

BELARUS

LEGAL BASIS

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

The Republic of Belarus is a party to the 1969 *United Nations Convention on Special Missions* since 27 September 1997.

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

Belarus is a State Party to a number of universal, regional and bilateral treaties concerning diplomatic immunities and privileges, such as:

1. *Convention on the Privileges and Immunities of the United Nations* (13.02.1946);
2. *Convention on the Privileges and Immunities of the Specialized Agencies* (21.11.1947);
3. *Agreement on the Privileges and Immunities of the International Atomic Energy Agency* (entered into force for the Republic of Belarus on December 2, 1966)
4. *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents* (14.12.1973);
5. *Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character* (14.03.1975);
6. *Protocol on the Privileges and Immunities of the International Maritime Satellite Organization (INMARSAT)* (entered into force for the Republic of Belarus on July 30, 1983)
7. *Agreement on the Status of the Economic Court of the Commonwealth of Independent States* (06.07.1992);
8. *Agreement between the Republic of Belarus and the Economic Court of the Commonwealth of Independent States on the Conditions of Stay of the Economic Court of the Commonwealth of Independent States in the Territory of the Republic of Belarus* (22.11.1996) and a *Protocol thereto* (01.08.1997);
9. *Convention on the Legal Status of the Officials and Staff of the Bodies of the Commonwealth of Independent States* (25.04.2003);
10. *Agreement between the Republic of Belarus and the Commission of the European Communities on Establishment, Privileges and Immunities of Delegation of the Commission of the European Communities in the Republic of Belarus* (07.03.2008);
11. *Agreement on the Conditions of Stay of the Executive Committee of the Commonwealth of Independent States in the Territory of the Republic of Belarus* (28.05.2009);
12. *Convention on the Privileges and Immunities of the Eurasian Economic Community* (19.12.2011);
13. *Agreement between the Republic of Belarus and the Council of Europe concerning the privileges and immunities of the members of the Group of Experts on Action against Trafficking in Human Beings and other members of country visit delegations* (26.11.2013);
14. *Agreement between the Republic of Belarus and the Council of Europe on the privileges and immunities of representatives of members of the Group of States against corruption and members of inspection teams* (22.01.2010);
15. *Agreement between the Republic of Belarus and the Office of the United Nations High Commissioner for Refugees on the cooperation and legal status of the Office of the United Nations High Commissioner for Refugees and its personnel in the Republic of Belarus* (28.07.2010);
16. *Agreement between the Government of the Republic of Belarus and the International Finance Corporation on the Representation of the International Finance Corporation in the Republic of Belarus* (20.03.2008);
17. *The Framework Agreement between the Republic of Belarus and the European Investment Bank* (15.05.2017);
18. *Agreement between the Republic of Belarus and the Eurasian Economic Union on the conditions of the stay of the Court of the Eurasian Economic Union on the territory of the Republic of Belarus* (29.04.2016);

19. *The Protocol to amend the Agreement on the Status of the Economic Court of the Commonwealth of Independent States from July 6, 1992;*
20. *The agreement between the Parliament of the Republic of Belarus and the OSCE Parliamentary Assembly on holding the 26th Annual Session of the OSCE Parliamentary Assembly (15.03.2017);*
21. *An Agreement between the Government of the Republic of Belarus and the United Nations, represented by the United Nations Economic Commission for Europe, regarding the hosting of the seventh session of the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context and the third session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment (15.03.2017).*

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

- a. If so, please provide information concerning the relevant legislative provisions (in particular title, source and content; if possible, please provide official translations in French or in English and/or references to online sources);**
- b. If not, is the issue of immunities of special missions covered by another part of your legislation? If so, please provide information concerning these relevant legislative provisions (in particular title, source and content; if possible, please provide official translations in French or in English and/or references to online sources).**

There is no specific domestic legislation in the Republic of Belarus on the status of special missions.

However, several Belarusian laws contain general provisions concerning diplomatic privileges and immunities:

- Criminal Code of the Republic of Belarus (09.07.1999). Article 5(4) refers to treaties of the Republic of Belarus;

- Criminal Procedural Code of the Republic of Belarus (16.07.1999). Article 4(2) states that the procedures envisaged by the Code shall be applicable to the persons who enjoy the right of diplomatic inviolability only subject to their request or consent transmitted through the Ministry of Foreign Affairs;

- Administrative Code of the Republic of Belarus (21.04.2003). Article 1.4(4) stipulates that the issue of responsibility for an administrative offence committed in the territory of the Republic of Belarus by a foreigner who enjoys immunity from administrative jurisdiction in accordance with treaties of the Republic of Belarus is decided through diplomatic channels;

- Administrative Procedural Code of the Republic of Belarus (20.12.2006). Article 1.3(4) states that the procedures envisaged by the Code shall be applicable to the persons who enjoy the right of diplomatic inviolability only subject to their request or consent transmitted through the Ministry of Foreign Affairs;

- Civil Procedural Code of the Republic of Belarus (11.01.1999). Article 554 states that the persons enjoying diplomatic immunities according to treaties of the Republic of Belarus shall be subject to the judicial jurisdiction of the Republic of Belarus within the limits defined by this Code or the treaties. Article 555 prohibits bringing actions in the courts of the Republic of Belarus against the persons who enjoy diplomatic immunities according to a law or a treaty of the Republic of Belarus except claims concerning:

- private immovable property of such persons if they possess it not on behalf of their States or international organizations;
- hereditary property;
- professional or any other profitable activities outside their official functions.

According to the Law of the Republic of Belarus "On Treaties of the Republic of Belarus" (23.07.2008; Article 33(2)) and the Law of the Republic of Belarus "On the Normative Legal Acts of the Republic of Belarus" (10.01.2000; Article 20(2)), directly applicable legal rules contained in the treaties of the Republic of Belarus constitute an integral part of the legislation in force in the Republic of Belarus. Therefore, the provisions of the United Nations Convention on Special Missions may be directly applicable in the Belarusian legal system.

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

The position of the Republic of Belarus on certain aspects of the immunities is annually stated at the meetings of the Sixth Committee of the UN General Assembly during the discussion of the ILC reports on the topic of immunity of State officials from foreign criminal jurisdiction. The statements are available at the UN documentation system.

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

Customary international law applied to the status of members of special missions stems from the principle of sovereign immunity and depends on the category of the mission in question.

The heads of States, heads of governments and ministers for foreign affairs enjoy the full diplomatic immunity irrespective of the nature of acts performed. The same immunity may be granted to the other senior State officials on a mission abroad when they are key actors exercising crucial aspects of the external policy of a State.

The immunity of other members of special missions is based upon the explicit or implied consent of the receiving State to a special mission and encompasses, at least inviolability and immunity in respect of official acts. The consent can be expressed in the invitation received by the sending State and diplomatic correspondence as well as by a written agreement. Subsequent notifications to the host State about the special mission and its composition are presumably required. The implicit consent can only follow from the conduct of State authorities confirming the acceptance of the special mission in a clear and unambiguous manner (arrangements essential for the performance of a special mission).

The status of special missions sent by States to international organizations, such as the United Nations, to participate in the meetings of their bodies and conferences is subject to relevant treaties as well as customary norms of international law.

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

- a. The extent of the privileges and immunities granted to special missions and to their members;**
- b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);**
- c. The scope *ratione materiae*, in particular by specifying if there are exceptions to the granting of the immunity;**
- d. The temporal limits of the immunities accorded to special missions.**

The extent of the privileges and immunities granted to special missions, their personal and material scope of application, and their temporal limits are determined by the UN Convention on Special Missions to which Belarus is a party.

NATIONAL PRACTICE AND PROCEDURE

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

There is no national case law in the field of immunities of special missions in the Republic of Belarus. The Ministry of Foreign Affairs did not register any situations where the immunity has been invoked and/or challenged. Hypothetically, should such situations arise, the State would be guided not only by codified and customary norms of international law and national legislation, but also by the *comitas gentium*.

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

The Republic of Belarus acts in this sphere in accordance with the 1969 UN Convention on Special Missions, inter alia in accordance with Article 8 (appointment of the members of the special mission) and Article 11 of the Convention (notifications).

a. If yes, which authority delivers these agreements? What weight do the courts attach to such agreements? Is there a formal notification or communication procedure between the governmental authorities and the courts?

Normally, the Ministry of Foreign Affairs of the Republic of Belarus is the competent government body responsible for organizing such communications. Exceptions to this rule may be envisaged in treaties relating to specific international organizations or States to which Belarus is a Party and which may be considered as *lex specialis* with regard to the 1969 UN Convention on Special Missions.

b. In the absence of such a formal agreement, can an implied consent derive from the behaviour of the governmental authorities?

Yes, an implied consent can be derived from the conduct of the governmental authorities. E.g., implied Belarusian consent to the mission may derive from the fact of an official reception of a special envoy by competent Belarusian officials or by the fact of an urgent issuance of a diplomatic visa to the relevant foreign official whose official visit to Belarus under discussion with Belarusian authorities.