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Kenmerk
2022-0000352889

Uw kenmerk

Datum July 4, 2022

Betreft Questions regarding right to self-determination and ius cogens

Thank you for your letter with a request regarding the right to self-determination and ius cogens. Below you will find an answer to the questions, listed in your letter of April 28.

Question 1:

Can the State Secretary confirm that because the right to self-determination is also a "jus cogens/peremptory" norm that it prevails over the Rijkswet COHO and that there is no lawful way to circumvent or, derogate from, a "jus cogens/peremptory" norm?

Answer:

As the Kingdom of the Netherlands has stated in its written statement of 17 April 2009 in the International Court of Justice's Advisory Opinion procedure 'Accordance with international law of the unilateral declaration of independence in respect of Kosovo' (para. 3.2) and in its written statement of 27 February 2018 in the International Court of Justice's Advisory Opinion procedure 'Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965' (para. 2.5), the right of self-determination of peoples is a permanent, continuing, universal and inalienable right with a peremptory character. In case of a conflict between a rule of international law with a peremptory character and national legislation, international law takes precedence over such national legislation (see more generally <https://zoek.officielebekendmakingen.nl/kst-29861-19.html>). The Kingdom of the Netherlands, however, considers that the Rijkswet COHO is in accordance with the right of self-determination of peoples. Therefore, the issue of precedence does not arise.

Question 2:

Can the State Secretary confirm that the right to self-determination also prevails over the Kingdom Charter or "Het Statuut"?

Answer:

See the answer to the first question. Also in this regard the Kingdom of the Netherlands considers that the Charter (het Statuut) of the Kingdom is in accordance with the right of self-determination of peoples.

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I trust that this answers your questions. On request of the committee of Kingdom Relations of the Dutch Parliament, I will send them a copy of this letter. I will also send a copy to the Prime Minister of Sint-Maarten.

Sincerely,

State Secretary for the Interior and Kingdom Relations,

Alexandra C. van Huffelen