November 2005

NETHERLANDS

Explanatory note of the Kingdom of the Netherlands

Treaties, legislation and Explanatory Memoranda

The Netherlands legislation with regard to State Immunity is limited. Article 13a of the Act on General Provisions of Kingdom Legislation (*Wet Algemene Bepalingen*, commonly known as *Wet AB*), (NL / 1), only states that the jurisdiction of the courts and the execution of judicial decisions and deeds are subject to exceptions recognised in international law. Also there is the possibility for the State under the Bailiffs Regulation (*Deurwaardersreglement),* (NL / 2)[1], to prevent an attachment, which it considers to be contrary to its obligations under international law. These obligations are laid down in international customary law and in the European Convention on State Immunity, to which the Netherlands is a party.[2] The Netherlands law of State immunity is, however, to a large extent formed by the case law of the Courts.

Case law

The Supreme Court accepted in a very important decision of 1973 the relative concept of State immunity. Since that time the Courts have gradually enlarged the number of subjects covered by their case law and fine-tuned their reasoning in line with the earlier mentioned decision. Most notably they seem to opt in general for the nature- rather than the subject test, when assessing whether a certain act or purpose should be granted immunity. A unique feature of the Netherlands jurisprudence is that the Courts were twice requested to adjudicate a foreign State bankrupt.

Hereinafter a survey is given of the decisions incorporated in this selection, sorted to subject.

Relative concept of State immunity

- *Société Européenne d'Etudes et d'Entreprises en liquidité volontaire (SEEE*) v. *Socialist Federal Republic of Yugoslavia, Supreme Court, 26 October 1973, NL / 5.*

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[1] Excerpts of the Explanatory Memorandum to the Bailiffs Regulation are included in this selection in document NL / 4.

[2] Excerpts of the Explanatory Memorandum to the Bill for the approval of the European Convention on State Immunity are included in this selection in document NL / 3.

Immunity from jurisdiction: application of the criterion on *Acta jure gestionis / Acta jure imperii*

- *Société Européenne d'Etudes et d'Entreprises en liquidité volontaire (SEEE)* v. *Socialist Federal Republic of Yugoslavia,* Supreme Court, 26 October 1973, NL / 5.
- *The Kingdom of Morocco* v. *Stichting Revalidatiecentrum "De Trappenberg",* District Court of Amsterdam, 18 May 1978, NL / 6.
- *M.K.B. van der Hulst* v. *United States of America,* Supreme Court, 22 December 1989, NL / 10.
- *The Russian Federation* v. *Pied-Rich B.V.,* Supreme Court, 28 May 1993, NL / 12.
- *Kingdom of Morocco* v. *Stichting Revalidatiecentrum "De Trappenberg"*, Supreme Court, 25 November 1994, NL / 13.
- *United States* v. *Havenschap Delfzijl/Eemshaven,* Supreme Court, 12 November 1999, NL / 16

Recognition of foreign awards: immunity from jurisdiction

- *Société Européenne d'Etudes et d'Entreprises en liquidité volontaire (SEEE)* v. *Socialist Federal Republic of Yugoslavia,* Supreme Court, 26 October 1973, NL / 5.

Bankruptcy of a foreign State

- *Republic of Zaire* v. *J.C.M. Duclaux,* Court of Appeal of The Hague, 18 February 1988, NL / 9.
- Appeal in cassation by the Procurator-General 'in the interest of the law' (*W.L. Oltmans* v. *The Republic of Surinam*), Supreme Court, 28 December 1990, NL / 11.

Immunity from execution

- *Société Européenne d'Etudes et d'Entreprises en liquidité volontaire (SEEE)* v. *Socialist Federal Republic of Yugoslavia,* Supreme Court, 26 October 1973, NL / 5.
- *The Kingdom of Morocco* v. *Stichting Revalidatie Centrum "De Trappenberg",* District Court of Amsterdam, 18 May 1978, NL / 6.
- *M.K.* v. *State Secretary for Justice,* Council of State, President of the Judicial Division*,* 24 November 1986, NL / 7.
- *Wijsmuller Salvage B.V.* v. *ADM Naval Services,* District Court of Amsterdam, 19 November 1987, NL / 8.
- *The Russian Federation* v. *Pied-Rich B.V.*, Supreme Court, 28 May 1993, NL / 12.
- *State of the Netherlands* v. *Azeta B.V.,* District Court of Rotterdam, 14 May 1998, NL / 15.

Place of service

- *The United States of America* v. *A.F.W. Delsman,* Supreme Court, 3 October 1997, NL / 14.

Literature

A more elaborate survey and a list of cases and materials of the Dutch State practice with regard to State immunity can be found in 'Spiegel J. – Vreemde staten voor de Nederlandse rechter: immuniteit van jurisdictie en van executie, 2001. (Thesis, VU Amsterdam; English summary added)'.

(a)	**Registration no.**	NL/ 1
(b)	**Date**	15 May 1829
(c)	**Author(ity)**	Beatrix, Queen of the Kingdom of the Netherlands.
(d)	**Parties**	*Article 13a of the Act on General Provisions of Kingdom Legislation (Wet Algemene Bepalingen, more commonly known as Wet AB)*
(e)	**Points of law**	The jurisdiction of the courts and the execution of judicial decisions and deeds are subject to exceptions recognised in international law.
(f)	**Classification no**	0.c, 1.c, 2.c
(g)	**Source**	Staatsblad 1829, no. 28.
(h)	**Additional information**	

NL/1

Appendix

Article 13a of the Act on General Provisions of Kingdom Legislation (*Wet Algemene Bepalingen,* more commonly known as *Wet AB*)

The jurisdiction of the courts and the execution of judicial decisions and deeds are subject to exceptions recognised in international law.

(a)	**Registration no.**	NL/ 2
(b)	**Date**	26 January 2001
(c)	**Authority**	Beatrix, Queen of the Kingdom of the Netherlands
(d)	**Parties**	*Article 3a Bailiffs' Act*
(e)	**Points of law**	Article 3a of the Bailiffs' Act empowers the State to intervene if it considers that the service of a notification would be contrary to its obligations under international law.
(f)	**Classification no**	0.c, 1.c, 2.a
(g)	**Source**	Staatsblad 2002, 318
(h)	**Additional information**	Article 3a of the Bailiffs' Act closely resembles article 13a of the (former) Bailiffs' Regulations.

NL/2

Appendix

Act of 26 January 2001 establishing the Bailiffs Act

Article 3a

1. A bailiff who is instructed to perform an official act shall, if he must reasonably take account of the possibility that performing the act in question would be incompatible with the State's obligations under international law, immediately inform Our Minister [the Minister of Justice] of the instruction in the manner prescribed by ministerial order.

2. Our Minister may notify a bailiff that an official act which he has been or will be instructed to perform or which he has performed is incompatible with the State's obligations under international law**.**

3. Such notification may only be given *ex officio*. If the matter is urgent, notification may be given verbally, in which case it must be confirmed in writing without delay.

4. The notification shall be published by being placed in the Government Gazette *(Staatscourant)*.

5. If, when he receives notification as referred to in paragraph 2, the bailiff has not yet performed the official act, the effect of the notification shall be that the bailiff is not competent to perform the official act. An official act performed contrary to the first sentence shall be void.

6. If, when a bailiff receives notification as referred to in paragraph 2, the official act has already been performed and involved a writ of seizure, the bailiff shall immediately serve the notification on the person on whom the writ was served, cancel the seizure and reverse its consequences. The costs of serving the notification shall be borne by the State.

7. A judge hearing applications for provisional relief may, in interim injunction proceedings, terminate the effect of the notification referred to in the first sentence of paragraph5 and the obligations referred to in paragraph 6, without prejudice to the powers of the ordinary courts. If the official act involves seizure, article 438, paragraph 4 of the Code of Civil Procedure shall apply.

(a)	**Registration no.**	NL/ 3
(b)	**Date**	1 July 1984
(c)	**Autho(rity)**	The minister of Justice and the minister of Foreign Affairs
(d)	**Parties**	*Explanatory memorandum to the Bill for the approval of the European Convention on State Immunity*
(e)	**Points of law**	1. It is recognised that under conventional and customary international law certain persons, institutions or property cannot be made defendants in proceedings in Dutch courts or be made the subject of enforcement proceedings. 2. In Dutch case law the theory of restricted immunity has now been firmly established. In the light of this broadly stated view of the Supreme Court, there is every reason to leave scope for Dutch courts to exercise the widest possible powers in entertaining proceedings against other Contracting States. 3. International law may at least be said not to require proof of the existence of a connection between the act and the territory of the State of the forum as a condition for jurisdiction of the court of that State, but the requirement that jurisdiction should not be based on exorbitant grounds must not be forgotten. 4. Judgments against a foreign State are in principle enforceable, but may not in any case be enforced against property destined for public use, according to the the Hague Court of Appeal. 5. To what extent such awards against a foreign State are subject to a judicial *exequatur* is a question to be determined only by the law of the State of the forum.
(f)	**Classification no**	0.c, 1.b, 2.b
(g)	**Source**	Kamerstukken 17485, no. 3.
(h)	**Additional information**	

NL/3

Appendix

Bill for the approval of the European Convention on State Immunity

The Explanatory Memorandum to the Bill for the approval of the European Invention on State Immunity reads:

"Article 13a of the Act on General Provisions of Kingdom Legislation *(Wet Algemene Bepalingen,* more commonly known as *Wet AB*) reads as follows: 'The jurisdiction of the courts and the execution of judicial decisions and deeds are subject to exceptions recognised in international law'. Thus it is recognised that under conventional and customary international law certain persons, institutions or property cannot be made defendants in proceedings in Dutch courts or be made the subject of enforcement proceedings. […]

Immunity from jurisdiction

In Dutch case law the theory of restricted immunity has now been firmly established. In its judgment of 26 October 1973 7, the Supreme Court considered that in cases where the State engages in private activities and therefore enters into legal relationships on an equal footing with private individuals, it is reasonable for the other party to be granted the same degree of legal protection that would be granted if the transaction had been with a private person, and that it must therefore be assumed that the immunity from jurisdiction to which a foreign State is entitled under contemporary international law does not extend to cases where a State has engaged in such activities as those referred to above.

In the light of this broadly stated view of the Supreme Court, there is every reason to leave scope for Dutch courts to exercise the widest possible powers in entertaining proceedings against other Contracting States and therefore to accept the *'zone grise'* of Chapter IV of the Convention by making the relevant declaration referred to in Article 24(1). […]

Reasons for ratification

The preparation for ratification by the Netherlands has not been given the highest priority, since the Convention including Chapter IV will not alter the current Dutch legal practice to any appreciable extent. Nevertheless, by acceding to the Convention the Netherlands will be able to contribute to the harmonisation of views in the field of immunity from jurisdiction. […]

It may be useful briefly to dwell upon the significance of the *'zone grise',* in particular on the extension which it represents in respect of the system laid down in Chapter I of the Convention. […]

In the above-mentioned judgment of the Supreme Court of 26 October 1973 one of the parties advanced on appeal that a foreign State is subject to the jurisdiction of another State only in proceedings relating to an industrial, commercial or financial activity in which this foreign State is engaged in the same manner as a private person, and if, in addition, there is a clear connection between this activity and the territory of the State where jurisdiction was assumed. The Supreme Court considered that neither the case law of various countries nor the legal literature contained any reference to any prevailing view that the existence of such a connection is a requirement for acceptance of

jurisdiction over disputes in which a foreign State is a party; and that, consequently, no such rule of international law may be assumed to exist.

It may be doubted whether this consideration is fully consistent with the Convention. Nevertheless, although acceptance of the *'zone grise'* may remove the connection in Articles 4-12 between the act and the territory of the State of the forum so that international law may at least be said not to require proof of the existence of such a connection as a condition for jurisdiction of the court of the State of the forum, the requirement that jurisdiction should not be based on exorbitant grounds must not be forgotten.

Not all the grounds of jurisdiction which, in the terms of the Annex to the Convention, qualify as exorbitant, exist in Dutch law. Most significant in practice are the grounds mentioned in (a) and (c).[3] […]

Execution of judgments

The Convention is not concerned with the question to what extent a Contracting State may claim immunity from execution of judgments given against it in the State of the forum. Opinions on this question still differ too much from country to country. Thus, some States, while fully accepting the theory of restricted immunity from jurisdiction, make an exception of immunity from execution, taking the view that it is contrary to international law for judgments against a foreign State to be enforced against its will in the State of the forum. Other States consider that such judgments are in principle enforceable, but may not in any case be enforced against property destined for public use.

The latter view was shared by the Court of Appeal of The Hague in its judgment of 28 November 1968, where the Court considered, on the defendant's argument that it is contrary to international law to give effect to a judgment given by a forum other than that of a foreign State against property of that State, or a State organ that can be assimilated to that State, and that therefore Dutch courts are in any case not entitled to entertain proceedings relating to the execution of preventive measures, "that it had already been decided that the international rule of sovereign immunity does not bar in this case the jurisdiction of the Dutch court; that a judicial decision is by its very nature enforceable; that if immunity does not bar jurisdiction, it also does not, in principle, bar execution; that, however, as also appears from Article 13a of the *Wet AB,* it is possible for a rule of international law to restrict enforceability; that the only rule applicable to this case is the rule that property destined for public use is not subject to measures of execution in another country." […]

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[3] "(a) the presence in the territory of the State of the forum of property belonging to the defendant, or the seizure by the plaintiff of property situated there, unless

- the action is brought to assert proprietary or possessory rights in that property or arises from another issue relating to such property;

or

- the property constitutes the security for a debt which is the subject matter of the action; …

(c) the domicile, habitual residence or ordinary residence of the plaintiff within the territory of the State of the forum, unless the assumption of jurisdiction on such a ground is permitted by way of an exception made on the account of the particular subject-matter of a class of contracts.

To what extent such awards against a foreign State are subject to a judicial *exequatur* is a question to be determined only by the law of the State of the forum (Cf. in this context, the judgment of the Supreme Court of 26 October 1973).

(a)	**Registration no.**	NL/ 4
(b)	**Date**	5 April 1993
(c)	**Author(ity)**	The deputy Minister of Justice
(d)	**Parties**	*Explanatory memorandum to the amendment of the Bailiffs' Act*
(e)	**Points of law**	
(f)	**Classification no**	0.c, 1.b, 2.a
(g)	**Source**	Kamerstukken 23081, no. 3.
(h)	**Additional information**	See also document NL / 2.

NL/4
Appendix

Amendments to the Bailiffs Act to regulate the consequences of official acts by bailiffs that are incompatible with the State's obligations under international law

EXPLANATORY MEMORANDUM

[…]

Immunity from jurisdiction

First let us consider the question of jurisdiction. In that respect restrictions on jurisdiction can be found in article 13a of the General Legislative Provisions Act and article 13, paragraph 4 of the Bailiffs' Regulations, the provisions of the latter being found in stricter form in article 3 of the Bailiffs Bill. There are also restrictions deriving from a number of international agreements to which the Netherlands is party: the European Convention on State Immunity (Netherlands Treaty Series (*Tractatenblad)*1973, 43) and the Vienna Convention on Diplomatic Relations (Netherlands Treaty (*Tractatenblad)* Series 1962, 159).

It is clear from these instruments and from Supreme Court case law (especially the judgment of 26 October 1973, *Nederlandse Jurisprudentie* (NJ) 1974, 361) that in this connection it is important whether the matter at issue was an act performed in the context of societal relationships governed by private law. If so, the Dutch courts do have jurisdiction; if not, they do not. However, in recent cases the Supreme Court has taken a more subtle approach to accepting jurisdiction in disputes to which international organisations or foreign States are party, even if the acts in question were performed in the context of societal relationships governed by private law. Reference may be had to the Supreme Court judgment of 23 December 1985 (NJ 1986, 438) where the question of whether an employee plays an essential role in the services offered by the employer was cited as an additional criterion in a labour dispute. Also of relevance in this connection is the Supreme Court judgment of 22 December 1989 (NJ 1991, 70) in which the Court held that according to current thinking, there is a tendency to restrict the privilege of sovereign States to invoke immunity in proceedings before a court in another State, and to grant this privilege only if the forum State is of the opinion that the act on the part of the foreign State that prompted the proceedings against it was clearly a governmental act. The same judgment holds that, while it must in general be assumed that a foreign State which enters into a private-law contract in a host State may not invoke immunity in disputes arising from the contract and that this situation does not alter if the foreign state wishes to withdraw, by means of an act which is distinctively a governmental act, from the binding contractual provisions it has entered into, but that there are nonetheless some exceptions to this basic rule. In the judgment in question, the Supreme Court accepted the following situation as an exception: a foreign State in the exercise of its diplomatic mission and its consular services in the host State may, for reasons of state security, make the conclusion or continuation of a contract (in the case at issue a contract of employment) dependent on the result of a security clearance. This result is not open to review by either the other party to the contract or the courts of the host State. In addition, as stated above, since 1990 there has been another exception in force, which cannot be circumscribed, namely that the Dutch courts have no jurisdiction to declare a foreign power bankrupt (Supreme Court 28 September 1990, NJ 1991, 247). […]

Immunity from execution […]

Both in treaties and in customary international law, immunity from execution is more readily accepted than immunity from jurisdiction. Although the matter is not absolutely clear, and opinions differ, it can be said that, in accordance with both customary and codified international law, it should be assumed that the property of a foreign State enjoys immunity from execution.

(a)	**Registration no.**	NL/ 5
(b)	**Date**	26 October 1973
(c)	**Author(ity)**	Supreme Court
(d)	**Parties**	*Societé Européenne d'Etudes et d'Entreprises en liquidité volontaire (SEEE)* v. *Socialist Federal Republic of Yugoslavia*
(e)	**Points of law**	1) Foreign States are only entitled to restricted jurisdictional immunity. The immunity does not extend to cases in which the State has acted in its civil capacity. 2) There is no rule of international law requiring an obvious link between the territory of the State where the jurisdiction is invoked and the activity in question. 3) If a State enters into a legal relationship on an equal footing with the other party, it makes no difference that the transaction has been concluded under an enabling Act, nor that the contested activity has a military or strategic character. 4) International law is not opposed to any execution against foreign State-owned property situated in the territory of another State.
(f)	**Classification no**	0.b, 1.b, 2.b
(g)	**Source**	RvdW (1973) No. 64; N.J. (1974) No. 361.4. English summary: NYIL 1972, p. 290-296.

(h)	**Additional information**	Summaries of the proceedings before the District Court and the Court of Appeal can be found in NYIL 1972, p. 294 and NYIL 1973, p. 390-391. A summary of the decision of the Court of Appeal to which the case was remitted can be found in NYIL 1975, p. 374-377.

NL/5

Appendix

Société Européenne d'Etudes et d'Entreprises en liquidité volontaire (SEEE)* v. *Socialist Federal Republic of Yugoslavia

In 1932, the appellant concluded an agreement with the respondent for the construction of a railroad in Yugoslavia. Since there were difficulties with regard to the payments, the appellant submitted the question to arbitration at Lausanne. In the arbitral award the respondent was ordered to pay a certain sum. However, although the Court of Appeal granted no immunity to Yugoslavia, it found itself unable to execute the award.

In the incidental appeal instituted by Yugoslavia against the decision of the Court of Appeal refusing immunity from jurisdiction and execution, it was argued as follows:

I. (a) A foreign State cannot be obliged to submit to the jurisdiction of another State.

(b) Jurisdiction over a foreign State can be exercised only where the activities in question have a definite link with the territory of the State where jurisdiction is invoked.

(c) The Court has only examined the question whether Yugoslavia's action

was a "purely governmental act", and not whether Yugoslavia had acted as a private person. If the latter is what the Court had in mind then its decision is contestable: Yugoslavia acted in accordance with an enabling Act and the railway had a military character.

(d) If immunity from jurisdiction can be granted only in respect of purely governmental acts, the finding of the Court without more that the private law trades-action for the construction of a railway was not a purely governmental Act, goes too far, in the light of the enabling Act and the military character of the railway.

[…]

III. To apply for the grant of enforcement of an arbitral award is an act of execution [and, as such, contrary to Yugoslavia's immunity from execution].

[…]

The Supreme Court held*:*

". ..With regard to subsections (a) and (b) of Section I of the incidental appeal:

In subsection (a) it is argued that as an exception, recognised under international law, to the exercise of jurisdiction by municipal courts, it should be accepted that a foreign State cannot be obliged to submit to the jurisdiction of another State;

However, no rule of international law involves taking the jurisdictional immunity to which foreign States are entitled so absolutely, as is suggested in this subsection;

Clearly, there is a tendency apparent in the international practice of treaties and in literature, as well as in the case law of national courts, to limit the extent to which a State may invoke immunity before a foreign court;

That this trend has been induced by, *inter alia,* the fact that in many States the government has increasingly engaged in activities in areas of society where the relations are governed by private law and where, consequently, the State enters into a legal relationship on an equal footing with individuals;

It is considered reasonable in such cases to grant a similar legal protection to the opposing party of the State concerned as would be granted if that party had dealt with an individual;

That on these various grounds it has to be assumed that the immunity from: jurisdiction to which a foreign State is entitled under the prevailing international law does not extend to cases in which a State has acted as set out above; Subsection (b) purports to contend that, if the rule as stated in (a) cannot be accepted, nevertheless jurisdiction over a foreign State which has acted as set out above can be exercised only where the activity in question of that State has an obvious link with the territory of the State where jurisdiction is invoked; this requirement is said not to be fulfilled in the present case;

Neither the case law of national courts nor the literature, as being a reflection of prevailing views, provide any evidence that such a link is, in international law, a condition for the exercise of jurisdiction in respect of disputes to which a foreign State is a party; therefore no rule of international law as stated in subsection (b) can be assumed;

Consequently, the arguments raised in subsections (a) and (b) fail;

With regard to subsections (c) and (d) of section I:

The Court of Appeal has established that the Kingdom of Yugoslavia has, in the present case, concluded a private law transaction whereby a private legal person was to construct a railway with delivery of materials against payment;

From this it follows that the Kingdom of Yugoslavia has entered into a legal relationship on an equal footing with SEEE; it makes no difference that the transaction has been concluded under an enabling Act nor that the railway, as contended by Yugoslavia, has a military or strategic character;

Therefore, Yugoslavia cannot invoke immunity from jurisdiction. Consequently, these arguments also fail;

[…]

With regard to section III:

To apply for a grant of enforcement of the present award could be deemed to be contrary to the immunity from execution to which a foreign State is entitled under international law only if international law is opposed to any execution against foreign State-owned property situated in the territory of an- other State;

However, such rule of international law does not exist;

Consequently, this point, whatever the relevant considerations of the Court of Appeal, cannot lead to cassation.

(a)	**Registration no.**	NL/ 6
(b)	**Date**	18 May 1978
(c)	**Authority**	District Court of Amsterdam (summary proceedings)
(d)	**Parties**	*The Kingdom of Morocco* v. *Stichting Revalidatie Centrum "De Trappenberg"*
(e)	**Points of law**	1) Much as States are not normally subject to one another's jurisdiction, this principle may be subject to exceptions in cases where a State becomes involved in legal situations not as a public authority, but rather in a private capacity. This occurs not only where the State takes on an obligation by entering into relationships in the sphere of private law, but also where such an obligation arises out of the law itself. 2) Reliance on the purposes for which the sums attached were intended, viz., public purposes, cannot succeed because, much as these sums were to be used for public purposes, this circumstance cannot render the moneys themselves immune from attachment.
(f)	**Classification no**	0.b1, 1.b, 2.b
(g)	**Source**	English summary: NYIL 1979, p. 444-445.
(h)	**Additional information**	In a later judgment (see NYIL 1987, p. 354-356) the Court dismissed the claim of "De Trappenberg", because Morocco had not acted carelessly. See on the same facts also case NL/ 13

NL/6

Appendix

The Kingdom of Morocco* v. *Stichting Revalidatie Centrum "De Trappenberg"

The daughter of the cleaner/caretaker of the Moroccan Consulate-General at Amsterdam was seriously injured in an accident at the Consulate. She was taken to "De Trappenberg" rehabilitation centre for medical treatment. During the treatment it became apparent that part of the costs involved were not covered by any Dutch or Moroccan insurance. Only during the course of treatment had Morocco taken out a policy, and this became operative a year after the accident. The non-insured costs amounted to Dfl. 84,185.15. Assuming that the caretaker was unable to pay such a sum, the defendant requested the Court for a garnishee order to secure the debt on funds held by Marocco in the Banque de Paris et des Pays-Bas. It was alleged that Morocco was liable in tort for failure to ensure that the caretaker, who was sent to the Netherlands as an employee and his family were adequately insured. The Court complied with the request, whereupon Morocco applied to the Court in summary proceedings for an injunction for the withdrawal of the garnishee order. The President gave judgment for the plaintiff.

The District Court held:

[…] 6. Much as States are not normally subject to one another's jurisdiction, this principle may be subject to exceptions in cases where a State becomes involved in legal situations not as a public authority, but rather in a private capacity. This occurs not only where the state takes on an obligation by entering into relationships in the sphere of private law, but also where such an obligation arises out of the law itself.

7. In the present case “De Trappenberg” alleges that Morocco is liable in tort under Article 1401 of the Civil Code, viz., an act or omission in which Morocco is involved not as a sovereign state, but in the same capacity as a private person, as the employer of M. Bouarfa.

8. Judged by the criterion set out in paragraph 6 of this judgment, Morocco's reliance on immunity must fail.

9. Also, Morocco's reliance on the purposes for which the sums attached were intended, viz., public purposes, cannot succeed because, much as these sums were to be used for public purposes, this circumstance cannot render the moneys themselves immune from attachment. […]

(a)	**Registration no.**	NL/ 7
(b)	**Date**	24 November 1986
(c)	**Authority**	Council of State, President of the Judicial Division
(d)	**Parties**	***M.K.* v. *State Secretary for Justice***
(e)	**Points of law**	1) Article 13(4) of the Bailiffs' Regulations empowers the respondent to intervene if he considers that the service of a notification would be contrary to his obligations under international law. Only in this case may the respondent make use of his power and is he also therefore bound to do so, in view of the obligations to which the Dutch State is subject in this connection. 2) There is no question of the respondent being left any discretion in policy which could be construed as imposing a certain restriction on the Courts right of assessment. Whether the respondent was correct in arriving at the conclusion that it had an obligation under international law is a question which is ideally suited in every respect to be decided in full by the courts. 3) When interpreting and applying customary international law, the courts should take account of the fact that the Government, as the representative of the State in dealings with other States, also helps to mould the law by disseminating its views on what the law is and by endeavouring to observe in its dealings the practice based on these views. 4) Although there is no rule of international law that prohibits executions levied on the assets of a foreign State which are in the territory of another State, it is equally beyond doubt that rules of customary law

		prescribe immunity from execution in respect of the enforcement of a judgment, even if the court which gave the judgment was competent to do so under these rules [as in the present case] if this execution relates to assets intended for public purposes. 5) The note verbale from the foreign Embassy in which it is stated that all the money in the account which has been attached, is used in the performance of its functions, must be deemed sufficient proof that these moneys are intended for public purposes. To require the foreign mission in the Netherlands to give a further and more detailed account of the funds in this account would amount under international law to an unjustified interference in the internal affairs of this mission.
(f)	**Classification no**	0.c, 1.c. 2.a
(g)	**Source**	KG 1987, 38. English summary: NYIL 1988, p. 439-443.
(h)	**Additional information**	See also the documents NL/2 and NL/ 4 on the Bailiffs' Act.

NL/7

Appendix

M.K.* v. *State Secretary for Justice

The petitioner instructed a bailiff in The Hague, to attach a bank account of the Republic of Turkey at the Algemene Bank Nederland in Amsterdam, by way of execution of a judgment given against the Republic on 1 August 1985 in which her dismissal by the Turkish Embassy in The Hague was declared void and Turkey was ordered to pay a sum of Dfl. 7,700. By letter dated 3 November 1986 the State Secretary gave notice to the bailiff under Article 13(4) of the Bailiffs' Regulations[4] that he should refuse to serve any notification in connection with the execution of the judgment since this was contrary to the international obligations of the State of the Netherlands.

The Council of State held:

[…] It should be said at the outset that the State and its organs are obliged to refrain from acts or omissions in relation to another State and its organs which are in breach of the obligations to which a State is subject under international law. In this context Article 13(4) of the Bailiffs' Regulations empowers the respondent to intervene if he considers that the service of a notification would be contrary to these obligations. Only in this case may the respondent make use of his power and is he also therefore bound to do so, in view of the obligations to which the Dutch State is subject in this connection. There is therefore no scope for a weighing of the interests and everything that the petitioner has submitted on this subject, notably her argument that an indemnity should not have been omitted in any weighing of the interests, does not need to be taken into consideration.
The dispute therefore revolves around the question whether the execution of the judgment would be contrary to the obligations of the State under international law. […]

If the respondent means by this that his opinion as to whether he made correct use of his power under the said provision of the Bailiffs' Regulations takes precedence over our opinion or that in any event our opinion can only be of a very marginal character, we cannot agree with him. We hold at the outset that a right of appeal exists under the Administrative Decisions Appeals (AROB) Act, and that neither Article 13a of the General Provisions of Legislation Act nor Article 13(4) of the Bailiffs' Regulations restricts the freedom of assessment given to us and the Division under the AROB Act, and that any such restriction cannot be based solely on the history of legislative provisions. There is also no question of the respondent being left any discretion in policy which could be construed as imposing a certain restriction on our right of assessment, since, as stated previously, the respondent may and indeed must exercise the power if he considers that the execution of a judgment would be contrary to the State's obligations under international law. Finally, whether the respondent was correct in arriving at this opinion is a question which is ideally suited in every respect to be decided in full by the courts.

We can, however, concede to the respondent that when interpreting and applying customary international law in particular, the courts should take account of the fact that the Government, as the representative of the State in dealings with other States, also

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[4] This article was replaced by article 3a of the Bailiffs' Act from 26 January 2001. See document NL/ 2.

helps to mould the law by disseminating its views on what the law is and by endeavouring to observe in its dealings the practice based on these views. Justice can be done to the Government's special position if the courts hear the Government's advisers on international law to ascertain its views on legal positions, either ex officio or at the Government's request, and accord the deference to this opinion which is due on account of the special position. […]

Although there is no rule of international law that prohibits executions levied on the assets of a foreign State which are in the territory of another State (cf., HR 26 October 1973, NJ (1974), No. 361), it is equally beyond doubt that rules of customary law prescribe immunity from execution in respect of the enforcement of a judgment, even if the court which gave the judgment was competent to do so under these rules (as in the present case) if this execution relates to assets intended for public purposes. […]

The note verbale from the Turkish Embassy in The Hague in which it is stated that all the money in the account which has been attached was transferred by the Turkish Government in order to defray the costs of the Embassy in the performance of its functions must be deemed sufficient proof that these moneys are intended for public purposes of the Republic of Turkey.

It is necessary to take into account in this connection that great importance has traditionally been attached to the efficient performance of the functions of embassies and consulates; confirmation of this is provided in the Vienna Conventions on diplomatic relations (1961) 31 and consular relations (1963). To require the Turkish mission in the Netherlands to give a further and more detailed account of the funds in this account would amount under international law to an unjustified interference in the internal affairs of this mission.

(a)	**Registration no.**	NL/ 8
(b)	**Date**	19 November 1987
(c)	**Authority**	District Court of Amsterdam
(d)	**Parties**	*Wijsmuller Salvage B.V.* v. *ADM Naval Services*
(e)	**Points of law**	1) The decisive criterion is the status of the ship at the time of attachment. 2) A warship delivered by a foreign State to Dutch companies for refitting not only has to spend a long time in dock but must also undergo sea trials, during which it sails under national command and is manned in part by a national crew, should also be regarded as a ship intended for use in the public service even during the execution of the work.
(f)	**Classification no**	0.c, 1.c, 2.a
(g)	**Source**	English summary: NYIL 1989, p. 294-296
(h)	**Additional information**	

NL/8

Appendix

Wijsmuller Salvage B.V.* v. *ADM Naval Services

The Peruvian warship Almirante Grau, a cruiser, got into difficulties during sea trials which were being conducted on the North Sea as part of a refit by ADM Naval Services. Wijsmuller Salvage B.V. successfully assisted the vessel. As Wijsmuller feared that Peru would arrange for the ship to sail away, it applied to Amsterdam District Court for an interlocutory injunction attaching the cruiser in order to secure its rights and obtain payment of the salvage money.

The District Court held:

[…] ADM had put forward as its defence, inter alia, that leave should not be given because Wijsmuller wishes to attach a vessel belonging to a foreign power which is intended for use in the public service. […]

Wijsmuller has tried in vain to challenge this by arguing that the ship was not being used in the public service during the present trials. Leaving aside the point that the decisive criterion is the status of the ship at the time of the attachment (which may differ from the status at the time when the claim for which redress is sought arose), Wijsmuller's argument fails because in view of the background described at 1, the Almirante Grau (a warship delivered by Peru to Dutch companies for refitting (i.e., "the work") not only has to spend a long time in dock but must also undergo sea trials, during which it sails under Peruvian command and is manned in part by Peruvian crew) should also be regarded as a ship intended for use in the public service (i.e., the Peruvian public service) even during the execution of the work.. […]

(a)	**Registration no.**	NL/ 9
(b)	**Date**	18 February 1988
(c)	**Author(ity)**	Court of Appeal of The Hague
(d)	**Parties**	Republic of Zaire v. J.C.M. Duclaux
(e)	**Points of law**	A bankruptcy would entail a by no means insubstantial infringement of the independence of the sending State vis-à-vis the receiving State. Therefore the sending State can, under the generally recognised rules of international law, invoke its immunity from execution in proceedings before the court in the receiving State which has been asked to give judgment on a petition for the sending State to be declared bankrupt.
(f)	**Classification no**	0.c, 1.c, 2.a
(g)	**Source**	English summary: NYIL 1989, p. 296-300
(h)	**Additional information**	An English summary of the judgment of the District Court can also be found in NYIL 1989, p. 296-300.

NL/9

Appendix

Republic of Zaire* v. *J.C.M. Duclaux

The Hague Sub-District Court ordered the Republic of Zaire in absentia to pay arrears of wages to Duclaux, who had worked as a secretary at the Embassy of Zaire in The Hague. When the Embassy failed to pay her wages, Duclaux petitioned the District Court of The Hague to declare the Republic of Zaire bankrupt to enable her to collect the debt, claiming that the Republic was also failing to pay other recoverable debts and therefore was in a position that it had ceased to pay its debts. The District Court rejected the Republic of Zaire's claim that it was immune from jurisdiction and execution, and declared the Republic of Zaire bankrupt. It furthermore instructed the trustee in bankruptcy to open letters and telegrams from the bankrupt.

The Court of Appeal held:

[…] Under Dutch law a declaration of bankruptcy is a very far-reaching measure; it constitutes judicial seizure of the entire assets of the debtor concerned with a view to their forced sale to enable the assets thus realised to be distributed among all the creditors; by virtue of being declared bankrupt, the debtor also automatically, by law, forfeits control over and the use of the assets which form part of the bankrupt estate.

It cannot be denied that if a Dutch court were to declare a sovereign State (which has an embassy or diplomatic mission in the Netherlands) bankrupt as the court of first instance did the Republic of Zaire this would in no small measure impede the efficient performance of the functions of that State's official diplomatic representation in the Netherlands in view of the nature, effects and consequences of a bankruptcy under the Dutch Bankruptcy Act, which have been considered above, particularly if, as in the present case, the trustee in bankruptcy were also to be declared competent to open letters and telegrams addressed to the sovereign sending State.

As therefore such a bankruptcy would entail a by no means insubstantial infringement of the independence of the sending State vis-à-vis the receiving State, given that, at the minimum, the diplomatic mission would not be able to function properly, the sending State can, under the generally recognised rules of international law, invoke its immunity from execution in proceedings before the court in the receiving State which has been asked to give judgment on a petition for the sending State to be declared bankrupt. […]

(a)	**Registration no.**	NL/ 10
(b)	**Date**	22 December 1989
(c)	**Author(ity)**	Supreme Court
(d)	**Parties**	*M.K.B. van der Hulst* v. *United States of America*
(e)	**Points of law**	1) A foreign State can only claim immunity if its act clearly has the character of a governmental act according to the views of the forum State. No immunity is in principle accepted for relations of an employment law nature entered into by a foreign State in the receiving State, although the defence of immunity may not be excluded in all cases. 2) If the applicant can rely on a contract of employment already in existence under private law, in carrying on its diplomatic mission and providing consular services in the receiving State, a foreign State should, for reasons of State security, be given the opportunity to allow the conclusion or continued existence of such a contract to depend on the result (which is not subject to the assessment of the other party or the courts of the receiving State) of a security check
(f)	**Classification**	0.b.2, 1.b, 2.c
(g)	**Source**	RvdW (1990) No. 15. English summary: NYIL 1991, p. 379-387.
(h)	**Additional information**	

NL/10

Appendix

M.K.B. van der Hulst* v. *United States of America

The case concerns immunity in respect of an employment dispute between the United States of America and a Dutch woman, Mrs Van der Hulst, who had been employed as a secretary in the Foreign Commercial Service Department of the Unites States Embassy in The Hague since 1 July 1984. A final appointment was dependent on the results of a security check. On 29 August 1984 she was dismissed 'for security reasons'.

The Supreme Court held:

[…] 3.3. As regards the question of whether an exception recognised under international law should be allowed to the jurisdiction conferred here in principle, the starting point should be that according to present-day views on international law as evidenced for example by international regulations already in existence or still in the draft stage there is a trend towards limiting the privilege of a sovereign State to claim immunity before the courts of another State and only to allow this immunity if the act of the foreign State which forms the subject of the proceedings instituted against it clearly has the character of a governmental act according to the views of the forum State. As far as employment relations are concerned, reference may be made in this connection to the European Convention on State Immunity and the draft scheme produced in the United Nations for Jurisdictional Immunities of States and their Property of July 1986. Under these international provisions, no immunity is in principle accepted for relations of an employment law nature entered into by a foreign State in the receiving State, although the defence of immunity may not be excluded in all cases.

[…]
3.5 […] Although it must generally be assumed that if a foreign State enters into a contract of a private law nature in the receiving State it is not entitled to claim immunity in respect of disputes resulting from such contract and that the position is no different if the foreign State wishes to evade the commitment it has accepted under the contract by means of a typically governmental act. However, this general rule is not entirely without exceptions. It must be assumed that an exception of this kind occurs in the present case, even if Van der Hulst could rely in this case on a contract of employment already in existence under private law. In carrying on its diplomatic mission and providing consular services in the receiving State, a foreign State should, for reasons of State security, be given the opportunity to allow the conclusion or continued existence of a contract such as the present one to depend on the result (which is not subject to the assessment of the other party or the courts of the receiving State) of a security check by stipulating a condition such as the present one. It cannot be assumed that a foreign State which enters into such a contract thereby loses its right to rely on immunity when terminating the contract on the ground of a security check of the kind mentioned above, no matter how much the contract itself is of a private law nature.

(a)	**Registration no.**	NL/ 11
(b)	**Date**	28 September 1990
(c)	**Authority**	Supreme Court
(d)	**Parties**	W.L. Oltmans v. the Republic of Surinam
(e)	**Points of law**	The nature of the bankruptcy and the consequences attached to a declaration of bankruptcy prevent the Dutch courts from having jurisdiction to take a measure of this kind in relation to a foreign power. Acceptance of this jurisdiction would imply that a trustee in bankruptcy with far-reaching powers could take over the administration and winding up of the assets of a foreign power under the supervision of a Dutch public official. This would constitute an unacceptable infringement under international law of the sovereignty of the foreign State concerned.
(f)	**Classification no**	0.c, 1.c, 2.a
(g)	**Source**	NJ 1991, 247. English summary: NYIL 1992, p.443-447.
(h)	**Additional information**	An English summary of he judgment of the District Court can also be found in NYIL 1992, p. 443-447.

NL/11

Appendix

W.L. Oltmans* v. *the Republic of Surinam

By petition Oltmans, who lived in the United States, requested that the Republic of Surinam be declared bankrupt on the ground that it was in the position of having ceased to pay its debts, as it had not paid a debt to Oltmans.

The Supreme Court held:

[…] The ground of appeal raises the question whether the Dutch courts have jurisdiction to declare a foreign State bankrupt. This question must be answered in the negative for the following reason.

Bankruptcy is a general seizure of the assets of a debtor and comprises his entire assets at the time of the bankruptcy petition (Art. 20 of the Bankruptcy Act), deprives a debtor of the right to dispose of and administer the assets belonging to the bankruptcy (Art. 23) and confers the power on one or more trustees in bankruptcy to administer and wind up the assets of the bankrupt (Arts. 68 and 70) under the supervision of a delegated judge (Art. 64), whereby the trustee has far-reaching powers such as the power to open all letters and telegrams addressed to the bankrupt (Art. 99).

The nature of the bankruptcy and the consequences attached to a declaration of bankruptcy prevent the Dutch courts from having jurisdiction to take a measure of this kind in relation to a foreign power. Acceptance of this jurisdiction would imply that a trustee in bankruptcy with far-reaching powers could take over the administration and winding up of the assets of a foreign power under the supervision of a Dutch public official. This would constitute an unacceptable infringement under international law of the sovereignty of the foreign State concerned. […]

(a)	**Registration no.**	NL/ 12
(b)	**Date**	28 May 1993
(c)	**Author(ity)**	Supreme Court
(d)	**Parties**	*The Russian Federation* v. *Pied-Rich B.V.*
(e)	**Points of law**	1) The fact that the undertaking was given in order to promote the economic interests of the USSR does not bar the conclusion that the undertaking was an act performed on the footing of equality. What is decisive, is the nature of the act, not the motive for it. 2) There is no rule of unwritten international law to the effect that seizure (provisional or otherwise) of a vessel belonging to the State and intended for commercial shipping, is permissible only if the seizure is levied for the purpose of insurance or to recover a ("maritime") claim resulting from the operation of the vessel.
(f)	**Classification no**	0.b, 1.b, 2.b
(g)	**Source**	NJ 1994, no. 329 English summary: NYIL 1994, p. 512-515
(h)	**Additional information**	

NL/12

Appendix

The Russian Federation* v. *Pied-Rich B.V.

Pied-Rich B.V., concluded a tripartite contract with the Baltic Shipping Company (hereinafter referred to as 'BSC') and a number of Russian importers in 1989 for the delivery of women's and children's wear. Under the contract, Pied-Rich sold and delivered the goods to the Russian importers and payment was guaranteed both by BSC, which transported the goods to Russia, and by the Ministry to which BSC was responsible. Pied-Rich made deliveries in 1990 and early 1991.

When the relevant Ministry failed to comply with its guarantees and payment was not made, Pied-Rich instituted arbitration proceedings in Moscow. As Pied-Rich wished to be certain that any award made by the arbitrators would actually be paid, it applied to the District Court in Rotterdam for leave to seize the 'Kapitan Kanevsky', a vessel which belonged to the Russian Federation (hereinafter referred to as 'the RF') and which was used by BSC.

The leave was originally granted on 27 April 1992 while the vessel was bound for Rotterdam. However, it did not arrive there. But, a month later, it did eventually dock in the port of Rotterdam. Pied-Rich then once again applied for leave to seize the vessel. The RF and BSC for their part instituted interim injunction proceedings to prevent leave being granted, in any event unless a prohibitive counter-guarantee was issued.

The Supreme Court held:

[…] The Court of Appeal did not show it had misinterpreted the law by concluding on the basis of this uncontested findings that the undertaking by the Ministry was an act performed on a footing of equality with the trading partners and by consequently not interpreting this undertaking as an act that was clearly in the nature of a governmental act. […]

The Court of Appeal did not refrain from making its contested ruling, because the undertaking was given in order to promote the economic interests of the USSR: this circumstance may well explain what induced the Ministry to give this undertaking, but it does not mean that this act was clearly a government act. What was decisive was the nature of the act, not the motive for it.

[…]

There is no rule of unwritten international law to the effect that seizure (provisional or otherwise) of a vessel belonging to the State and intended for commercial shipping, is permissible only if the seizure is levied for the purpose of insurance or to recover a (“maritime”) claim resulting from the operation of the vessel.

(a)	**Registration no.**	NL/ 13
(b)	**Date**	25 November 1994
(c)	**Authority**	Supreme Court
(d)	**Parties**	*The Kingdom of Morocco* v. *Stichting Revalidatiecentrum "De Trappenberg"*
(e)	**Points of law**	1) If in principle the Dutch courts have jurisdiction with regard to a dispute referred to them, they must try the dispute even if the defendant is a sovereign State, except where the defendant claimed in good time and on good grounds the privilege of immunity from jurisdiction. It follows that there is no occasion for an ex officio investigation into the question of whether the circumstances of the case warrant such a claim. 2) The nature of the undertaking given was not a clearly governmental act since such an undertaking could equally well have been given by a private sector employer in a comparable situation. The reasons why the Kingdom gave the undertaking in question are not relevant to the nature of the undertaking
(f)	**Classification no**	0.b, 1.b, 2.c
(g)	**Source**	NJ 1995, 650 English summary: NYIL 1996, p. 321-325
(h)	**Additional information**	See for English summaries of previous judgments in the same case NYIL 1987, p. 354-356; NYIL 1993, p. 340. See for another judgment on the basis of the same facts document NL/ 6

NL/13

Appendix

Kingdom of Morocco* v. *Stichting Revalidatiecentrum "De Trappenberg"

The daughter of B., the cleaner/caretaker of the Moroccan Consulate-General in Amsterdam, was seriously injured in an accident at the Consulate. She was taken to "De Trappenberg" rehabilitation centre for medical treatment. During the treatment it became apparent that part of the costs involved were not covered by any Dutch or Moroccan insurance. Only during the course of the treatment had Morocco taken out a policy, and this became operative a year after the accident. The District Court of Amsterdam ordered B. to pay "De Trappenberg" the non-insured costs of Dfl. 89,185. Execution of this judgment proved, however, to be impossible since no part of the sum could be recovered from B. "De Trappenberg" then sued the Kingdom of Morocco before the District Court of Amsterdam, claiming payment of this sum. It based its claim on the unlawful conduct of Morocco in failing to comply with its duty of care as B.'s employer to insure B. and his family in good time against medical expenses. Morocco then claimed immunity in interlocutory proceedings. The District Court dismissed this claim to immunity Subsequently it dismissed the claim by "De Trappenberg" because the Kingdom of Morocco had not acted carelessly or contrary to the general principles of Dutch law vis-à-vis "De Trappenberg" by not insuring B. against medical expenses. "De Trappenberg" appealed against this judgment. Morocco then lodged an interim appeal against the judgment, arguing that the District Court had wrongly held that the Dutch courts were competent to take cognisance of the dispute. The Court of Appeal of Amsterdam dismissed the interim appeal, upheld the judgment of the District Court and referred the case to the cause list judge for the submission of the statement of defence by Morocco in the main action. In an interlocutory judgment of the Court of Appeal dismissed the basis of the claim by "De Trappenberg" in the originating summons, but then allowed it to prove its submission that Morocco had ultimately undertaken to make payment In its judgment the Court of Appeal held that "De Trappenberg" had succeeded in discharging the burden of proof upon it and, after quashing the judgment of the District Court, granted the claim of "De Trappenberg" on the basis of the undertaking given by Morocco. Morocco then lodged notice of appeal in cassation to the Supreme Court.

The Supreme Court held:

[…] If in principle the Dutch courts have jurisdiction with regard to a dispute referred to them, they must try the dispute even if the defendant is a sovereign State, except where the defendant claimed in good time and on good grounds the privilege of immunity from jurisdiction. It follows that there is no occasion for an ex officio investigation into the question of whether the circumstances of the case warrant such a claim.

What is therefore decisive is whether, after "De Trappenberg" had altered the basis of its claim, the Kingdom claimed the privilege of immunity from jurisdiction with regard to the trial of the dispute on these altered grounds. […]

It should also be noted that even if this had not been the case [i.e. if Morocco had claimed immunity], it could not have benefited the Kingdom. The nature of the undertaking given (voluntarily) by the ambassador of the Kingdom to pay the claim of "De Trappenberg" against B., a national of the Kingdom, who was in the employ of the Kingdom, was not a clearly governmental act since such an undertaking could equally well have been given by a private sector employer in a comparable situation. The

reasons why the Kingdom gave the undertaking in question are not relevant to the nature of the undertaking

(a)	**Registration no.**	NL/ 14
(b)	**Date**	3 October 1997
(c)	**Authority**	Supreme Court
(d)	**Parties**	The United States of America v. A.F.W. Delsman
(e)	**Points of law**	A foreign State has no office within the meaning of Article 1:14 of the Civil Code at its military basis and is therefore not domiciled there. A foreign State has a domicile at the place where it has its seat.
(f)	**Classification no**	0.c, 1.c, 2.c
(g)	**Source**	RvdW 1997, 189 C. English summary: NYIL 1998, p. 254-256
(h)	**Additional information**	

NL/14

Appendix

The United States of America* v. *A.F.W. Delsman

Delsman concluded two contracts with the 'contracting officer' of the air force base of the United States of America – 'USAFE' – at Soesterberg (near Amersfoort). The contracts were terminated prematurely by USAFE and when protests were of no avail Delsman sued the USA before the Sub-District Court of Amersfoort. A few days later the writ of summons was served a second time at the embassy of the USA in The Hague. However, the USA (USAFE) did not enter an appearance and the Sub-District Court gave judgment by default on 20 May 1992. The judgment was served on the USA by bailiff's notification of 8 July 1992 at the address of USAFE in Soesterberg, where it was left in a sealed envelope.

The USA objected to the default judgment, arguing inter alia that the service of the default judgment at the address of USAFE in Soesterberg had been void.

The Supreme Court held:

[…] The second complaint challenges the view of the District Court that the USA has an office in Soesterberg within the meaning of Article 1:14 of the Civil Code and is therefore domiciled there.

This complaint is well-founded. Article 1:14 of the Civil Code is not applicable to States, and the District Court was therefore wrong to assume on the basis of this provision that the United States was domiciled in Soesterberg too for the purpose of the present matter.

The established facts do not show that the US has a domicile elsewhere than the place where it has its seat. It follows that the service [of the default judgment] should have been effected in accordance with Article 4, point 8, of the Code of Civil Procedure [at the seat of the US] […].

(a)	**Registration no.**	NL/ 15
(b)	**Date**	14 May 1998
(c)	**Authority**	District Court of Rotterdam
(d)	**Parties**	*State of the Netherlands* v. *Azeta B.V*.
(e)	**Points of law**	1) A foreign State is entitled to immunity from execution when execution measures are employed against the State concerned involving the attachment of property intended for the public service of that State. Establishing, maintaining and running embassies is an essential part of the function of government and hence of the public service. Moneys intended for the performance of this function must therefore be treated as property intended for the public service. 2) A letter from the deputy Foreign Minister and a 'note verbale' from the Embassy in The Hague, in which it is stated that the credit balances in the attached bank account are intended for the running of the Embassy is sufficient to support the assumption that the present moneys are intended for the public service. 3) It was up to the defendant to adduce evidence of facts and/or circumstances to support its submission that this was not the case. The defendant wrongly demands that the Embassy should provide more detailed information about the nature and scope of the bank balances held by it, since this would entail an unacceptable interference under international law in the internal affairs of this mission. 4) The interests of the uninterrupted functioning of a diplomatic mission should prevail over the interests of executing (by expeditious means) a judgment given in the Netherlands.
(f)	**Classification no**	0.a, 1.c, 2.a

(g)	**Source**	KG 1998, 251. English summary: NYIL 2000, p. 264-267.
(h)	**Additional information**	

NL/15

Appendix

State of the Netherlands* v. *Azeta B.V.

Azeta arranged for the credit balances of the Chilean Embassy in an account at ABN-AMRO Bank in Amsterdam to be attached by way of execution of a judgment against Chile. After the Bank had informed the Chilean ambassador of the attachment, he lodged a protest with the Dutch Ministry of Foreign Affairs. The ambassador demanded that the Minister take steps to arrange for termination of the attachment on the ground of the Netherlands' obligation under international law to maintain the immunity of the diplomatic mission of Chile from attachment.

The District Court held:

3.2. The starting point in this dispute is that – pursuant to (unwritten) international law – a foreign State is entitled to immunity from execution when execution measures are employed against the State concerned involving the attachment of property intended for the public service of that State. Establishing, maintaining and running embassies is an essential part of the function of government and hence of the public service. Moneys intended for the performance of this function must therefore be treated as property intended for the public service.

In the present case the defendant denies that (all) bank balances which it has caused to be attached are intended for the functioning of the Chilean Embassy. The plaintiff has lodged in this connection a letter of 8 May 1998 from the deputy Foreign Minister of the Republic of Chile and a ‘note verbale' from the Chilean Embassy in The Hague of 11 May 1998, in which it is stated that the credit balances in the attached bank account are intended for the running of the Chilean Embassy.

Contrary to what the defendant has alleged in this connection, the President considers that these statements are sufficient in this case to support the assumption that the present moneys are intended for the public service of the Republic of Chile.

It was up to the defendant to adduce evidence of facts and/or circumstances to support its submission that this was not the case. As the defendant has failed to do so, and as such facts and/or circumstances have not become known in any other way either, the Republic of Chile is – in view of the above – in principle entitled to claim immunity from. The defendant wrongly demands that the Chilean Embassy should provide more detailed information about the nature and scope of the bank balances held by it, since this would entail an unacceptable interference under international law in the internal affairs of this mission. The defendant's submission that the State of the Netherlands should also defend the interests of its national companies does not detract from the above.

3.3. The defence put forward by the defendant that recognition of the immunity from execution would jeopardise the immunity of Dutch administration of justice is rejected. Quite apart from whether such a general principle exists in [the Dutch] legal system, a higher importance should in principle be attached to the rules of international law than to the rules of Dutch law (in particular Dutch procedural law), with the result that the interests of the uninterrupted functioning of a diplomatic mission should in this case prevail over the interests of executing (by expeditious means) a judgment given in the Netherlands.

(a)	**Registration no.**	NL/ 16
(b)	**Date**	12 November 1999
(c)	**Author(ity)**	Supreme Court
(d)	**Parties**	*The United States of America* v. *Havenschap Delfzijl/Eemshaven (Delfzijl/ Eemshaven Port Authority)*
(e)	**Points of law**	As international law stands at present, foreign States are not subject to the jurisdiction of the Dutch courts in respect of claims arising in the Netherlands as the result of the operation of ships which belong to or are operated by them and which are used in the performance of a typical government function (such as military action). The nature of the act or event giving rise to the claim is not of importance in this connection.
(f)	**Classification no**	0.a, 1.a, 2.c
(g)	**Source**	NJ 2001, 567. English summary: NYIL 2001
(h)	**Additional information**	A similar decision of the Supreme Court '*The United States of America*, *Department of the Navy, Military Sealift Command* v. *P.C. van der Linden*' is published in NJ 2001, 568.

NL/16

Appendix

The United States of America* v. *Havenschap Delfzijl/Eemshaven (Delfzijl/ Eemshaven Port Authority)

In November and December 1990 the seagoing motor vessel Cape May, which sailed under the flag of the United States, berthed in the Dutch port of Eemshaven. The ship was owned by the United States. The berthing had taken place on conditions contained in a document drawn up by the Port Authority, which had been signed in confirmation of the agreement of the United States by Mijne and Barends B.V. for or on behalf of OMI Corporation in New York. While the ship was berthed a number of boiler tubes fell overboard during loading. The Port Authority was involved in the salvage of these tubes and incurred costs in this connection. Subsequently the Cape May broke from its moorings on a number of occasions and drifted away. It collided with quayside walls belonging to the Port Authority and caused damage. The Port Authority sued the United States claiming compensation for the items of damage. The United States claimed that the Dutch Courts lacked jurisdiction.

The Supreme Court held:

[…] Part 1 therefore raises the question of whether the United States is entitled on the basis of unwritten rules of international law to immunity from jurisdiction in respect of a claim which has arisen in the Netherlands on account of the use by the United States of a vessel belonging to or operated by the United States if, at the time when the cause of action arose, this vessel had the status of a warship or military supply ship and was used exclusively to carry out a military (i.e., non-commercial) public function.

This question must be answered in the affirmative. As international law stands at present, foreign States are not subject to the jurisdiction of the Dutch courts in respect of claims arising in the Netherlands as the result of the operation of ships which belong to or are operated by them and which are used in the performance of a typical government function (such as military action). The nature of the act or event giving rise to the claim is not of importance in this connection. […]