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In copy:

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The Permanent Mission of the Kingdom of the Netherlands to the United Nations presents its compliments to the Secretary-General of the United Nations and would like to inform the latter of the following. With reference to General Assembly resolution 75/142 of 15 December 2020, entitled "The scope and application of the principle of universal jurisdiction", the Office of Legal Affairs of the United Nations in its diplomatic note of 18 December 2020 (Reference: LA/COD/59/1) invited Member States to submit information and observations on the scope and application of universal jurisdiction, including, where appropriate, information on the relevant applicable international treaties and on their national legal rules and judicial practice. In this resolution, the Secretary-General of the United Nations had also been requested to prepare and submit to the Assembly at its seventy-sixth session a report based on such information and observations.

For the Netherlands, the most relevant piece of legislation in respect of universal jurisdiction is the International Crimes Act of 19 June 2003, which entered into force in October 2003. This act replaced several pieces of legislation on genocide, war crimes and torture, including the Dutch Genocide Convention Implementation Act ("Uitvoeringswet genocideverdrag") and the Dutch Torture Convention Implementation Act ("Uitvoeringswet folteringverdrag"). It also replaced several clauses of the Dutch Criminal Law in Wartime Act ("Wet oorlogsstrafrecht"). In addition, the 2003 International Crimes Act ("Wet internationale misdrijven") codified the criminalization of crimes against humanity in Dutch national law. One of the main aims of the adoption of the International Crimes Act was the full implementation of the Rome Statute of the International Criminal Court, which the Netherlands ratified on 17 July 2001 and which entered into force on 1 July 2002.

Article 2 of the International Crimes Act states that, without prejudice to the relevant provisions of the Criminal Code and the Code of Military Law, Dutch criminal law shall apply to:

- a. anyone who commits any of the crimes defined in this Act outside the Netherlands, if the suspect is present in the Netherlands;
- b. anyone who commits any of the crimes defined in this Act outside the Netherlands, if the crime is committed against a Dutch national;



c. a Dutch national who commits any of the crimes defined in this Act outside the Netherlands.

In terms of providing a basis for the exercise of universal jurisdiction by the Netherlands, the first element mentioned above is the most relevant part, as it allows the authorities to investigate and prosecute the crimes covered by the International Crimes Act when these have been committed abroad by foreign nationals. However, the International Crimes Act does not provide for full, unlimited jurisdiction in respect of international crimes. The judicial authorities of the Netherlands cannot open an investigation into alleged international crimes committed abroad by foreigners against non-nationals without the suspect having been identified and present in the country. Investigations into a general situation are not possible, unless the victim(s) and/or the alleged perpetrator(s) are Dutch nationals (Article 2). In other cases, Dutch authorities are therefore only competent to investigate universal jurisdiction cases if the suspect is present on the territory during the investigation. In such cases, the decision to investigate and prosecute is based on a decision by the public prosecutor's office.

Dutch law does not require that the conduct under investigation or prosecution is also criminalized in the State of nationality of the suspect, or in the State in which the crime was committed. Hence, double criminality is not a prerequisite for the investigation or prosecution of international crimes.

In terms of its material scope of application, the International Crimes Act criminalizes genocide, crimes against humanity, war crimes and the crime of aggression based on the provisions of the Rome Statute, while taking into account relevant amendments to the latter. In addition to the Rome Statute, the International Crimes Act criminalizes torture (Article 8) and enforced disappearance (Article 8a) and aggression (Article 8c) as stand-alone crimes in order to implement the obligations of the Netherlands under the Convention against Torture and the International Convention for the Protection of all Persons from Enforced Disappearance.

In the past 20 years, the Netherlands has invested a significant amount of resources in the investigation and prosecution of individuals suspected of having committed core international crimes. Special teams within the national police service and the prosecution service have undertaken highly complex investigations, which have led to a significant number of convictions and important steps in the development of relevant case law. An overview of these cases can be found at www.warcrimes.nl. In addition to the International Crimes Act, the Netherlands Criminal Code (Article 381) provides a basis for the exercise of universal jurisdiction by the Netherlands over the crime of piracy committed on the high seas. Prosecutions based on this provision have also led to a number of convictions since 2010.

Additional information regarding the relevant legal framework national and its application in the Netherlands is available in the following reports:

- Human Rights Watch, The Legal Framework for Universal Jurisdiction in the Netherlands, 2014,
https://www.hrw.org/sites/default/files/related_material/IJ0914Netherlands_0.pdf;



- Open Society Justice Initiative and Trial International, Universal Jurisdiction Law and Practice in the Netherlands, April 2019,
<https://www.justiceinitiative.org/uploads/3574da67-0a4a-4cd1-855a-15317737162c/universal-jurisdiction-netherlands-20190606.pdf>.

The Permanent Mission of the Kingdom of the Netherlands to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

