regarding the establishment of jurisdiction over their nationals whenever they serve as United Nations officials or experts on mission, in relation to crimes as known in their existing national criminal laws, particularly those of a serious nature', and to Annex 1 to resolution 71/167, containing the questionnaire on criminal accountability of United Nations officials and experts on mission, pursuant to resolution 70/114, paragraph 23.

The Permanent Mission has the honour to submit to the Codification Division the answers to the questionnaire, including an English translation of the applicable national legal framework.

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 the assurances of its highest considerations.



**Questionnaire on Criminal accountability of United Nations officials and experts on mission,  
pursuant to General Assembly Resolution 70/114, paragraph 23, and Resolution 72/112,  
paragraph 28**

By operative paragraph 23 of General Assembly resolution 70/114 of 14 December 2015, entitled “Criminal accountability of United Nations officials and experts on mission”, the Secretary-General was requested ‘to prepare a compilation, based on information which should be received from all Member States, of national provisions regarding the establishment of jurisdiction over their nationals, whenever they serve as United Nations officials or experts on mission, in relation to crimes as known in their existing national criminal laws, particularly those of a serious nature’.

The General Assembly in paragraph 28, of its Resolution 72/114 of 7 December 2017, reiterated the request to the Secretary-General ‘to prepare and keep updated a report containing a compilation and a summary table of national provisions, based on information received from Member States since 2007, regarding the establishment of jurisdiction over their nationals whenever they serve as United Nations officials or experts on mission, in relation to crimes as known in their existing national criminal laws, particularly those of a serious nature’.

In order to facilitate the collation of information for this compilation, the Codification Division of the Office of Legal Affairs prepared a questionnaire for consideration by Member States in submitting information in response to circular notes LA/COD/50/1 and LA/COD/50/2 dated 31 December 2015, on the same item.

In order to ensure completeness in the preparation of the compilation, the Codification Division would appreciate receiving excerpts of relevant national provisions and short references or citations of such national provisions.

**1. Please indicate the available forms of jurisdiction and list the relevant national provision(s) through which criminal law is applicable to nationals while serving as United Nations officials or experts on mission; please also specify whether specific legislation applies to United Nations officials and experts on mission:**

(a) Territoriality	Section 2 Criminal Code
(b) Nationality	Section 7 Criminal Code
(c) Passive personality	Section 5 Criminal Code
(d) Effective doctrine	-
(e) Protective doctrine	Section 4 Criminal Code
(f) Universality	Section 6 Criminal Code
(g) Other (if any)	-
Specific law with regards to Dutch officials	Section 8 Criminal Code
Specific law with regards to Armed Members forces	Section 4 Military Criminal Code

**2. To what extent do national provisions establish jurisdiction *ratione personae* over crimes committed extraterritorially by nationals while serving as United Nations officials and experts on mission (please indicate all that apply and cite relevant national provisions):**

- |  |                                  |
|--|----------------------------------|
| (a) General application to all persons                             | Section 4 Criminal Code          |
| (b) Jurisdiction over nationals                                    | Section 7 Criminal Code          |
| (c) Jurisdiction over stateless persons                            | -                                |
| (d) Jurisdiction over foreign nationals (list specific exceptions) | -                                |
| (e) Specific legislation for particular categories of persons      |                                  |
| (i) Military United Nations officials and experts on mission       | Section 4 Military Criminal Code |
| (ii) Police United Nations officials and experts on mission        | Section 8 Criminal Code          |
| (iii) Civilian United Nations officials and experts on mission     | Section 8 Criminal Code          |
| (iv) Public officials acting in foreign jurisdictions              | Section 8 Criminal Code          |
| (v) Other (if any)   | -                                |

**3. To which extent do national provisions establish jurisdiction *ratione materiae* over crimes committed extraterritorially by nationals while serving as United Nations officials or experts on mission (please indicate all that apply and cite relevant national provisions):**

- |   |   |
|---|---|
| (a) General application of criminal law   | Section 4 Military Criminal Code          |
| (b) Application limited to international treaty obligations   | Section 6 Criminal Code                   |
| (c) Application limited to crimes of a 'serious nature'   | Section 4 Criminal Code                   |
| (d) Application limited to 'international crimes', including genocide, crimes against humanity and war crimes | Section 2.1.c International War Crime Act |
| (e) Application limited to crimes accompanied with minimum imprisonment term (eg. 3/5 years)                  | -   |
| (f) Application limited to crimes affecting 'essential interest(s) of the State'                              | Section 4 & 5 Criminal Code               |
| (g) Application limited to crimes affecting public security   | Section 4 & 5 Criminal Code               |
| (h) Application limited to specific list of crimes  | Section 7 Criminal Code                   |
| (i) Other limitations to the application <i>ratione materiae</i> of domestic law (if any)                     | -   |

**4. Which, if any, prerequisites are placed before the application of extraterritorial jurisdiction for United Nations officials or experts on mission (please indicate all that apply and cite relevant national provisions):**

(II) (b) Double criminality, with specific limitations to its application with exception of members of the armed services (Section 4 Military Criminal Code); and,

(d) Application of principles of ne bis in idem

**5. What is the legal basis for the application of rules of immunity to United Nations officials or experts on mission (please indicate all that apply and cite relevant national provisions):**

(a) Convention on Privileges and Immunities of the United Nations, 1946, as applicable

(b) Specific agreement with the United Nations (SOFA/SOMA/other)

(c) Specific agreement with the host State (SOFA/SOMA/other)

**6. To what extent is military and/or civilian law applicable to crimes committed by United Nations officials or experts on mission (please indicate all applicable categories and cite relevant national provisions):**

(a) Exclusive application of military law to military personnel deployed as United Nations officials or experts on mission: Section 4 Military Criminal Code;

(b) Exclusive use of military courts for military personnel deployed as United Nations officials or experts on mission: Section 55 Judiciary Organization Act (Since 1991, the military justice system has been integrated into the civilian administration of criminal justice, with a centralized military chamber of the district court and Court of Appeal that have exclusive jurisdiction over offenses committed by military personnel);

(c) Potential application of civilian law/courts to military personnel: general Criminal Code is equally applicable to military personnel: Section 1, para Military Criminal Code

**7. Please provide any other comments.**

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## **Criminal Code**

*Warning: this is not an official translation. Under all circumstances the original text in Dutch language of the Criminal Code (Wetboek van Strafrecht) prevails. The State accepts no liability for damage of any kind resulting from the use of this translation.*

## **Criminal Code**

(Text valid on: 01-01-2017)

### **Act of 3 March 1881**

We WILLEM III, by the grace of God, King of the Netherlands, Prince of Orange-Nassau, Grand Duke of Luxemburg etc. etc. etc.

Greetings to all who shall see or hear these presents! Be it known:

Whereas We have considered that it is necessary to enact a new Criminal Code;

We therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree, to establish the following provisions which shall constitute the Criminal Code:

## **Book One. General Provisions**

### **Part I. Scope of Application of Criminal Law**

#### **Section 1**

1. No act or omission which did not constitute a criminal offence under the law at the time of its commission shall be punishable by law.
2. Where the statutory provisions in force at the time when the criminal offence was committed are later amended, the provisions most favourable to the suspect or the defendant shall apply.

#### **Section 2**

The criminal law of the Netherlands shall apply to any person who commits a criminal offence in the Netherlands.

#### **Section 3**

The criminal law of the Netherlands shall apply to any person who commits a criminal offence on board a Dutch vessel or aircraft outside the territory of the Netherlands.

#### **Section 4**

The criminal law of the Netherlands shall apply to any person who commits outside the territory of the Netherlands:

- a. any of the serious offences defined in sections 92-96, 97a, 98-98c, 105 and 108-110;
- b. any of the serious offences defined in sections 131 to 134 and 189, if the criminal offence or the serious offence referred to in these sections is a serious offence as defined in 'a';
- c. any of the serious offences defined in sections in article 208 to 2014 and 216 to 223;
- d. any of the serious offences defined in sections 225 to 227b and 232 if the serious offence is committed against a Netherlands government institution;
- e. any of the serious offences defined in sections 381 to 385b, 409, 410 or an offence defined in section 446a;
- f. the serious offence defined in section 207a

#### **Section 5**

1. The Criminal law of the Netherlands shall apply to any person outside the Netherlands who commits a serious offence against a Dutch national, a Dutch official, a Dutch vehicle, - vessel or aircraft as long as the serious offence is punishable by law with at least 8 years of imprisonment and also punishable by the law of the country where the serious offence was committed.
- 2 paragraph one shall apply to the foreign national who has his permanent place of residence or abode in the Netherlands.

## **Section 6**

1 The Criminal law of the Netherlands shall apply to any person outside the Netherlands who commits an offense which pursuant per governmental decree specified treaty or decision of an organization under international law which obliges to establish jurisdiction over that offense.  
2 the governmental decree, as referred to in paragraph 1, describes the offences for which per decree specified treaties or decisions of an organization under international law make the establishment of jurisdiction mandatory.

## **Section 7**

1 The criminal law of the Netherlands shall apply to any Dutch national who commits outside the territory of the Netherlands, an offence that is regarded as a serious offence under the criminal law of the Netherlands and is punishable under the law of the country where it was committed.  
2 The criminal law of the Netherlands shall also apply to any Dutch national who commits outside the territory of the Netherlands;  
any of the serious offences defined in sections I and II from book II and [articles 192a to 192c, 197a to 197c, 206, 237, 272 and 273](#);  
any of the serious offences defined in sections [177, 178, 179, 180, 189, 200, 207a, 285a and 361](#), in so far the offense was mentioned to undermine the administration of justice from the International Criminal Court;  
any of the serious offences defined in sections [article 240b and 242 to 250](#)  
any of the serious offences defined in sections article 300-303 in so far the offense constitutes genital mutilation by a person of the female sex who has not yet reached the age of 18;  
the serious offence defined in section 284  
3. Paragraph 1 and 2 (b-e) shall apply to any suspect who only acquires his Dutch citizenship subsequent to the commission of the offence and or the foreign national who has his permanent place of residence or abode in the Netherlands.

## **Section 8**

The criminal law of the Netherlands shall apply to a Dutch official who commits any of the serious offences defined in Part XXVIII of Book Two outside the territory of the Netherlands;

### **Section 8a**

The criminal law of the Netherlands shall apply to the master of a Dutch vessel and all other persons on board the vessel who commit, on board or elsewhere, any of the criminal offences defined in Part XXIX of Book Two and Part IX of Book Three outside the territory of the Netherlands.

### **Section 8b**

1. The criminal law of the Netherlands shall apply to any person whose prosecution is transferred to the Netherlands by a foreign state on the basis of a treaty which confers jurisdiction to prosecute on the Netherlands.  
2. The criminal law of the Netherlands shall apply to any person whose prosecution is transferred to the Dutch Public Prosecution Service on the basis of such application from the Public Prosecution Service of Bonaire, St. Eustatius and Saba.  
3. The criminal law of the Netherlands shall also apply to any person whose extradition or surrender for a terrorist offence or a serious offence committed with the intention of preparing or facilitating a terrorist offence is declared impermissible or is rejected or refused.  
4 The criminal law of the Netherlands shall also apply to any person whose prosecution is transferred to the Netherlands by an international court established pursuant to a treaty or a decision of an organization under international law.

### **Section 8c**

The Criminal law of the Netherlands shall apply to any foreign national outside the Netherlands who commits an serious offense punishable by law with at least 8 years of imprisonment if the foreign national is residing in the Netherlands and:.

- extradition with regards to the serious offence is denied for a reason which does not exclude a possible Dutch prosecution, or
- extradition with regards to the serious offence is not an option due to the lack of an extradition treaty and also punishable by the law of the country where the serious offense was committed.

### **Section 8d**

The applicability of sections 2-8c shall be limited by the exceptions recognised in international law.