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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW

(CAHDI)

COMITE DES CONSEILLERS JURIDIQUES SUR LE DROIT INTERNATIONAL PUBLIC

(CAHDI)

Replies by States to the questionnaire on "Immunities of special missions"

Réponses des Etats au questionnaire sur les « Immunités des missions spéciales »

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FOREWORD / *AVANT-PROPOS*

The topic of “Immunities of special missions” was included in the agenda of the 46th meeting of the CAHDI (Strasbourg, 16-17 September 2013) at the request of the delegation of the United Kingdom which had prepared a working document to generate a process of exchange of views and of information gathering on the practice and the legislation relating to special missions in member and observer States within the CAHDI (document CAHDI (2013) 15).

At the said meeting, the members of the CAHDI held an exchange of views on this issue and agreed to draft a questionnaire aiming at establishing an overview of legislations and specific national practices in this field. This questionnaire was adopted by the CAHDI at its 47th meeting (Strasbourg, 20-21 March 2014).

The present document compiles the replies submitted by States to the questionnaire.

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Le sujet des « Immunités des missions spéciales » a été inscrit à l'ordre du jour de la 46ème réunion du CAHDI (Strasbourg, 16-17 septembre 2013) à la demande de la délégation du Royaume-Uni qui avait préparé un document de travail afin de susciter un processus d'échange de vues et de collecte d'informations sur la pratique et la législation relatives aux missions spéciales dans les Etats membres et observateurs auprès du CAHDI (document CAHDI (2013) 15).

Lors de ladite réunion, les membres du CAHDI ont procédé à un échange de vues sur la question et ont convenu d'élaborer questionnaire visant à établir une vue d'ensemble des législations et pratiques spécifiques nationales dans ce domaine. Ce questionnaire a été adopté par le CAHDI lors de la 47ème réunion (Strasbourg, 20-21 mars 2014).

Le présent document compile les réponses soumises par les Etats au questionnaire.

QUESTIONNAIRE ON "IMMUNITIES OF SPECIAL MISSIONS"

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?

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

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).

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.

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.

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.

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).

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?

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?

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

QUESTIONNAIRE SUR LES « IMMUNITES DES MISSIONS SPECIALES »

BASE LEGALE

1. Votre Etat a-t-il signé et/ou ratifié la *Convention des Nations Unies sur les missions spéciales* (1969) ? Si non, votre Etat envisage-t-il de signer/ratifier la Convention ?

2. Votre Etat applique-t-il d'autres instruments juridiques internationaux en la matière (ex : accords bilatéraux, multilatéraux ou accords de siège) ?

3. Votre Etat a-t-il adopté une législation nationale spécifique en matière d'immunité des missions spéciales ?

    a. Dans l'affirmative, veuillez fournir des informations concernant les dispositions législatives pertinentes (en particulier titre, source et contenu ; si possible, veuillez fournir des traductions officielles en français ou en anglais et/ou les références renvoyant à des sources Internet) ;

    b. Si non, la question des immunités des missions spéciales est-elle couverte par une autre partie de votre législation ? Dans l'affirmative, veuillez fournir des informations concernant ces dispositions législatives pertinentes (en particulier titre, source et contenu ; si possible, veuillez fournir des traductions officielles en français ou en anglais et/ou les références renvoyant à des sources Internet).

4. Les autorités de votre Etat ont-elles émis des déclarations officielles, rapports ou tout autre document concernant le statut et les immunités des missions spéciales ? Dans l'affirmative, veuillez fournir toute information pertinente relative à ces documents.

5. Votre Etat considère-t-il que certaines obligations et/ou définitions en matière d'immunité des missions spéciales dérivent du droit international coutumier ? Dans l'affirmative, veuillez fournir une brève description des principales exigences de ce droit à cet égard.

6. Veuillez fournir des informations sur la portée des immunités des missions spéciales, en particulier :

    a. L'étendue des privilèges et immunités accordés aux missions spéciales et à leurs membres ;

    b. Le champ d'application *ratione personae* (catégories d'individus susceptibles de jouir d'une immunité de mission spéciale);

    c. Le champ d'application *ratione materiae*, notamment en précisant s'il existe des exceptions à l'octroi de l'immunité;

    d. Les limites temporelles des immunités reconnues aux missions spéciales.

PRATIQUE NATIONALE ET PROCEDURE

7. Existe-t-il des jurisprudences nationales en matière d'immunité des missions spéciales ? Dans l'affirmative, veuillez fournir des informations sur ces décisions (date du jugement, autorité ayant rendu le jugement, noms des parties, principaux points de droit, traduction française ou anglaise du jugement ou résumé en anglais ou en français du jugement).

8. Existe-t-il un mécanisme d'agrément formel des missions spéciales c'est-à-dire un processus suivant lequel votre Etat peut accepter à l'avance qu'une visite officielle constitue ou non une mission spéciale ?

    a. Si oui, quelle autorité délivre ces agréments ? Quel est le poids accordé par les tribunaux à de tels agréments ? Existe-t-il une procédure formelle de notification ou de communication entre les autorités gouvernementales et les tribunaux ?

    b. En l'absence d'un agrément formel, un consentement implicite peut-il dériver du comportement des autorités gouvernementales ?

REPLIES BY MEMBER STATES OF THE COUNCIL OF EUROPE

REPONSES DES ETATS MEMBRES DU CONSEIL DE L'EUROPE

ALBANIA

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?

Albania has not signed/ratified yet the UN Convention on Special Missions (1969). The issue of signing the Convention is still under consideration by the Albanian government.

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

Albania applies the generally accepted customary international norms in this area. Even though Albania has not became a state party to the United Nations Convention on Special Missions (1969), certain provisions on immunities and privileges are taken into consideration regarding the treatment of high level missions while in Albania.

In addition, there are a few bilateral agreements concluded between Albania and some countries on technical cooperation containing some provisions granting immunities and privileges to the headquarters and staff of the missions operating in Albania on temporary basis.

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

Albania has not adopted so far any special national legislation on this respect.

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).

The issue of immunities of special missions is not covered by other part of Albanian legislation.

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.

n/a

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.

Albania considers that issues related to immunity of special missions derive from customary law. The customary rules that are applied to a high-level mission are related with immunity from civil and criminal jurisdiction in respect of their official acts.

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;

A special mission and its staff to Albania enjoy the following privileges and immunities:

- The right to use the flag and emblem of the sending state;
- The necessary facilities required for the performance of its functions;
- Exemption of the premises of the high level mission from taxation. Concerning other special missions the exemption is subject to a bilateral agreement ratified by the Albanian Parliament;
- Inviolability of the premises;
- Inviolability of archives and documents;
- Freedom of movement;
- Freedom of communication;
- Personal inviolability;
- Inviolability of the private accommodation;
- Immunity from jurisdiction for their official acts;
- Exemption from social security legislation;
- Exemption from customs duties and inspection of high level missions. Concerning other special missions the exemption is subject to a bilateral agreement ratified by the Albanian Parliament.

b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);

Categories of individuals belonging to a special mission who enjoy immunity are the following:

- Head of State and Government, Speaker of Parliament, Minister of Foreign Affairs and their family members accompanying them;
- Diplomats and high officials holding a diplomatic passport.

c. The scope *ratione materiae*, in particular by specifying if there are exceptions to the granting of the immunity;

The scope *rationae materiae* of immunities comprises immunity from civil and criminal jurisdiction in respect of official acts. Immunity is not granted to state officials who have committed international crimes while in office.

d. The temporal limits of the immunities accorded to special missions.

A special mission enjoys immunities and privileges from the time of entry until its departure livefrom the territory of Albania.

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 this field so far.

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?

There is no formal agreement regarding an official visit under which it is considered as a special mission.

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?

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

The behavior of Albanian authorities towards an official delegation visiting Albania implies that it constitutes a special mission.

ANDORRE

BASE LEGALE

1. Votre Etat a-t-il signé et/ou ratifié la *Convention des Nations Unies sur les missions spéciales* (1969) ? Si non, votre Etat envisage-t-il de signer/ratifier la Convention ?

Non, la Principauté d'Andorre n'a pas signé et donc pas ratifié la Convention des Nations Unies sur les missions spéciales (1969) ; bien qu'elle fasse partie des Conventions qui sont parfois mentionnées lors de négociations avec des organisations, cette Convention ne fait pas partie des priorités immédiates du gouvernement actuel en matière d'adhésion à des traités internationaux. Elle figure cependant comme texte de référence dans la bibliographie du Ministère des Affaires Etrangères. Le dispositif juridique dont dispose l'Etat andorran en la matière nous paraît couvrir pour l'instant l'essentiel des questions et situations.

2. Votre Etat applique-t-il d'autres instruments juridiques internationaux en la matière (ex : accords bilatéraux, multilatéraux ou accords de siège) ?

L'Etat andorran applique depuis le 2 août 1996, de manière générale la *Convention de Vienne sur les Relations Diplomatiques* du 18 avril 1961 et la *Convention de Vienne sur les Relations Consulaires* du 24 avril 1963.

Sont aussi en vigueur en Andorre :

- Un accord de siège concernant un bureau spécialisé de l'Organisation Mondiale du Tourisme (OMT) : « Accord entre la Principauté d'Andorre et l'Organisation Mondiale du Tourisme relative au statut juridique du Bureau de l'OMT spécialisé dans le développement des ressources humaines » du 11/09/2003
- L'Accord sur les privilèges et immunités de la Cour Pénale Internationale du 3 novembre 2004
- L'Accord général sur les privilèges et immunités du Conseil de l'Europe du 02/09/1949 et les protocoles additionnels successifs du 6/11/1952 et du 05/03/1996.
- L'Accord entre la Principauté d'Andorre et le Royaume d'Espagne relatif au Statut du Co-prince épiscopal du 6 décembre 1994.
- Accord bilatéral entre le Gouvernement de la Principauté d'Andorre et le Gouvernement des Etats-Unis d'Amérique dans le domaine de l'emploi pour les parents qui sont à charge des membres des missions diplomatiques et des bureaux consulaires en poste, du 17/07/2012 (échange de notes verbales).

3. Votre Etat a-t-il adopté une législation nationale spécifique en matière d'immunité des missions spéciales ?

a. Dans l'affirmative, veuillez fournir des informations concernant les dispositions législatives pertinentes (en particulier titre, source et contenu ; si possible, veuillez fournir des traductions officielles en français ou en anglais et/ou les références renvoyant à des sources Internet) ;

L'Etat andorran n'a pas adopté une législation nationale spécifique en matière d'immunité des missions spéciales.

b. Si non, la question des immunités des missions spéciales est-elle couverte par une autre partie de votre législation ? Dans l'affirmative, veuillez fournir des informations concernant ces dispositions législatives pertinentes (en particulier titre, source et contenu ; si possible, veuillez fournir des traductions officielles en français ou en anglais et/ou les références renvoyant à des sources Internet).

Les Conventions de Vienne et les trois accords spécifiques susmentionnés à la question 2 sont des traités internationaux qui n'ont pas eu de développement législatif ou réglementaire. Toutefois ces accords ayant la qualité de traité international en vigueur en Andorre, ils font partie de la législation andorrane et ont une applicabilité directe en vertu de la Constitution andorrane du 14 mars 1993 : l'art.3.4 prévoit en effet que « *les traités et les accords internationaux s'intègrent dans l'ordre juridique andorran dès leur publication au Bulletin Officiel de la Principauté d'Andorre et ne peuvent être abrogés ou modifiés par la loi*. »

Les références exactes des textes sont les suivantes et peuvent être trouvés sur le web aux liens indiqués.

- Convention de Vienne sur les Relations diplomatiques du 18 avril 1961, en vigueur depuis le 2 août 1996, publiée au BOPA numéro 50, Année 8 du 17-07-1996 https://www.bopa.ad/bopa/008050/Pagines/47A6.aspx

- Convention de Vienne sur les Relations consulaires du 24 avril 1963, en vigueur depuis le 2 août 1996, publiée au BOPA numéro 50, Année 8 du 17-07-1996 https://www.bopa.ad/bopa/008050/Pagines/2F82.aspx

- Accord entre la Principauté d'Andorre et l'Organisation Mondiale du Tourisme relative au statut juridique du Bureau de l'OMT spécialisé dans le développement des ressources humaines du 11/09/2003, publié au BOPA Année 16, numéro 29, du 12/05/2004 https://www.bopa.ad/bopa/016029/Pagines/3583A.aspx

- L'Accord sur les privilèges et immunités de la Cour Pénale International du 3 novembre 2004, publié au BOPA Année 16, numéro 81 du 1er décembre 2004, https://www.bopa.ad/bopa/016081/Pagines/39DB6.aspx

- L'Accord entre la Principauté d'Andorre et le Royaume d'Espagne relatif au Statut du Co-prince épiscopal du 6 décembre 1994. Source: Ministère des Affaires étrangères, texte non publié au BOPA, disponible sur demande, non traduit (ci-joint)

- Accord bilatéral entre le Gouvernement de la Principauté d'Andorre et le Gouvernement des Etats-Unis d'Amérique dans le domaine de l'emploi pour les parents qui sont à charge des membres des missions diplomatiques et des bureaux consulaires en poste, du 17/07/2012 (échange de notes verbales) (ci-joint versions catalane et anglaise) publié au BOPA 18/07/2012, https://www.bopa.ad/bopa/024035/Documents/788F6.pdf

4. Les autorités de votre Etat ont-elles émis des déclarations officielles, rapports ou tout autre document concernant le statut et les immunités des missions spéciales ? Dans l'affirmative, veuillez fournir toute information pertinente relative à ces documents.

Non, les autorités andorranes n'ont pas émis de déclarations officielles, rapports ou autre document concernant le statut et les immunités des missions spéciales. Il existe toutefois des rapports d'analyse rédigés par des consultants et des fonctionnaires nationaux à ce sujet, valides comme documents de travail, élaborés sur le statut du bureau spécialisé de l'OMT en matière de ressources humaines. Ils peuvent être consultés sur demande motivée.
La ligne du Gouvernement d'Andorre en la matière, bien qu'elle ne soit pas « officialisée », est assez constante, et reflète assez bien l'évolution du droit international en la matière, qui est passé d'une immunité absolue vers une immunité limitée, au fur et à mesure que les activités des Etats (et de leur représentants) se sont diversifiées et sont entrées dans le champ d'activité privée.
Le gouvernement d'Andorre applique de manière assez stricte les privilèges et immunités sur le territoire d'Andorre, en respectant les conventions et les accords existants pour faciliter le travail des diplomates, personnel consulaire et fonctionnaires internationaux, sans toutefois excéder afin de ne pas créer des régimes d'immunités et privilèges trop favorables à ceux qui n'exercent pas de

fonctions diplomatiques ou consulaires ni internationales. Par exemple le personnel administratif et le personnel de service des ambassades ne dispose pas des immunités et privilèges en dehors du plus strict exercice de leurs fonctions; autre exemple : dans un Accord d'Entente entre l'OMT et l'Andorre, relatif au fonctionnement de la Fondation OMT.Themis qui développe aussi des thématiques relatif au développement des ressources humaines, l'inclusion de la référence à l'application de la Convention sur les prérogatives et immunités des Organes spécialisés des Nations Unies dans ce cas a été réfuté car il s'agit d'une organisation nationale régie par le droit national, et il serait, selon l'interprétation du gouvernement andorran, discriminatoire que s'appliquent des privilèges ou immunités à la Fondation Thémis alors que d'autres organisations nationales, soumises exactement à la même législation, ne jouiraient pas des mêmes privilèges.

Mentionnons aussi que le Code Pénal prévoit certaines dispositions pour sanctionner celui ou celle qui aurait sur le territoire andorran, kidnappé, menacé, agressé ou assassiné un Chef d'Etat étranger ou toute personne internationalement protégée par un traité international (art.450-451 du CP). Egalement, le Code Pénal andorran sanctionne tout délit contre la résidence ou les dépendances officielles d'un Chef d'Etat étranger (Art. 453), et celui qui, en violation du droit international public, viole l'immunité d'un Chef d'Etat étranger ou d'une personne internationalement protégée par un traité international (Art.454 CP).

5. Votre Etat considère-t-il que certaines obligations et/ou définitions en matière d'immunité des missions spéciales dérivent du droit international coutumier ? Dans l'affirmative, veuillez fournir une brève description des principales exigences de ce droit à cet égard.

Il n'y a pas de législation nationale qui incorpore expressément du droit coutumier international ; toutefois, la Constitution d'Andorre affirme dans son article 3, paragraphe 3 que l'Andorre « *incorpore à son ordre juridique les principes de droit international public universellement reconnus* ».

6. Veuillez fournir des informations sur la portée des immunités des missions spéciales, en particulier :

a. L'étendue des privilèges et immunités accordés aux missions spéciales et à leurs membres ;

Ces privilèges et immunités sont pour l'instant définis de manière spécifique dans l'unique accord de siège que nous avons avec une organisation internationale, l'Organisation Mondiale du Tourisme, relatif au fonctionnement du bureau de l'OMT spécialisé en Ressources Humaines.
Les articles 12 et 13 de cet accord établissent explicitement quels sont les privilèges et immunités :

L'article 12 définit les privilèges et immunités du Directeur du Bureau spécialisé OMT.RH et des fonctionnaires du Bureau OMT.RH :

> « 1. Le Directeur du Développement des Ressources Humaines de l'OMT.DRH jouit des privilèges, immunités, exemptions et facilités qui sont reconnues aux ambassadeurs et aux chefs de mission diplomatique en Andorre.
> (..)
> 3. les fonctionnaires internationaux et les cadres techniques de l'OMT, ainsi que les fonctionnaires de l'OMT.DRH, jouissent, dans l'exercice de leurs fonctions des privilèges et immunités reconnues aux agents diplomatiques. Sont aussi considérés fonctionnaires internationaux les fonctionnaires de l'OMT en mission spéciale sur le territoire d'Andorre.»

L'article 13 établit les privilèges et immunités au personnel administratif et technique :

« 1. Le personnel administratif et technique de l'OMT.DRH jouit des privilèges, des immunités, des exemptions et des facilités qui sont accordées au personnel administratif et technique des missions diplomatiques résidentes en Andorre. »

Les articles 1 à 11 de l'accord prévoient les privilèges et immunités suivants :

- Art.1 : pleine personnalité et capacité juridique au Bureau spécialisé de l'OMT ;
- Art.2 ; liberté d'action de l'OMT.DRH en toute indépendance, inhérente à sa condition d'organisation internationale ;
- Art.3 : Inviolabilité du siège, des archives, de la correspondance et des biens et avoirs ;
- Art.4 : immunité de juridiction, à moins que l'OMT.DRH n'y renonce expressément ;
- Art.5 : même traitement que celui accordé aux missions diplomatiques en matière de communications. Le Bureau OMT.DRH ne peut être en aucun cas soumis à des contrôles, ne peut être sujette à la limitation de l'utilisation des clés (mots de passe…) ou tout autre pratique propre à une organisation internationale ;
- Art.6 : Même accès aux services publics que les autres missions diplomatiques ;
- Art.7 : aucune mesure restrictive ne peut s'appliquer à l'importation et exportation de publications de l'OMT.DRH ;
- Art.8 : Même régime fiscal qu'aux autres missions diplomatiques ;
- Art.9 : Régime de douanes : exemption des droits de douane pour tout ce qui concerne les biens et objets utilisés pour le fonctionnement du bureau. La revente de tels objets en Andorre est limitée au passage d'un délai de trois ans ;
- Art.11 : liberté de disposer des fonds monétaires et financiers ;
- Art.15 : Obligation pour le Gouvernement d'Andorre de fournir une carte d'identité valide à toutes les personnes qui rentrent dans l'accord de siège (voir ci-dessous b.).

b. Le champ d'application *ratione personae* (catégories d'individus susceptibles de jouir d'une immunité de mission spéciale);

- Directeurs d'organisations internationales ayant siège en Andorre ou en déplacement lors d'une mission spéciale en Andorre ;
- Fonctionnaires et cadres techniques d'organisations internationales ayant siège en Andorre ou en déplacement lors d'une mission en Andorre, dans l'exercice de leurs fonctions ;
- Personnel Administratif et technique d'organisations internationales ayant siège en Andorre dans le plus strict exercice de leur fonction ;
- Sont aussi inclus : les époux, conjoints les fils et membres des familles personnes susmentionnés qui vivent ensemble.

En base à l'Accord entre la Principauté d'Andorre et le Royaume d'Espagne relatif au Statut du Coprince épiscopal du 23 Juillet 1993, l'Etat Espagnol reconnait au Coprince épiscopal d'Andorre la qualité de « *personne internationalement protégée* », Selon l'article 2 de cet accord, la personne du Coprince épiscopal est inviolable et elle jouit de l'immunité de juridiction pénale, civile et administrative dans l'exercice de ses fonctions publiques comme Chef d'Etat andorran. Les délégués du Coprince sont aussi, dans l'exercice de leurs fonctions, exempts de responsabilité. La résidence privée du Coprince est inviolable. Les documents, la correspondance, les archives et les locaux qui sont le siège des services de l'Evêque d'Urgell en tant que Co-prince d'Andorre sont inviolables sur le territoire espagnol.

c. Le champ d'application *ratione materiae*, notamment en précisant s'il existe des exceptions à l'octroi de l'immunité;

Il n'existe actuellement aucune disposition générique ou spécifique qui prévoie des exceptions à l'octroi de l'immunité à ceux qui devraient normalement en jouir, à cause de la matière dont ils s'occupent.

Il est clair par contre, toujours selon l'Accord de siège que « *l'exécution d'actes en relation avec l'OMT.DRH de la part d'un employé de la Fondation OMT.Thémis ne lui confère aucun droit aux privilèges et immunités diplomatiques.* »

Mentionnons aussi que l'Accord entre Andorre et les Etats-Unis relatifs aux conjoints des membres des missions diplomatiques n'a pas pour objet d'accorder des immunités aux conjoints. Sur une base de réciprocité les conjoints des membres des missions diplomatiques ou consulaires disposeront d'un permis de travail (sur demande à l'autorité du pays récepteur), mais ils sont donc exempts de l'exigence de disposer d'une offre de travail préalable pour disposer du permis de travail. L'accord spécifie en outre que dans le cadre de leurs activités professionnelles, les conjoints ne jouiront pas de l'immunité civile ou administrative. Ils sont aussi soumis au paiement des impôts nationaux et des contributions sociales.

d. Les limites temporelles des immunités reconnues aux missions spéciales.

L'accord de siège entre l'OMT et la Principauté d'Andorre a été signé avec une durée indéfinie.

PRATIQUE NATIONALE ET PROCEDURE

7. Existe-t-il des jurisprudences nationales en matière d'immunité des missions spéciales ? Dans l'affirmative, veuillez fournir des informations sur ces décisions (date du jugement, autorité ayant rendu le jugement, noms des parties, principaux points de droit, traduction française ou anglaise du jugement ou résumé en anglais ou en français du jugement).

Non, il n'y a pas eu pour l'instant d'affaires ayant conduit à une jurisprudence nationale en matière d'immunité des missions spéciales.

8. Existe-t-il un mécanisme d'agrément formel des missions spéciales c'est-à-dire un processus suivant lequel votre Etat peut accepter à l'avance qu'une visite officielle constitue ou non une mission spéciale ?

a. Si oui, quelle autorité délivre ces agréments ? Quel est le poids accordé par les tribunaux à de tels agréments ? Existe-t-il une procédure formelle de notification ou de communication entre les autorités gouvernementales et les tribunaux ?

b. En l'absence d'un agrément formel, un consentement implicite peut-il dériver du comportement des autorités gouvernementales ?

Non, il n'existe pas réellement de mécanisme d'agrément formel et formalisé sous forme de règlement ou de loi pour les missions spéciales ; toutefois, suite aux nombreuses visites officielles de diplomates, de chefs d'Etats et de gouvernements, ainsi que de représentants d'organisations internationales, il existe une procédure assez bien rodée, réalisée par voie diplomatique qui permet aux missions spéciales de se déplacer et d'opérer en Andorre en ayant obtenu les privilèges et immunités nécessaires : visites des équipes de monitoring dans les prisons d'Andorre, etc. Les autorités judiciaires n'entrent pas en jeu dans cette procédure. Il s'agit de procédures qui se feront entre le Ministère d'Affaires Extérieures, le Service du Protocole et le Ministère de l'Intérieur, et éventuellement aussi du Ministère technique concerné ; Ministère de la Santé par exemple pour une visite d'une mission spéciale de l'OMS.

ARMENIA

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?

Armenia has not signed/ratified yet the UN Convention on Special Missions (1969). Armenia has no intention yet to sign/ratified the convention.

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

Yes. There are a few bilateral agreements concluded between Armenia and some countries containing some provisions granting immunities and privileges to the headquarters and staff of the missions operating in Armenia.

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);

N/A

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).

Yes. It is covered by:

- Criminal Procedural Code of the Republic of Armenia, in particular, by Chapter 51 (Articles 445-448) of the mentioned document,

- Code of the Republic of Armenia on Administrative Infringement of Law, in particular, by Article 16 of the mentioned document,

- Civil Procedural Code of the Republic of Armenia, in particular, by Article 245 of the mentioned document.

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.

No

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.

N/A

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**.

See answers for point 3 of this questionnaire and Annex 1.

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 this field so far.

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?

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?

No. But there are informal discussions and negotiations in the frame of CIS counties to create such an agreement regulating bilateral relations in this field between CIS states.

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

N/A

APPENDIX TO THE REPLY OF ARMENIA

Annex 1
Non-official translation

EXTRACTS FROM CRIMINAL PROCEDURAL CODE OF THE REPUBLIC OF ARMENIA

CHAPTER 51
PECULIARITIES OF PROCEEDINGS IN CASES OF PERSONS ENJOYING PRIVILEGES AND IMMUNITY PRESCRIBED BY INTERNATIONAL TREATIES

Article 444. Persons enjoying diplomatic immunity under jurisdiction of the Republic of Armenia

Persons enjoying diplomatic immunity may be under jurisdiction of the Republic of Armenia in case when a corresponding foreign state or international organisation will give a clear consent to it.

Article 445. Persons enjoying diplomatic immunity

The following persons shall enjoy diplomatic immunity:
(1) heads of diplomatic representations of foreign states, members of diplomatic staff of these representations and members of their families living together, where they are not citizens of the Republic of Armenia;
(2) based on reciprocity, workers of administrative and technical staff of diplomatic representations and members of their families living together, where they are not citizens of the Republic of Armenia;
(3) based on reciprocity, workers of the support staff of the diplomatic representation who are not citizens of the Republic of Armenia and not permanently residing in the Republic of Armenia;
(4) diplomatic couriers;
(5) heads of consular offices and other officials;
(6) representatives of a foreign state, members of parliamentary and governmental delegations and, based on reciprocity, members of the delegations of a foreign state who has arrived to participate in international negotiations, international assemblies and meetings, or they are in the Republic of Armenia in transit with other official assignments or the same purpose, family members of the above-mentioned persons who accompany them and are not citizens of the Republic of Armenia;
(7) heads, members and staff of representations of a foreign state in international organisations, their officials who are in the Republic of Armenia by virtue of international agreements or internationally recognised custom;
(8) heads of diplomatic representations in third countries, members of diplomatic staff of diplomatic representations of a foreign state who are in the Republic of Armenia in transit, and their family members who accompany the above-mentioned persons or travel alone for the purpose of joining them or returning to their state.

Article 446. Personal immunity

1. **Persons listed in Article 445 of this Code shall enjoy the right to personal immunity. They may not be arrested or detained except for cases when it is necessary for the execution of the criminal judgement having entered into force against them.**
2. The preliminary investigation body, prosecutor or court having arrested or detained persons referred to in part 1 of this Article shall be obliged to immediately inform the ministry of foreign affairs of the corresponding state about that by telephone, telegram or other means.

Article 447. Immunity from criminal prosecution

1. **Persons listed in Article 445 of this Code shall enjoy immunity from criminal prosecution. The issue of involving such persons as a suspect or accused shall be disposed of through diplomatic channels.**
2. Workers of the staff supporting diplomatic representation who are not citizens of the Republic of Armenia and are not permanently residing in the Republic of Armenia, heads of consular offices and other officials shall enjoy in the Republic of Armenia immunity from criminal prosecution solely while performing their official duties in the field of their activities.

Article 448. Advantage while giving testimonies

1. **Persons listed in Article 445 of this Code may not give testimonies as a witness or victim, whereas, if agreed to give testimonies, shall not be obliged to appear before the investigator, prosecutor, court for that purpose**.
2. When the given persons have given testimonies in the course of preliminary investigation as a witness, victim but has not appear for trial, the court may disclose their testimonies.
3. Heads of consular offices and other officials may not refuse to give testimonies as witnesses or victims except for cases in relation to giving testimonies on issues concerning the performance of their official duties. Where officials of consular offices refuse to give testimonies, coercive measures may not be imposed against them.
4. In case of receiving consent referred to in part 1 of this Article, the subpoena delivered to corresponding persons shall not contain an indication on applying coercive measures, failing to appear before the body conducting proceedings.
5. Persons enjoying diplomatic immunity shall not be obliged to submit correspondence or other documents concerning the performance of their official duties to the investigator, prosecutor, court.

EXTRACT FROM CIVIL PROCEDURAL CODE OF THE REPUBLIC OF ARMENIA

Article 245. Court immunity. 1. Bringing an action against a foreign state, involving it as a third person in the case, **imposing attachment on the property belonging to a foreign state and located in the territory of the Republic of Armenia as well as undertaking other measures for securing the claim with respect thereto, levying that property in execution through the procedure of compulsory enforcement of the judicial act shall be permitted only upon consent of the competent authorities of the respective state, unless otherwise stipulated by the international treaties of the Republic of Armenia**.....

EXTRACT FROM CODE OF ADMINISTRATIVE OFFENCES OF THE REPUBLIC OF ARMENIA

Article 16 **Administrative Responsibility of Foreign Citizens and Stateless Persons**

1. ….
2. **The issue of the administrative responsibility of a foreign citizen, who is immune from the administrative jurisdiction of the Republic of Armenia in compliance with the laws and international treaties** of the Republic of Armenia and who has committed an administrative offence on the territory of the Republic of Armenia, shall be resolved in diplomatic way.

AUSTRIA

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?

Austria is a party to the United Nations Convention on special missions (1969) as well as to the Optional Protocol to the Convention on special missions concerning the compulsory settlement of disputes (acceded on 22 August 1978, entered into force on 21 June 1985).

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

Austria hosts a large number of international organisations. For special missions to these international organisations the respective headquarters agreements are relevant (see e.g. the Agreement between the Republic of Austria and the United Nations regarding the Seat of the United Nations in Vienna, Federal Law Gazette III No. 99/1998 – Article XI Section 33, the Agreement between the Republic of Austria and the United Nations Industrial Development Organization regarding the Headquarters of the United Nations Industrial Development Organization in Vienna, Federal Law Gazette III No. 100/1998 – Article XI Section 33, the Agreement between the Republic of Austria and the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization regarding the Headquarters of the CTBTO, BGBl. III No. 71/1997-Article XIV Section 41, the Agreement between the Republic of Austria and the International Atomic Energy Agency regarding the Headquarters of the IAEA, BGBl. No. 82/1958 as amended - Article XIV Section 33 and the Agreement between the Republic of Austria and the Organization of Petroleum Exporting Countries regarding the Headquarters of the OPEC, Federal Law Gazette No. 382/1974 as amended - Article 20). All these agreements can be found in the Austrian legal information system (http://www.ris.bka.gv.at – Bundesrecht).

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).

As a self-executing treaty approved by the Austrian parliament, the Convention on special missions, published in Federal Law Gazette No. 380/1985, has the status of statutory law and is directly applicable in Austria.

Customary international law is part of Austrian law. Article 9 (1) of the Austrian Federal Constitution stipulates that generally recognized rules of international law are an integral part of Federal law.

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.

Not available.

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.

Although Austria is aware of the progressive elements in the Convention, it considers it as reflecting by and large customary international law. Austria thus applies the provisions of the Convention in relation to any state. If a state not party to the Convention contested the customary status of a provision in a particular situation, a detailed case-by-case analysis would be necessary.

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;

Austria applies the rules of the Convention to members of special missions, which – for the main members of the mission – is equivalent to diplomatic immunity. However, certain categories of persons, such as administrative and technical staff or private staff, enjoy immunity to a lesser extent (see Articles 36-38 of the Convention). Family members enjoy the same immunities as the persons they accompany (see Article 39 of the Convention).

b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);

The rules on special missions apply to all members of the special mission regardless of their rank. The relevant criterion for the applicability of the Convention is the consent of the receiving state to the mission and its members.

c. The scope *ratione materiae*, in particular by specifying if there are exceptions to the granting of the immunity;

Every member of a special mission enjoys immunity from criminal jurisdiction for official acts. As to immunity in civil and administrative proceedings, Article 31 (2) of the Convention applies. As to private acts, there is no immunity from jurisdiction for certain members of the mission (see Article 37 of the Convention relating to service staff). It depends on the rank of the member of a special mission whether immunity is granted.

d. The temporal limits of the immunities accorded to special missions.

According to Article 43 of the Convention, members of the special mission enjoy the privileges and immunities from the moment she or he enters the territory of the receiving state for the purpose of performing her or his functions in the special mission. The privileges and immunities cease at the moment of leaving the territory of the receiving state or on expiry of a reasonable period in which to do so.

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).

In 1998, the Austrian Supreme Court in its decision No. 12Os3/98; dealt with the provisional arrest of a Syrian national, Dr. S, carrying a diplomatic passport. The Regional High Court of Vienna had ordered his release on the ground that he enjoyed immunity as a representative of a member state

on a visit to UNIDO under Article XI of the respective headquarters agreement. Having rejected this argument, the Supreme Court turned to the issue of whether Dr. S was on an ad hoc mission and could claim immunities and privileges on this ground. The Supreme Court underlined the relevance of customary international law in this regard and referred inter alia to the UN Convention on special missions. It finally expressed the view that a special mission to an international organization cannot be undertaken without the consent of that organization (see *Oberster Gerichtshof* (Supreme Court of Justice, Austria), *Syrian National Immunity* case, Case 12 Os 3/98, 12 February 1998, *International Law Reports*, vol. 127, pp. 88-93, attached). The question whether a member of a special mission enjoys formal diplomatic status thus is less important in this context, as long as the member has been notified to and accepted by the receiving state or international organization.

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?

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?

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

There is no formal requirement. The relevant criterion is the consent of the receiving state, whatever form it may take (however, there should be at least some written documentation). Usually the sending state notifies the members of the mission following prior contacts between the relevant state institutions.

APPENDIX TO THE REPLY OF AUSTRIA

AUSTRIA (SUPREME COURT)

International organizations – Immunity – Representatives of Member States – Scope of immunity – United Nations Industrial Development Organization ("UNIDO") Headquarters Agreement, 1967, Article XI – Immunity limited to representatives of Member States "having official business with UNIDO" – Meaning – Question of whether representative acting within scope of activities of UNIDO – Whether dependent on view of UNIDO or sending State – Whether requiring decision of UNIDO recognizing status of person in question as a State representative entitled to diplomatic immunity

Diplomatic relations – Special missions – "Ad hoc" mission to international organization – Determination of status – UNIDO Headquarters Agreement, 1967 – Rules of customary international law – Whether such mission capable of coming into existence without consent of international organization concerned – The law of Austria

SYRIAN NATIONAL IMMUNITY CASE

(Case 12 Os 3/98)

Austria, Supreme Court. 12 February 1998

SUMMARY: *The facts*: – Dr S, a Syrian national carrying a diplomatic passport, was placed under provisional arrest pending extradition in November 1994, under an order made by the District Court of Vienna following a request made by the German authorities. The Superior Provincial Court ("OLG") of Vienna ordered his release on the ground that he enjoyed immunity as a representative of a Member State on a visit to the United Nations Industrial Development Organization ("UNIDO") in Vienna. Article XI of the Headquarters Agreement between UNIDO and Austria, 1967, provided that representatives of Member States who had official business with UNIDO enjoyed immunity. The Court also held that the accused was entitled to immunity since he was on an "ad hoc" mission to UNIDO. The Prosecutor General lodged an appeal to the Supreme Court.

Held: – The appeal was allowed. The provisions of Article XI of the Headquarters Agreement had been incorrectly applied since the lower court had failed to examine what official steps had been taken by UNIDO in relation to the accused.

(1) For someone to be considered as a representative of a Member State "who had official business with UNIDO", within the meaning of Article XI and from Austria, to enjoy the privileges and immunities provided in Article IV of the Convention on Privileged and Immunities."

The facts upon which the OLG based its judgment were that Dr S was in Vienna at the time in question because the Syrian Government had given him the task of visiting the International Tobacco Fair that was taking place there and of using it as an opportunity to make official contact with UNIDO on a diplomatic mission in order to promote the Syrian tobacco industry. The Foreign Ministry of the Syrian Government had previously informed the Austrian Government of this visit "for political purposes" through the Austrian Embassy in Damascus. In addition Syria's representative at the UNO in Geneva (Ambassador A) had informed the UNIDO Officer in Charge, Mehdi A. Al-H, that Dr S would shortly be calling at that organisation in Vienna, although he did not in fact do so owing to his arrest.

Amongst the documents taken into consideration by the OLG was inter alia a verbal note of UNIDO dated 11 November 1994, in which UNIDO in essence expressed the view that despite the above mentioned contact between Ambassador A and the UNIDO official Al-H, and the latter's statement that it would be possible to arrange a meeting between Dr S and UNIDO officials in Vienna, the question of immunity had not been raised at all because, since that conversation no contacts of any kind had taken place in regard to a visit by Dr S; nor had Ambassador A ever been accredited to UNIDO as the Permanent Representative of Syria. Annexed to that document was a statement of UNIDO official Al-H to the effect that, following a meeting arranged by UNIDO, Ambassador A – possibly not in his capacity as diplomat but as an official of a chamber of commerce – had referred to the wish of Dr S, the Managing Director of the Syrian Tobacco Company, to raise a number of unspecified matters with UNIDO officials on the occasion of a visit that he would shortly be making to Vienna, and that in response Mr Al-H had confirmed in non-binding, general terms that such a meeting would be possible. In substance, the UNIDO verbal note at least indicated that because the contacts set out above were not of an official nature, they were from the outset not of such a nature as to cause the visit of Dr S to Vienna to be in the nature of official business.

Nevertheless, the OLG Vienna held as follows:

As is evident from the notice published in the Syrian official gazette, the mission given to Dr S by the Prime Minister of the Syrian Government concerns initial discussions with a view to the promotion of the Syrian tobacco industry by UNIDO and so, in the view of the OLG Vienna, clearly corresponds to "official business" in connection with the scope of activity that is evident from UNIDO's title, namely Organisation for Industrial Development. Austria, as the State in which that organisation has its headquarters, was informed in due time of the visit for political purposes and noted it through the issue of an endorsement.

As regards the legal appraisal of these facts, the view expressed in the legal opinion given by prof. Dr K (in agreement with the view expressed by Prof. Dr Z) cannot be ignored, namely that although upon the dispatch of State agents on official missions in bilateral relations between two States adequate contact must be taken up with the receiving State and its "agrément" obtained, in the case of multilateral diplomacy in regard to multilateral organisations this is not always feasible in this form – nor is it necessary – because no provision is made for an "agrément" in that regard. If an official UNIDO representative (Officer-in-Charge Al H) was notified of the visit of Dr S on behalf of his government, it does not matter that a fixed date for that activity was not agreed. Nevertheless, it is not for the organisation itself alone to decide at its discretion whether immunity from criminal proceedings should be given to an individual; that decision is to be taken by an independent court, which must review the relevant documents submitted in that regard.

In his application for annulment on public interest grounds, the Procurator General rightly points out that the OLG thereby incorrectly applied the provisions of Article XI Section [33] of the Agreement between the Republic of Austria and the United Nations on the official headquarters of UNIDO.

Representatives of the Member States "who have official business with the UNIDO" do not include representatives who in the view of their own State are acting officially in a matter that, viewed abstractly, falls within the scope of activity of UNIDO; rather, it refers to State representatives whom UNIDO regards as acting in connection with a matter which UNIDO considers to fall specifically within its remit and to be in accordance with its objectives. The fact that the sender State has officially entrusted a mission to a representative is therefore irrelevant in that respect.

This interpretation follows quite simply from the notion of "official business" as it is used in the Headquarters Agreement. In particular it is illustrated by Article X Section [29], in which activities of a person "on official business" or "in his official capacity" refer exclusively to the scope of activities of UNIDO. Also militating in favour of such an interpretation are the following: under Article XI Section [36] the inclusion, in a list, of privileged State representatives at UNIDO and the notification of that list to the Austrian Government are the sole responsibility of UNIDO; the rights and exemptions

granted in the agreement are intended solely to facilitate and promote the public interest activities of UNIDO; and the interests of the organisation as the principal rule of interpretation is also expressly laid down in the agreement with UNIDO. It is incompatible with those matters for the diplomatic immunity of a State's representatives to be recognised simply on the basis of the unilateral announcement of a visit, without reference to specific decisions taken by organs of UNIDO.

Accordingly, the OLG Vienna should not have based its decision merely on the fact that Dr S had travelled to UNIDO on behalf of Syria after the announcement of that visit in rather indefinite terms, but the OLG Vienna should have considered whether the meeting he sought with UNIDO (also) represented official business of UNIDO. In so doing, the OLG should also have taken into account the UNIDO verbal note indicating the complete absence of any preparation for the visit and also the primary testimony of Dr S, who – without even hinting at the existence of a specific UNIDO official as his intended interlocutor – merely asserted that he had intended to contact Mr A, a Syrian diplomat.

Nor do the facts found justify the conclusion in law that Dr S was on an ad hoc mission to UNIDO and could therefore claim diplomatic immunities and privileges. This proposition, which the OLG Vienna evidently ultimately concluded was correct, was indeed submitted by the defence and accompanied by an expert legal opinion of Prof. Dr K, but cannot be upheld in the light of the facts found by the court.

An "ad hoc" mission means a legation, limited in duration, which represents a State and is sent by that State to another State, with the latter's consent, for the purpose of dealing with specific issues with that State and to fulfill a specific task in relation to it (…). The position of such ad hoc State representatives – also those sent to an international organisation – is determined primarily by the relevant agreement on the official headquarters of that organisation, secondarily by customary international law, for the determination of which (limited) reference may be made to the Vienna Convention of 14 March 1975 on the representation of States in their relations with International Organisations of a universal character, and by analogy also the UN Convention on special missions (…). None of those legal sources can support the assumption that an ad hoc mission to UNIDO may come into being without the consent of the organisation. In the case in point, UNIDO would be comparable to the recipient State or an ad hoc legation; that State has the right to cooperate, through its consent, in the despatch to it of such a mission, so that unwanted missions cannot arise (…). Accordingly, the question whether an ad hoc legation represents official business of the sender State and of UNIDO is not determined by the performance of any particular formal step in regard to Austria; instead, the prior agreement of UNIDO is required in order to cause a visit by a State representative to become an ad hoc legation. If that requirement is not satisfied, a special mission does not exist.

The OLG Vienna did not find that there had been such agreement of UNIDO. It was merely able to establish that a visit had been announced ("informed" and "notified") by a representative of Syria at the UNO in Geneva. The subsidiary question of the need for an "agrément" (consent to the appointment of a specific person as head of a Permanent Mission) in multilateral diplomacy, which the OLG Vienna, referring to the opinion of Prof. Dr K, dealt with in this connection and treated as an issue subordinate to the need for consent, is unconnected with the need for there to be agreement to the existence of an ad hoc mission.

A unilateral ad hoc mission to an international organisation that arises independently of a declaration by the organs of that organisation and without reference to its rules is foreign to international law. Not even the Vienna Convention of 14 March 1975 (not yet in force) provides for such an event, in spite of the fact that its rules are intended to give non-accredited representatives of a State a more favourable position than that currently provided under international law (…).

Accordingly – although it correctly held that UNIDO had no power to grant immunity in this specific case – the OLG Vienna, by merely applying the test based on an abstract framework of competence

inferred from the name of the organisation without reference to the official steps actually taken in that organisation, incorrectly appraised the question of law concerning the existence of immunity for the purposes of Article XI Section [33] of the Agreement on the Official Headquarters of UNIDO.

[Report: *Juristische Blätter* 1999, p. 677 (in German)]

BELGIQUE
(Nouvelle réponse du 14 septembre 2017)

BASE LEGALE

1. Votre Etat a-t-il signé et/ou ratifié la *Convention des Nations Unies sur les missions spéciales* (1969) ? Si non, votre Etat envisage-t-il de signer/ratifier la Convention ?

La Belgique n'a pas signé la Convention des Nations Unies sur les missions spéciales de 1969 et n'envisage pas pour l'instant de la signer.

2. Votre Etat applique-t-il d'autres instruments juridiques internationaux en la matière (ex : accords bilatéraux, multilatéraux ou accords de siège) ?

La Belgique est le siège de nombreuses organisations internationales (ou régionales). Les immunités des missions spéciales accordées pour la participation à des conférences ou des réunions organisées par ces organisations sont parfois réglées, soit par un protocole multilatéral sur les privilèges et immunités de l'organisation, soit par un accord de siège conclu entre l'organisation internationale (ou régionale) et la Belgique. Toutefois, dans ces cas de figure, la Belgique n'est pas l'Etat invitant au regard de la mission spéciale.

3. Votre Etat a-t-il adopté une législation nationale spécifique en matière d'immunité des missions spéciales ?

a. Dans l'affirmative, veuillez fournir des informations concernant les dispositions législatives pertinentes (en particulier titre, source et contenu ; si possible, veuillez fournir des traductions officielles en français ou en anglais et/ou les références renvoyant à des sources Internet) ;

La Belgique n'a pas de législation nationale spécifique en matière d'immunité des missions spéciales.

b. Si non, la question des immunités des missions spéciales est-elle couverte par une autre partie de votre législation ? Dans l'affirmative, veuillez fournir des informations concernant ces dispositions législatives pertinentes (en particulier titre, source et contenu ; si possible, veuillez fournir des traductions officielles en français ou en anglais et/ou les références renvoyant à des sources Internet).

L'article 1er*bis* du Titre préliminaire du Code de procédure pénale dispose que :

« §*1er. Conformément au droit international, les poursuites sont exclues à l'égard :*

- *des chefs d'Etats, chefs de Gouvernement et Ministres des Affaires étrangères, pendant la période où ils exercent leur fonction, ainsi que des autres personnes dont l'immunité est reconnue par le droit international ;*

- *des personnes qui disposent d'une immunité, totale ou partielle, fondée sur un traité qui lie la Belgique.*

§2. Conformément au droit international, nul acte de contrainte relatif à l'exercice de l'action publique ne peut être posé pendant la durée de leur séjour, à l'encontre de toute personne ayant été officiellement invitée à séjourner sur le territoire du Royaume par les autorités belges ou par une organisation internationale établie en Belgique et avec laquelle la Belgique a conclu un accord de siège. » *(nous soulignons)*

Alors que le paragraphe 2 vise l'immunité d'exécution (ou l'inviolabilité) dont bénéficient spécifiquement les missions spéciales, le paragraphe 1er traite de l'immunité de juridiction pénale

(sans préjudice d'éventuelles immunités de juridiction en matière civile ou administrative) des chefs d'Etat, chefs de gouvernement et ministres des affaires étrangères, ainsi que de toute personne (en ce compris les membres des missions spéciales) dont l'immunité est reconnue par le droit international ou qui dispose d'une immunité, totale ou partielle, fondée sur un traité qui lie la Belgique.

Il ressort, par ailleurs, du paragraphe 2 qu'une mission spéciale invitée en Belgique par une organisation internationale ou régionale bénéficie de l'immunité d'exécution (ou inviolabilité) dès lors que cette organisation est établie en Belgique, que l'invitation est envoyée par un organe pouvant engager l'organisation et qu'un accord de siège a été conclu entre cette organisation et la Belgique ou qu'un protocole multilatéral sur les privilèges et immunités de l'organisation lie la Belgique.

Cette disposition n'impose donc pas que l'immunité d'exécution (ou inviolabilité) soit régie par l'accord de siège lui-même. Il en découle que toute mission spéciale invitée par une organisation internationale ou régionale bénéficie, dans le respect de ces conditions, de l'immunité d'exécution (ou inviolabilité) et ce, même si l'Etat que cette mission spéciale représente n'est pas membre de l'organisation internationale concernée.

Toutefois, l'ensemble de ces immunités ne sont accordées que pour peu que cela soit conforme au droit international, y compris coutumier, applicable à la Belgique. A ce sujet, il convient de tenir compte de l'évolution de certaines matières du droit pertinentes dont les règles relatives à la répression des infractions internationales les plus graves.

4. Les autorités de votre Etat ont-elles émis des déclarations officielles, rapports ou tout autre document concernant le statut et les immunités des missions spéciales? Dans l'affirmative, veuillez fournir toute information pertinente relative à ces documents.
Non.

5. Votre Etat considère-t-il que certaines obligations et/ou définitions en matière d'immunité des missions spéciales dérivent du droit international coutumier ? Dans l'affirmative, veuillez fournir une brève description des principales exigences de ce droit à cet égard.

Oui. Les immunités accordées aux missions spéciales sont pour l'essentiel basées sur le droit international coutumier.
L'immunité de juridiction pénale des missions spéciales couvre tous les actes accomplis à titre officiel pendant la durée de la mission, à l'exception des actes constitutifs de crimes internationaux (crime de génocide, crime contre l'humanité et crime de guerre, notamment).
Seuls les Chefs d'Etat, Chefs de gouvernements et Ministres des Affaires étrangères bénéficient, durant l'exercice de leur mandat, d'une immunité de juridiction absolue, tant à l'égard des actes accomplis à titre officiel que ceux accomplis à titre privé (sous réserve, bien entendu, de dispositions conventionnelles plus restrictives).
L'immunité de juridiction pénale est sans préjudice de l'obligation de coopérer avec une cour ou un tribunal international qui, dans chaque cas, peut être exigée de l'État du for.
Par ailleurs, les missions spéciales bénéficient d'une immunité d'exécution (ou inviolabilité), tirée du droit international coutumier, qui les protège, pendant la durée de leur séjour autorisée par la Belgique (ou par l'organisation internationale ou régionale à l'origine de l'invitation), de tout acte de contrainte relatif à l'exercice de l'action publique.

6. Veuillez fournir des informations sur la portée des immunités des missions spéciales, en particulier :

a. L'étendue des privilèges et immunités accordés aux missions spéciales et à leurs membres ;

La personne reconnue comme étant en mission spéciale bénéficie :

- d'une immunité d'exécution (ou inviolabilité) qui la protège, pendant la durée de son séjour de tout acte de contrainte relatif à l'exercice de l'action publique.

- d'une immunité de juridiction qui couvre tous les actes accomplis à titre officiel pendant la durée de la mission, à l'exception des actes constitutifs de crimes internationaux (crime de génocide, crime contre l'humanité et crime de guerre, notamment)

Il appartient, le cas échéant, à la juridiction (ou à l'autorité judiciaire ou d'entraide judiciaire) saisie de vérifier si, dans le cas qui lui est soumis, la personne concernée bénéficie, ou non, d'une immunité.

b. Le champ d'application *ratione personae* (catégories d'individus susceptibles de jouir d'une immunité de mission spéciale);

L'immunité d'exécution accordée aux missions spéciales n'a pas pour but d'avantager des individus, mais d'assurer l'accomplissement efficace des missions ayant un caractère représentatif de l'Etat. Ce caractère représentatif doit avoir été accepté tant par l'Etat d'envoi que par la Belgique (ou par l'organisation internationale ou régionale à l'origine de l'invitation).

L'immunité octroyée aux seuls membres de la mission spéciale, aux conditions précitées, est sans préjudice d'autres immunités internationales fondées sur d'autres règles (comme l'immunité absolue de juridiction devant les tribunaux d'un Etat étranger dont bénéficient les chefs d'Etat, chefs de gouvernement ou ministres des affaires étrangères, durant la durée de leur mandat).

c. Le champ d'application *ratione materiae*, notamment en précisant s'il existe des exceptions à l'octroi de l'immunité;

Comme indiqué au point 5, ci-dessus, l'immunité de juridiction pénale des missions spéciales couvre tous les actes accomplis à titre officiel pendant la durée de la mission, à l'exception des actes constitutifs de crimes internationaux (crime de génocide, crime contre l'humanité et crime de guerre, notamment).

L'immunité d'exécution (ou inviolabilité) protège les missions spéciales pendant la durée de la mission de tout acte de contrainte relatif à l'exercice de l'action publique.

d. Les limites temporelles des immunités reconnues aux missions spéciales.

Une mission spéciale a, par essence, un caractère temporaire. Elle bénéfice dès lors d'immunités pour une durée raisonnable lui permettant d'exécuter la mission (l'immunité débute et prend fin dans un délai lui permettant notamment d'arriver sur le territoire avant le début de la mission et de quitter le territoire après la fin officielle de la mission).

PRATIQUE NATIONALE ET PROCEDURE

7. Existe-t-il des jurisprudences nationales en matière d'immunité des missions spéciales ? Dans l'affirmative, veuillez fournir des informations sur ces décisions (date du jugement, autorité ayant rendu le jugement, noms des parties, principaux points de droit, traduction française ou anglaise du jugement ou résumé en anglais ou en français du jugement).

Non.

8. Existe-t-il un mécanisme d'agrément formel des missions spéciales, c'est-à-dire un processus suivant lequel votre Etat peut accepter à l'avance qu'une visite officielle constitue ou non une mission spéciale ?

a. Si oui, quelle autorité délivre ces agréments ? Quel est le poids accordé par les tribunaux à de tels agréments ? Existe-t-il une procédure formelle de notification ou de communication entre les autorités gouvernementales et les tribunaux ?

Il n'existe pas à proprement parler de procédure d'agrément des missions spéciales.

En pratique, lorsqu'une autorité belge souhaite s'assurer qu'une personne bénéficiant de l'immunité de mission spéciale ne voit pas son immunité violée durant son séjour, une procédure d'éventuel désignalement est instaurée au sein de la *Belgian Task Force for International Criminal Justice* (arrêté royal du 23 août 2014 portant organisation de la *Belgian Task Force for International Criminal Justice* (BTF ICJ), notamment son article 9,§1er, 3°).

b. En l'absence d'un agrément formel, un consentement implicite peut-il dériver du comportement des autorités gouvernementales ?

Il s'agit d'une question de fait qu'il appartiendrait in fine, à la juridiction (ou à l'autorité judiciaire) éventuellement saisie de vérifier.

BOSNIA AND HERZEGOVINA
(New reply of 18 January 2018)

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?

Bosnia and Herzegovina is party to the United Convention on special missions (1969). The former Yugoslavia has signed and ratified the Convention. Bosnia and Herzegovina deposited with the Secretary General notification of succession to the Convention on 1st September 1993.

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

Bosnia and Herzegovina is party to several multilateral and bilateral treaties in this area:

- Vienna Conventions on diplomatic relations (1961)
- Vienna Convention on consular relations (1963)
- Convention on privileges and immunities of the United Nations
- Convention on Special Missions (1969)

Besides that, The General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement), has provisions on immunities and privileges of OSCE and military forces in the annexes.

Bosnia and Herzegovina ratified the Partnership for Peace (PfP) Status of Forces Agreement (SOFA) on 4th August 2008.

Bosnia and Herzegovina has several bilateral and headquarters agreements regarding privileges and immunities with special missions and international organizations accredited in Bosnia and Herzegovina.

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).

For the implementation of the PfP SOFA Agreement several domestic laws have been changed.

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.

No.

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.

If the sending state notifies the receiving state (Bosnia and Herzegovina) through diplomatic channels about the “Special mission”, members of the mission, the scope, travelling dates and other details, the mission will enjoy immunities and privileges based on the customary international law and Convention on Special Missions.

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;

According to the UN Convention on Special Missions

b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);

Basically, immunity would be granted to bearers of diplomatic and service passports, but also to other members of the mission with ordinary passports if they are notified as members of the mission.

c. The scope *ratione materiae*, in particular by specifying if there are exceptions to the granting of the immunity;

UN Convention on Special Missions

d. The temporal limits of the immunities accorded to special missions.

UN Convention on Special Missions

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).

No.

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?

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?

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

There is no single formal mechanism in place for establishing beforehand whether or not an official visit constitutes a special mission. The sending state is required to notify the special mission in accordance with provisions of Convention. Although an official invitation and confirmation of visit from the Presidency of Bosnia and Herzegovina, Council of Ministers and other governmental institutions may be considered as consent on behalf of Bosnia and Herzegovina.

BULGARIA
(New reply of 13 September 2017)

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 Bulgaria has ratified the United Nations Convention on special missions (Adopted by the General Assembly of the United Nations on 8.12.1969. Ratified by Decree No. 618 of the State Council from 24.02.1987 - SG, No. 17/3.03.1987. Issued by the Ministry of Interior Affairs, promulgated SG No. 70/8.09.1987, corrected, SG No. 76/2.10.1987, effective for Bulgaria since 13.06.1987) **with the following reservations:**

"a) under Art. 8:
"Based on the sovereign equality of States principle, the People's Republic of Bulgaria considers that if there is a difference concerning the determining of the staff number of the special mission, this problem should be settled by agreement between the sending State and the receiving State;

b) under Art. 25:
"The People's Republic of Bulgaria doesn't accept the provision, referred to in Art. 25, para 1 of the Convention, according to which the authorities of the receiving State may entry in the premises where the special mission is located in event of fire or other natural calamity without explicit consent of the head of the mission.";

c) under Art. 50:
"The People's Republic of Bulgaria finds it necessary to emphasize that Art. 50 of the Convention, excluding certain number of States by the possibility to participate in it, has unduly restrictive character. This provision is incompatible with the nature of the Convention, which has omnipurpose character and should be open for accession by any State."

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

Currently, the Republic of Bulgaria does not apply any other international legal instruments in the area of special missions.

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 national legislation in the field of immunities of special missions. However, some provisions of the following acts apply[1]:

- Criminal Procedure Code;

[1] A list of the relevant provisions of the above mentioned acts is attached to the questionnaire.

- Extradition and European Arrest Warrant Act;
- Recognition, Enforcement and Issuance of Writs for Securing of Assets or Evidence Act;
- Act on Recognition, Execution and Forwarding of Judgments and Probation Decisions with a View to Exercising Supervision of Probation Measures and Alternative Sanctions;
- Recognition, Execution and Transmission of Confiscation and Seizure Orders and Decisions Imposing Financial Penalties Act;
- Recognition, Execution and Transmission of Decisions on Supervision Measures Other Than Measures Which Require Detention Act.

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 authorities of the Republic of Bulgaria have not released any official statements, reports or any other document concerning the status and the immunities of special missions.

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.

The Republic of Bulgaria considers that some aspects regarding the immunity of special missions may derive from customary international law, which constitutes one of the primary sources of international law, as stated in the Charter of the United Nations /art. 38 of the Statute of the International Court of Justice/.

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;

The Republic of Bulgaria has made the following reservation regarding art. 25 of the UN Convention on special missions:
„The People's Republic of Bulgaria does not accept the provision of article 25, paragraph 1 of the Convention, according to which the agents of the receiving State may enter the premises where the special mission is established in case of fire or other disaster without the express consent of the head of the special mission or, where appropriate, of the head of the permanent mission."

b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);

The scope *ratione personae* is provided for in the United Nations Convention on special missions.

c. The scope *ratione materiae*, in particular by specifying if there are exceptions to the granting of the immunity;

The scope *ratione materiae* is provided for in the United Nations Convention on special missions.

d. The temporal limits of the immunities accorded to special missions.

The temporal limits of the immunities accorded to special missions are provided for in the United Nations Convention on special missions.

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.

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?

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?

Under art. 2 of the UN Convention on Special Missions the consent of the receiving State for the constitution of a special mission has to be given in advance. The authority which delivers these agreements on behalf of the Republic of Bulgaria is the Ministry of foreign affairs. However, there are cases in which other ministries have reached agreements with their foreign counterparts on the constitution of a special mission. The agreement is to be reached through diplomatic or other official channels (notes, official letters).

There is no internal legal requirement for a formal notification or communication procedure between the governmental authorities and the courts regarding special missions. However, in case a criminal proceeding is initiated, governmental authorities are obliged to provide all the information they have on the constitution and composition of the special mission.

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

N/A.

APPENDIX TO THE REPLY OF BULGARIA

Criminal Procedure Code

Promulgated, State Gazette No. 86/28.10.2005, effective 29.04.2006, amended, SG No. 46/12.06.2007, effective 1.01.2008, amended and supplemented, SG No. 109/20.12.2007, effective 1.01.2008, amended, SG No. 69/5.08.2008, amended and supplemented, SG No. 109/23.12.2008, amended, SG No. 12/13.02.2009, effective 1.05.2009, amended and supplemented, SG No. 27/10.04.2009, supplemented, SG No. 33/30.04.2009, amended and supplemented, SG No. 15/22.02.2010, SG No. 32/27.04.2010, effective 28.05.2010, amended, SG No. 101/28.12.2010, amended and supplemented, SG No. 13/11.02.2011, effective 12.08.2011, amended, SG No. 33/26.04.2011, effective 27.05.2011, supplemented, SG No. 60/5.08.2011, amended, SG No. 61/9.08.2011, amended and supplemented, SG No. 93/25.11.2011; amended with Decision No. 10 of the Constitutional Court of the Republic of Bulgaria - SG No. 93/25.11.2011; supplemented, SG No. 19/6.03.2012, effective 6.03.2012, amended, SG No. 20/9.03.2012, effective 10.06.2012, amended and supplemented, SG No. 25/27.03.2012, effective 28.04.2012, supplemented, SG No. 60/7.08.2012, effective 8.09.2012, SG No. 17/21.02.2013, SG No. 52/14.06.2013, effective 14.06.2013, amended and supplemented, SG No. 70/9.08.2013, effective 9.08.2013, SG No. 71/13.08.2013, SG No. 21/8.03.2014, SG No. 14/20.02.2015, SG No. 24/31.03.2015, effective 31.03.2015, SG No. 41/5.06.2015, effective 6.07.2015, SG No. 42/9.06.2015, supplemented, SG No. 60/7.08.2015, amended and supplemented, SG No. 74/26.09.2015, amended, SG No. 79/13.10.2015, effective 1.11.2015, SG No. 32/22.04.2016, amended and supplemented, SG No. 39/26.05.2016, effective 26.05.2016, SG No. 62/9.08.2016, effective 9.08.2016, supplemented, SG No. 81/14.10.2016, effective 14.10.2016, SG No. 95/29.11.2016, amended and supplemented, SG No. 13/7.02.2017, effective 7.02.2017

Article 5
Procedural actions provided for by this Code may be applied with regard to persons who enjoy immunity from the criminal jurisdiction of the Republic of Bulgaria, only in compliance with the norms of international law.

Extradition and European Arrest Warrant Act

Promulgated State Gazette, No 46/3.06.2005, effective 4.07.2005, amended, SG No. 86/28.10.2005, effective 29.04.2006, amended and supplemented, SG No. 52/6.06.2008, SG No. 49/29.06.2010, SG No. 55/19.07.2011, amended, SG No. 53/27.06.2014

Article 6
(1) The extradition of the following persons shall not be granted:
1. Bulgarian nationals, unless otherwise provided for in an international treaty to which the Republic of Bulgaria is a party;
2. persons who have been granted asylum in the Republic of Bulgaria;
3. foreign nationals enjoying immunity from the criminal jurisdiction of the Republic of Bulgaria;
4. persons who are not criminally responsible under Bulgarian legislation.
(2) The existence of Bulgarian nationality, asylum granted in the Republic of Bulgaria or immunity from the criminal jurisdiction of the Republic of Bulgaria shall be determined at the moment of receipt of a request for extradition.

Article 47
(Effective 1.01.2007)
(1) Where the person claimed enjoys a privilege or immunity in respect of the jurisdiction of the Republic of Bulgaria and a Bulgarian authority is competent to waive any such privilege or immunity, the court shall immediately extend a request to this effect to the said competent authority.

(2) Where the authority of another State or an international organisation is competent, the court shall immediately notify the issuing authority thereof, in order to allow the latter to proceed with a request for the waiver of the said privilege or immunity.
(3) In cases under Paragraphs (1) and (2), the periods for completion of judicial proceedings on the execution of a European arrest warrant shall start running from the day on which the court is notified of the waiver of the said privilege or immunity.

Recognition, Enforcement and Issuance of Writs for Securing of Assets or Evidence Act

Promulgated, State Gazette No. 59/21.07.2006, effective as from the date of entry into force of the Treaty concerning the Accession of the Republic of Bulgaria to the European Union - 1.01.2007

Article 9
(1) The Sofia City Court may refuse to recognize or enforce a writ for securing of assets or evidence in cases where:
1. no certificate or an incomplete certificate has been submitted, or the submitted certificate is obviously at variance with the writ for securing of assets or evidence;
2. under Bulgarian law the person subject to criminal proceedings enjoys such immunity or privilege as would render impossible the enforcement of the writ for securing of assets or evidence;
...

Act on Recognition, Execution and Forwarding of Judgments and Probation Decisions with a View to Exercising Supervision of Probation Measures and Alternative Sanctions

Promulgated, State Gazette No. 25/27.03.2012, effective 28.04.2012

Article 15
(1) The court may refuse to recognise a judgment or decision referred to in Item 1 of Article 2 herein and may refuse to exercise supervision of probation measures or alternative sanctions where:
...
8. the sentenced person enjoys immunity under Bulgarian law, which makes it impossible to supervise probation measures or alternative sanctions;
...

Recognition, Execution and Transmission of Confiscation and Seizure Orders and Decisions Imposing Financial Penalties Act

Promulgated, SG, No. 15/23.02.2010, amended and supplemented, SG No. 55/19.07.2011

Article 19
(1) The court may refuse to recognise or to allow the execution of a confiscation or seizure order if it establishes that:
...
4. there is immunity or privilege under the Bulgarian legislation which prevent the execution of the order;
...

Article 35
The court may refuse to recognise or to allow the execution of a decision imposing a financial penalty if it establishes that:
...
4. there is immunity or privilege under the Bulgarian legislation which prevent the execution of the decision;
...

Recognition, Execution and Transmission of Decisions on Supervision Measures Other Than Measures Which Require Detention Act

Promulgated, State Gazette No. 33/26.04.2016, effective 27.05.2016

Article 9
(1) The court may refuse to recognise the decision on supervision measures when:
...
7. the person on whom the measure was enacted has immunity under the Bulgarian law;
...

CROATIA
(New reply of 27 November 2017)

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 Croatia is a party to the United Nations Convention on special missions (1969) by virtue of succession of the Socialist Federal Republic of Yugoslavia of 8 October 1991**.**

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

The Republic of Croatia is a party to a number of multilateral agreements in this area, such as the Vienna Convention on Diplomatic Relations of 1961, the Vienna Convention on Consular Relations of 1963, the Convention on Privileges and Immunities of the United Nations of 1946, the Convention on Privileges and Immunities of the Specialized Agencies of 1947, etc. The Republic of Croatia is also a party to international agreements providing for privileges and immunities of international organizations of which the Republic of Croatia is a member or host state.

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).

The Republic of Croatia has not adopted specific legislation or any provisions on the issue of immunities of special missions. However, Article 141 of the Constitution of the Republic of Croatia (Official Gazette, No 85/10 and 5/14 Decision of the Constitutional Court of the Republic of Croatia) stipulates that: "*International treaties which have been concluded and ratified in accordance with the Constitution, published and, which have entered into force shall be a component of the domestic legal order of the Republic of Croatia and shall have primacy over domestic law. Their provisions may be altered or repealed only under the conditions and in the manner specified therein or in accordance with the general rules of international law*.".

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 authorities of the Republic of Croatia have not released any official statement, report or document concerning the status and the immunities of special missions.

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.

The Republic of Croatia considers that the provisions of the Convention on special missions, in particular the provisions concerning the scope of privileges and immunities, reflect customary international law. With regard to States that are not Parties to the Convention, the customary nature of relevant rules shall be assessed on a case-by case basis. The heads of states, heads of governments and foreign ministers enjoy the full immunity irrespective of the nature of acts performed.

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 Republic of Croatia, being Party to the Convention on special missions, would in all possible cases apply its relevant provisions. The Republic of Croatia is not able to provide additional information on points a – d above, since, as the Party to the Convention, the Republic of Croatia has neither received any proposal/suggestion/request from another State to receive a special mission of that State on its territory in accordance with the Convention, nor has any State ever invoked the provisions of the Convention in bilateral relations with the Republic of Croatia.

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.

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?

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?

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

There is no mechanism of formal agreement under which the Republic of Croatia accepts in advance that an official visit constitutes or not a special mission. Since the Republic of Croatia has

not received any request in this respect so far, direct or indirect (as already indicated previously in relation to point 6), it is unable to provide information if the behaviour of the governmental authorities would be interpreted as an implied consent.

CZECH REPUBLIC

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 Czech Republic is a party to the United Nations Convention on special missions (1969) since 22 February 1993.

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

The Czech Republic has ratified a number of multilateral agreements in this area such as the Vienna Convention on Diplomatic Relations (1961), the Vienna Convention on Consular Relations (1963), the Convention on privileges and immunities of the United Nations (1946) and of specialized agencies (1947) and other agreements providing for privileges and immunities of international organizations of which the Czech Republic is a member or a host state.

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).**

The Czech Republic has not adopted any special national legislation as once the Czech Parliament has consented to the ratification of the Convention on special missions, it has been promulgated and the Czech Republic is bound by it, it forms a part of the Czech legal order. It is a self-executing treaty which is directly applicable in the Czech Republic. According to the Czech Constitution, if an international treaty stipulates something different than a law, the international treaty shall apply (Art. 10).

In so far as the immunity of special missions is a part of customary international law, Art. 1(2) of the Czech Constitution sets forth in general terms that the Czech Republic observes its obligations resulting from international law. Specific laws (such as Code on Criminal Procedure or Act on Private International Law) refer and give precedence to the application of the regime of privileges and immunities under international law, including customary international law.

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 Czech authorities have not released any official statements directly addressing the status and the immunities of special missions. The topic of privileges and immunities of special missions is partly relevant for the discussions on the topic of “Immunity of State officials from foreign criminal jurisdiction”, dealt with by the International Law Commission. The Czech Republic actively participates in these discussions.

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.

The Czech Republic is of the view that the Convention, in particular the provisions concerning the scope of privileges and immunities, to large extent reflects customary international law. With regard to States which are not parties to the Convention, the customary nature of relevant rules will be assessed on a case-by case basis. The Head of State, Head of Government and the Minister of Foreign Affairs, mentioned in Article 21 of the Convention, enjoy immunity *ratione personae* irrespective of their status as members of special mission.

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;

As the Czech Republic is a State Party to the Convention on special missions, it applies its relevant provisions. Among the privileges and immunities falls:

- The right to use the flag and emblem of the sending state (Art. 19);
- Granting the facilities required for the performance of the functions of the mission(Art. 22);
- Exemption of the premises of the special mission from taxation (Art. 24);
- Inviolability of the premises (Art. 25);
- Inviolability of archives and documents (Art. 26);
- Freedom of movement (Art. 27);
- Freedom of communication (Art. 28);
- Personal inviolability (Art. 29);
- Inviolability of the private accommodation (Art. 30);
- Immunity from jurisdiction (Art. 31);
- Exemption from social security legislation (Art. 32);
- Exemption from dues and taxes (Art. 33) and from customs duties and inspection (Art. 35);
- Exemption from personal services (Art. 34);
- Granting the transit through the territory of a third State (Art. 42).

Administrative and technical staff, service staff and private staff enjoy immunities to a lesser extent than the representatives of the sending State in the special mission or members of diplomatic staff (Art. 36-38). Members of the family enjoy the same immunities as the persons they accompany (Art. 39).

b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);

The immunity of special mission applies to all members of a special mission to whom the receiving State has consented.

c. The scope *ratione materiae*, in particular by specifying if there are exceptions to the granting of the immunity;

The Convention on special missions distinguishes different types of members of the missions and each type enjoys different immunities. For instance, administrative and technical staff enjoys the same exemption from criminal jurisdiction as the representatives of the sending State and the diplomatic personnel, however, the exemption from civil and administrative jurisdiction is limited to the performance of official duties. In contrast, the service staff is exempted from all types of jurisdiction only to the limits of the performance of official acts.

Possible exceptions to the immunity ratione materiae, which will be considered by the International Law Commission under the topic “Immunity of State officials from foreign criminal jurisdiction”, might be of relevance to the scope of immunities ratione materiae provided for by the Convention (Article 43 paragraph 2).

d. The temporal limits of the immunities accorded to special missions.

According to Article 43 of the Convention on special missions, members of the special mission enjoy the privileges and immunities from the moment they enter the territory of the receiving State for the purpose of performing their functions in the special mission or from the moment when their appointments are notified to the relevant authority of the receiving State if they are already present in its territory. The privileges and immunities cease at the moment of leaving the territory of the receiving State or on expiry of a reasonable period in which to do so, except for the immunity in respect of acts performed by them in the exercise of their functions.

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 case law on this particular issue so far.

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?

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?

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

No special mechanism has been established so far. In order to be considered as a special mission it is necessary to obtain a consent of the receiving State. Therefore, as envisaged by the Convention on special missions, the sending State is required to notify to the receiving State the exact composition of the special mission, travel dates and the place of seat in the host State. Although there is no relevant domestic rule, the Czech Republic accepts that the behaviour of the governmental authorities may constitute implied consent (e. g. official invitation and confirmation of such visits). However, the scope of such behaviour is not defined yet.

DENMARK

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?

Denmark has not signed or ratified the United Nations Convention on special missions (1969) and currently does not intend to do so.

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

Yes, Denmark as a host country to a number of international organisations, including UN agencies, has a number of agreements providing for immunity for experts on mission, etc.

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

Denmark has not adopted 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).

The issue is of immunities of special missions is not specifically covered by another part of Danish legislation. The Danish Penal Code paragraph 12 provides, that the jurisdiction of Danish authorities is limited by applicable international law; a provision which covers customary international law. It is likewise assumed that in civil cases customary law is applicable and that immunity principles under customary law can thus be a barrier to the exercise of jurisdiction by Danish courts and authorities.

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.

Danish Authorities have not released official statement, reports or other documents concerning the status and the immunities of special missions.

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.

No detailed analysis has been made hereof, but a preliminary view would be that Denmark does not regard the Convention on Special Missions as such to reflect international custom although certain principles which mirror general principles under state immunity law are of a customary nature.

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. **d. The temporal limits of the immunities accorded to special missions.**

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 currently no Danish case law in the field of immunities of special missions.

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?**

Denmark has established no formal process under which Denmark can accept in advance that an official visit constitutes a special mission. In principle, ad hoc bilateral agreements could be made in this regard under the normal Danish treaty making rules, but we do not have knowledge of such agreements having been made.

ESTONIA
(Revised reply of 24 November 2017)

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 Estonia has ratified the United Nations Convention on special missions and it entered into force in respect of Estonia on 21 October 1991.

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

The Republic of Estonia is also a state party to the Optional Protocol to the aforementioned Convention concerning the Compulsory Settlement of Disputes.

With regard to the immunities and privileges of foreign states and international organizations, Estonia has concluded several bilateral agreements in this field (for example, the agreements on privileges and immunities with the Organization for Economic Co-operation and Development, the Organization for the Prohibition of Chemical Weapons, the European Union etc.).

Multilateral agreements of relevance signed or acceded to by Estonia are the United Nations Convention on Jurisdictional Immunities of States and Their Property, the Convention on the Privileges and Immunities of the United Nations, the United Nations Convention on the Privileges and Immunities of the Specialized Agencies, the General Agreement on Privileges and Immunities of the Council of Europe, the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations.

Estonia hosts two headquarters of international organizations: The European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) and the NATO Cooperative Cyber Defence Centre of Excellence. For special missions to these international organizations the respective headquarters agreements are relevant (see the Headquarters Agreement between the Government of the Republic of Estonia and the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice, https://www.riigiteataja.ee/aktilisa/2060/3201/5002/agreement.pdf#, and the Agreement between the Republic of Estonia and the Supreme Headquarters Allied Powers Europe and Headquarters, Supreme Allied Commander Transformation to Supplement the Paris Protocol, https://www.riigiteataja.ee/aktilisa/2140/5201/3002/NATO_HQ_engl.pdf#).

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).

Estonian legislation does not specifically regulate the issues of immunities of special missions. As mentioned above, international treaties to which Estonia is a state party, have superior force in

Estonian legislation. According to the Constitution, if laws or other legislation of Estonia are in conflict with international treaties, the provisions of the international treaty apply (Section 123).

The immunities of special missions are covered by the Code of Civil Procedure and Code of Criminal Procedure.

Extracts from the relevant legislative acts concerning immunities of special missions (https://www.riigiteataja.ee/en/):

Constitution of the Republic of Estonia
https://www.riigiteataja.ee/en/eli/ee/521052015001/consolide/current
Passed 28 June 1992

§ 3.
Governmental authority is exercised solely pursuant to the Constitution and laws which are in conformity therewith. Generally recognised principles and rules of international law are an inseparable part of the Estonian legal system. Laws are published in accordance with prescribed procedure. Only published laws may have binding force.

§ 123.
The Republic of Estonia may not enter into international treaties which are in conflict with the Constitution. When laws or other legislation of Estonia are in conflict with an international treaty ratified by the *Riigikogu*, provisions of the international treaty apply.

2. Code of Civil Procedure
https://www.riigiteataja.ee/en/eli/ee/524072017001/consolide/current
Passed 20 April 2005

§ 10. Restricted competence of court in respect of extra-territorial persons
The jurisdiction of the courts of the Republic of Estonia does not extend to:
1) the members of foreign diplomatic representations established in the Republic of Estonia, their family members and private servants, to the extent prescribed by the Vienna Convention on Diplomatic Relations;

2) the members of consular posts, to the extent prescribed by the Vienna Convention on Consular Relations; 3) the persons not specified in clauses 1) or 2) of this section if this arises from international agreements, generally recognised principles of international law or an Act.

3. Code of Criminal Procedure
https://www.riigiteataja.ee/en/eli/ee/511092017001/consolide/current
Passed 12 February 2003

§ 3. Territorial and temporal applicability of criminal procedural law
(1) Criminal procedural law applies in the territory of the Republic Estonia. Criminal procedural law also applies outside the territory of the Republic Estonia if this arises from an international agreement or if the object of the criminal proceeding is an act of a person serving in the Defence Forces of Estonia.
(2) In criminal proceedings, the criminal procedural law in force at the time of performance of a procedural act shall be applied.
(3) The requirements for using the evidence taken abroad in criminal proceedings in Estonia are provided for in § 65 of this Code.
(4) During a state of emergency this Act applies, taking account of the specifications provided for in the State of Emergency Act.

§ 4. Applicability of criminal procedural law by reason of person concerned
Criminal procedural law applies equally to all persons with the following exceptions:
1) the specifications concerning preparation of a statement of charges and performance of some procedural acts with regard to the President of the Republic, members of the Government of the Republic, the Auditor General, the Chancellor of Justice and the Chief Justice and justices of the Supreme Court are provided for in Chapter 14 of this Code;

2) the specifications concerning procedural acts performed with regard to members of the *Riigikogu* before preparation of a statement of charges and of preparation of the statement of charges are provided for in Chapter 14[1] of this Code;
3) Estonian criminal procedural law may be applied to a person enjoying diplomatic immunity or other privileges prescribed by an international agreement at the request of a foreign state, taking into account the specifications provided for in an international agreement.

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.

Estonian authorities have not released official statements or other documents concerning the status and immunities of special missions.

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.

As stated in the replies to questions 1 and 2, Estonia is a state party to the 1969 UN Convention on special missions, its Optional Protocol as well as other relevant UN conventions on immunities of foreign states and international organizations. Estonia considers immunities afforded to special missions to derive from customary international law in as far as the principles relating thereto are not covered by the 1969 Convention and in relation to countries that are not states parties to it. Issues that arise in respect to immunities of special missions are solved case-by-case.

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.

As provided in the replies to questions 1 and 2, Estonia has acceded to the 1969 UN Convention on special missions and the provisions of the Convention are applied in Estonia directly. The relevant Estonian civil and criminal laws set forth the main principles and refer to the international agreements concluded between Estonia and the specific organization, institution or mission.

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).

The disputes concerning immunities of diplomatic representatives, organizations or special missions are in the first instance settled by the Protocol Department of the Ministry of Foreign Affairs. No dispute to date regarding the immunities and privileges of special missions has reached Estonian courts.

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?

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?

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

No special mechanism has been established with regard to processing a request for accepting in advance that an official visit constitutes or not a special mission.

FINLAND
(Revised reply of 20 November 2017)

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?

Finland has signed the Convention on 28 December 1970 but has not ratified it. However, some provisions of the Agreement have been implemented in national legislation (ref. answer to question 3).

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

Finland has concluded headquarters agreements with international organizations that have established their headquarters or other offices in Finland (see for example agreements with the European Forest Institute (EFI) (SopS 14-15/2007) and International Organization for Migration (IOM) (SopS 31/1993) and Baltic Marine Environment Protection Commission (SopS 6/1999). These agreements may have relevance in this area.

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).

Yes, the Act on the Privileges and Immunities of International Conferences and Special Missions ("the Privileges Act", 572/1973), and the Decree on the Privileges and Immunities of International Conferences and Special Missions (728/1973). Unofficial translations of the act and the decree are available through the following links: http://www.finlex.fi/fi/laki/kaannokset/1973/en19730572.pdf and http://www.finlex.fi/fi/laki/kaannokset/1973/en19730728.pdf.

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.

No official statements by Finland on the nature of obligations and/or definitions regarding immunity of special missions have been made.

Government proposals on the Privileges Act and on amendments thereto (HE 57/1973 vp and HE 112/1991 vp) include information in this area. These are available in the official languages of Finland, that is in Finnish and Swedish.

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.

Finland refers to section 5 of the Act on the Privileges and Immunities of International Conferences and Special Missions (572/1973; amendments up to 1649/1991 included):

In addition to what is otherwise provided in this Act, the head of a foreign State or the head of Government, Minister for Foreign Affairs or other person of high rank of a foreign State in the capacity of the head or a member of the delegation or the special mission shall enjoy all the privileges and immunities accorded such persons by international law and ***custom.***

Section 5 expresses the rule according to which foreign head of state, prime minister, foreign minister or any other person with rank will have the privileges and immunities that according to international law and international custom belong to them, when they are acting as a head of delegation or head of a special mission or as a member in them. This is in addition to what else is regulated in the Act.

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

The immunities applied in Finland are defined in the Act on the Privileges and Immunities of International Conferences and Special Missions (572/1973).

a. The extent of the privileges and immunities granted to special missions and to their members;

See Section 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the Privileges Act (572/1973).

b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);

According to the Privileges Act (572/1973), the immunities are granted to members of the special mission and their family members and to some extent to members of service staff who are employed in the domestic service of the special mission.

However, the Privileges Act (572/1973) provides that "[w]here Finland and a foreign State have agreed about restricting the immunities referred to in this section, such agreement shall be applicable."

The scope *ratione personae* of the immunities is also limited by Section 15 of the Privileges Act (572/1973), which provides that *Members of the delegation or the special mission who are Finnish nationals or permanently resident in Finland shall enjoy the privileges and immunities referred to in sections 9 to 11, 13 and 14 exclusively in respect of acts performed in the course of their official duties according to Section 15 subsection 1 of the Act,* and that *family members of members of the delegation or the special mission shall enjoy the privileges and immunities referred to in sections 9 to 14 only if they are not Finnish nationals or permanently resident in Finland.*

In addition, Section 5 reads as follows: *In addition to what is otherwise provided in this Act, the head of a foreign State or the head of Government, Minister for Foreign Affairs or other person of high rank of a foreign State in the capacity of the head or a member of the delegation or the special mission shall enjoy all the privileges and immunities accorded to such persons by international law and custom.*

c. The scope *ratione materiae*, in particular by specifying if there are exceptions to the granting of the immunity;

See the information provided in section a.

d. The temporal limits of the immunities accorded to special missions.

According to Section 16 of the Privileges Act *the date of commencement and termination of the privileges and immunities referred to in this Act shall be subject to the same provisions as those applicable to members of diplomatic missions in Finland in this respect.*

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).

No.

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?

There exists no established mechanism of formal agreement of special missions, but it may be noted that the immunities granted in the Finnish Privileges Act apply only to special missions sent to Finland by foreign States with the consent of the Government of Finland and vested with functions mutually agreed upon by the respective States.

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?

As mentioned above, such consent is accorded by the Government**.** In accordance with the section 13 of the Government Rules of Procedure representation of Foreign States and Organizations in Finland falls within the mandate of the Ministry for Foreign Affairs.

According the section 13, paragraph 9 of the Government Rules of Procedure the mandate of the Ministry for Foreign Affairs shall cover representation of foreign states and international organisations in Finland.

According to section 11 of the Government Rules of Procedure, each ministry shall, consider international matters, within the ministry's mandate.

On the basis of the sections referred to above, the Ministry for Foreign Affairs is responsible for agreements of special missions and regarding international conferences, each ministry, within its mandate, is in charge of the organisation of a conference falling under its mandate.

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

n/a

FRANCE
(Réponse révisée du 10 novembre 2017)

BASE LEGALE

1. Votre Etat a-t-il signé et/ou ratifié la Convention des Nations Unies sur les missions spéciales (1969) ? Si non, votre Etat envisage-t-il de signer/ratifier la Convention ?

La France n'est pas partie à la Convention des Nations Unies sur les missions spéciales (1969) et n'envisage pas de la ratifier.

2. Votre Etat applique-t-il d'autres instruments juridiques internationaux en la matière (ex: accords bilatéraux, multilatéraux ou accords de siège) ?

La France n'est partie à aucun autre instrument juridique international concernant les missions spéciales.

3. Votre Etat a-t-il adopté une législation nationale spécifique en matière d'immunité des missions spéciales ?

a. Dans l'affirmative, veuillez fournir des informations concernant les dispositions législatives pertinentes (en particulier titre, source et contenu ; si possible, veuillez fournir des traductions officielles en français ou en anglais et/ou les références renvoyant à des sources Internet) ;

b. Si non, la question des immunités des missions spéciales est-elle couverte par une autre partie de votre législation ? Dans l'affirmative, veuillez fournir des informations concernant ces dispositions législatives pertinentes (en particulier titre, source et contenu ; si possible, veuillez fournir des traductions officielles en français ou en anglais et/ou les références renvoyant à des sources Internet).

La France n'a pas de législation spécifique en la matière.

4. Les autorités de votre Etat ont-elles émis des déclarations officielles, rapports ou tout autre document concernant le statut et les immunités des missions spéciales ? Dans l'affirmative, veuillez fournir toute information pertinente relative à ces documents.

N.A.

5. Votre Etat considère-t-il que certaines obligations et/ou définitions en matière d'immunité des missions spéciales dérivent du droit international coutumier ? Dans l'affirmative, veuillez fournir une brève description des principales exigences de ce droit à cet égard.

La France n'est partie à aucun autre instrument juridique international concernant les missions spéciales et se réfère donc lorsque cela est pertinent aux règles du droit international coutumier en la matière.

S'agissant de la définition d'une mission spéciale, elle considère que les règles posées par la Convention de New York sur les missions spéciales du 8 décembre 1969 reflètent le droit international coutumier. Une mission spéciale est ainsi « une mission temporaire, ayant un caractère représentatif de l'Etat, envoyée par un Etat auprès d'un autre Etat avec le consentement de ce dernier pour traiter avec lui de questions déterminées ou pour accomplir auprès de lui une tâche déterminée » (article 1er, alinéa a), de la Convention).

La France considère donc qu'en application du droit international coutumier, une mission spéciale peut être définie comme une mission officielle, temporaire, d'un Etat dans un autre Etat, dont l'envoi et la composition sont acceptés par l'Etat de réception.

6. Veuillez fournir des informations sur la portée des immunités des missions spéciales, en particulier :

a. L'étendue des privilèges et immunités accordés aux missions spéciales et à leurs membres ;

b. Le champ d'application *ratione* personae (catégories d'individus susceptibles de jouir d'une immunité de mission spéciale);

c. Le champ d'application *ratione* materiae, notamment en précisant s'il existe des exceptions à l'octroi de l'immunité;

d. Les limites temporelles des immunités reconnues aux missions spéciales.

L'étendue des privilèges et immunités dont bénéficient les membres d'une mission spéciale demeure très incertaine en droit international.

La Convention de New York sur les missions spéciales ne reflète que partiellement l'état du droit international coutumier en la matière.

A cet égard, il peut être noté que la Convention de New York a été ratifiée par peu d'Etats ; l'une des raisons majeures de ce nombre limité de ratifications (38 Etats sont parties à la convention), et d'ailleurs de la non-ratification par la France, réside dans l'étendue très large des privilèges et immunités reconnus aux membres des missions spéciales, qui bénéficient de privilèges et immunités calqués sur ceux dont jouissent les membres des missions diplomatiques.

En revanche, il ne semble pas faire de doute qu'un envoyé spécial, non ressortissant de l'Etat de réception, devrait *à minima* bénéficier des immunités indispensables à l'exercice de ses fonctions, à savoir une inviolabilité personnelle, qui interdit toute mesure de contrainte sur la personne de l'envoyé spécial telle qu'une arrestation, et une immunité de juridiction pour les actes officiels accomplis dans l'exercice de ses fonctions au titre et dans le cadre de la mission spéciale.

Il convient enfin de rappeler que la décision de reconnaître ou non le bénéfice d'une immunité dans un cas donné appartient toujours, in fine, à la juridiction éventuellement saisie.

PRATIQUE NATIONALE ET PROCEDURE

7. Existe-t-il des jurisprudences nationales en matière d'immunité des missions spéciales? Dans l'affirmative, veuillez fournir des informations sur ces décisions (date du jugement, autorité ayant rendu le jugement, noms des parties, principaux points de droit, traduction française ou anglaise du jugement ou résumé en anglais ou en français du jugement).

Il peut être fait mention de l'arrêt de la chambre criminelle de la Cour de cassation du 23 septembre 2009, n° 09-84.759 (V. également, arrêt de la chambre criminelle de la Cour de cassation du 9 avril 2008, n° 07-86.412).

En l'espèce, le requérant, placé en détention provisoire, faisait valoir qu'il bénéficiait d'une immunité diplomatique. La Cour de cassation observe sur ce point que « la chambre de l'instruction énonce que le ministère des affaires étrangères a indiqué aux enquêteurs qu'Hubert X... n'était pas

accrédité en France et que sa présence ne s'inscrivait pas dans le cadre d'une mission spéciale. Attendu qu'en cet état, la chambre de l'instruction a justifié sa décision. D'où il suit que le moyen ne saurait être accueilli ».

8. Existe-t-il un mécanisme d'agrément formel des missions spéciales, c'est-à-dire un processus suivant lequel votre Etat peut accepter à l'avance qu'une visite officielle constitue ou non une mission spéciale ?

a. Si oui, quelle autorité délivre ces agréments ? Quel est le poids accordé par les tribunaux à de tels agréments ? Existe-t-il une procédure formelle de notification ou de communication entre les autorités gouvernementales et les tribunaux ?

b. En l'absence d'un agrément formel, un consentement implicite peut-il dériver du comportement des autorités gouvernementales ?

De manière générale et en matière pénale, les magistrats ou agents de police judiciaire vérifient auprès du Protocole du ministère des affaires étrangères si une personne est susceptible de se prévaloir d'une immunité en vertu du droit international. A cet effet, le Protocole ne communique que des informations d'ordre factuel. En effet, la décision de reconnaître ou non le bénéfice d'une immunité dans un cas donné appartient toujours, in fine, à la juridiction qui pourrait être saisie de l'affaire.

GEORGIA

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?

Georgia conveyed the instrument of ratification of the United Nations Convention on Special Missions on 23 May 2005 and in accordance with its Article 53, it entered into force on 22 June 2005 for the country.

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

As long as Georgian personnel participates in missions organized by the Northern Atlantic Treaty Organization (NATO) and European Union (EU) there is an international legal framework which regulates the pertinent issues with the above-mentioned entities.

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

Georgia does not have a comprehensive legal framework at internal level which would bring about the detailed regulation of special missions related issues. However, in 1999 Law on participation in peace-keeping operations of Georgian military forces was adopted. The Law prescribes rules regarding the implementation of those obligations which are enshrined in various international treaties of Georgia concerning the participation of military and civilian personnel of the country in peace-keeping and peace enforcing operations.

Currently, competent authorities of Georgia are conducting procedures in order to prepare draft law regarding the crisis management operations in the EU's framework. Moreover, interaction between the agencies makes it possible to draw up a law on special missions in general, which would comprehensively set the pertinent issues out in order to effectively implement the international obligations of the country.

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);

n/a

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).

n/a

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.

n/a

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.

There is no genuine approach in Georgia towards the certain obligations and/or definitions regarding immunity of special missions as the manifestation of customary international law. Georgian governmental bodies solely rely on those international instruments which were consented to be bound by the state and as long as there are hardly any completed or ongoing judicial cases in Georgian courts regarding the immunity of special missions it is difficult to assess authoritatively the possible affiliation of certain provisions from those instruments with customary international rules.

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;

n/a

b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);

n/a

c. The scope *ratione materiae*, in particular by specifying if there are exceptions to the granting of the immunity;

n/a

d. The temporal limits of the immunities accorded to special missions.

n/a

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 judgement, authority that issued the judgement, name of the parties, main points of law, French or English translation of the judgement or summary of the judgement in English or in French).

n/a

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?

n/a

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?

n/a

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

n/a

GERMANY
(Revised reply of 16 June 2017)

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?

Germany has not ratified the Convention. Currently there is no intention to do so.

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

The Agreement on the Status of Missions and Representatives of Third States to the Nord Atlantic Treaty Organization entails provisions on special missions (art. 2 lit. b).

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

There is no 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).

The issue of immunities of special missions is covered by the Courts Constitution Act (09/05/1975, Federal Law Gazette I, p. 1077) Section 20 (2):

> "Moreover, German Jurisdiction also shall not apply to persons other than those designated in subsection (1) and in Section 18 and 19 insofar as they are exempt therefrom pursuant to the ***general rules of international law***[2] or on the basis of international agreements or other legislation."

English online source: http://www.gesetze-im-internet.de/englisch_gvg/index.html

Concerning general rules of international law article 25 of the Basic Law of the Federal Republic of Germany stipulates:

> "The general rules of international law shall be an integral part of federal law. They shall take precedence over the laws and directly create rights and duties for the inhabitants of the federal territory."

English online source: http://www.gesetze-im-internet.de/englisch_gg/index.html

According to the Federal Constitutional Court the threshold of "general rules of international law", as used in article 25 of the German Basic Law is met if a rule is recognized as binding by a large majority of States, which need not necessarily include Germany.[3]

[2] Emphasis added by the author.
[3] *Inter alia* Federal Constitutional Court, 2 BvM 1/60, of 30 October 1962 and 2 BvM 1/62, of 30 April 1963.

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 Federal Foreign Office has issued a circular, addressed to all German public authorities including courts on the treatment of diplomats and other privileged persons. This circular contains a chapter on special missions.[4] The circular states that according to customary international law members of special missions enjoy immunities and inviolability. For details on the scope of their immunity public authorities should refer to the Federal Foreign Office (II, A. para.3 of the circular).

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.

In the view of the German government, a “special mission” is a temporary mission, representing a State, which is sent by this State to another State with the consent of the latter for the purpose of dealing with it on specific questions or of performing in relation to it a specific task . The functions of a special mission shall be determined by the mutual consent of the sending and the receiving State. A State may send a special mission to another State with the consent of the latter, previously obtained through the diplomatic or another agreed or mutually acceptable channel. Consent may also be given implicitly, in exceptional cases consent even retroactively.

The German government takes the view that immunity of the members of special missions from judicial, in particular from criminal proceedings, is part of customary international law. Moreover, if there has been explicit consent on transit, customary law also stipulates the granting of privileges necessary for transit. Beyond these core privileges, States enjoy discretion concerning the exact scope of immunities and privileges of individual special missions. The basis for any regime of immunities has to be the mutually agreed function of the individual mission and the necessities arising out of this function.

Customary international law calls for notification of the exact composition of the special mission, travel dates and its seat in the host country in order to enable the latter to guarantee the mission’s privileges and immunities.

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;

As stated under 5. the extent of privileges and immunities granted beyond the core requirements of customary international law depends on the individual special mission and its functions. However, the Vienna Convention on Diplomatic Relations should serve as guideline in this regard.

b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);

There are differences between the immunities granted to diplomatic staff of the mission and it’s technical and administrative personnel. In this regard, too, the Vienna Convention on Diplomatic Relations may serve as guideline.

[4] Rundschreiben vom 15.09.15 Zur Behandlung von Diplomaten und anderen bevorrechtigten Personen in der Bundesrepublik Deutschland, GMBL vom 19.11.2015, S. 1206ff. (1210), http://www.auswaertiges-amt.de/cae/servlet/contentblob/669230/publicationFile/189128/Rundschreiben_Beh_Diplomaten.pdf

c. The scope *ratione materiae*, in particular by specifying if there are exceptions to the granting of the immunity;

Cf. answer no. 6 lit. a.

d. The temporal limits of the immunities accorded to special missions.

Special missions are of a temporary character. Since privileges and immunities are only based on the concrete task of the special mission, immunities are only granted during the official visit itself. Immunities and privileges do not cover subsequent or prior private visits by members of special missions to the host state.

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).

Federal Supreme Court ("*Bundesgerichtshof*", judgment of 27 February 1984 – 3 StR 396/83, Decisions of the Federal Supreme Court in Criminal Law ("*Entscheidungen des BGH in Strafsachen*"), Vol 32 p. 275:

> Upon entering the Federal Republic of Germany on 8 January 1983, the Iranian government official Dr. T. was taken into custody after German custom officials had found him to be in possession of illegal narcotics. Dr. T. contested his arrest and claimed immunity as a special envoy of Iran. There had been no prior notification of his mission by the government of Iran, but by letter of 31 January 1983 the Iranian government confirmed to the German Federal Foreign Office Dr. T.'s status as a special envoy and asked for immunities and privileges due to this diplomatic position.
> The district court ("*Landgericht*") Düsseldorf issued a warrant of arrest twice, which was each repealed by the higher regional court ("Oberlandesgericht") Düsseldorf. Both courts were in disagreement as to whether Dr. T. was exempted from German jurisdiction on the basis of Section 20 (2) of the Courts Constitution Act (cf. answer 3). The district court decided that the immunity of Dr. T. had not been established, arguing that the conditions of his "special task" were not sufficiently substantiated. The Higher Regional Court, however, ruled that Dr. T. was exempted from German jurisdiction, as he had obtained immunity as a special envoy with the acceptance by the Federal Foreign Office of the notification of the Iranian government.
> After the arrest warrant was lifted, Dr. T. left the Federal Republic of Germany and was subsequently declared a persona non grata. On the day of his departure, the district court Düsseldorf sentenced him in absentia to three years imprisonment.
> Dr. T. subsequently appealed to the Federal Supreme Court ("*Bundesgerichtshof*"). The court ruled that the preconditions of diplomatic immunity were met. It argued that "irrespective of the [UN Special Missions Convention], there is a customary rule of international law based on State practice and opinio juris which makes it possible for an ad hoc envoy, who has been charged with a special political mission by the sending State, to be granted immunity by individual agreement with the host State for that mission and its associated status, and therefore for such envoys to be placed on a par with the members of the permanent missions of State protected by international treaty law." Overruling the district court, the Federal Supreme Court noted that no excessive demands should be made with regard to the specification of the task of the special mission. It further argued that the necessary bilateral consent may even be given retroactively.

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 regular procedure would be a formal notification to the Federal Foreign Office by the foreign state. The notification should encompass the exact composition of the special mission, travel dates and the place of sojourn envisaged for the special mission in the host State.

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 Federal Foreign Office is the competent authority to deliver the consent of the Federal Government. The courts attach great weight to such agreement insofar as the consent is a constitutive element of any special mission. However, in the case mentioned under answer no. 7 the Federal Supreme Court made it clear that German courts are not bound by a declaration of the Federal Foreign Office when construing Section 20 of the Courts Constitution Act in order to determine whether an individual enjoys immunity as member of a special mission or not.

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

It is thought that an official reception of a special envoy by competent German officials would normally indicate implied German consent to the mission.

HUNGARY
(New reply of 20 September 2017)

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?

Hungary has not signed or ratified the United Nations Convention on Special Missions (1969), and currently has no intention to do so.

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

Hungary applies several multilateral agreements relevant in this area, among them the Vienna Convention on Diplomatic Relations (1961) and the Vienna Convention on Consular Relations (1963). Due to its membership in different international organizations, Hungary is a party to a number of agreements containing provisions relevant in this respect, such as the Convention on the Privileges and Immunities of the United Nations (1946) and of Specialized Agencies (1947), and the General Agreement on Privileges and Immunities of the Council of Europe (1949).

Hungary has also concluded a number of headquarter agreements with international organizations. Many of these agreements contain provisions on the immunity of experts on mission, see for example the following agreements:

> Agreement between the Government of Hungary and the World Health Organization concerning the establishment of the World Health Organization's Budapest Centre (Law No. LXV of 2016, Hungarian Law Gazette 2016/87 (VI. 15.))
>
> Agreement between the Government of Hungary and the United Nations Children's Fund about the establishment of the United Nations Children's Fund Global Shared Services Center (Law No. CXXII of 2015, Hungarian Law Gazette 2015/102 (VII. 13.))
>
> Agreement between the Government of the Republic of Hungary and the Office of the United Nations High Commissioner for Refugees (Law No. XVI of 2008, Hungarian Law Gazette 2008/66 (IV. 25.))

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).

No, Hungary has not adopted any specific legislation addressing the issue of immunities of special missions.

Concerning general rules of international law, and with regard to the relation of international law and domestic legislation, Article Q of the Fundamental Law of Hungary stipulates:

"(2) Hungary shall ensure that Hungarian law is in conformity with international law in order to comply with its obligations under international law.

(3) Hungary shall accept the generally recognized rules of international law. Other sources of international law shall be incorporated into Hungarian law upon their promulgation by laws."

Sectoral legislation, in particular procedural laws (examples include the criminal and civil procedure codes) also contain references to immunity and respect for international law.

Law Decree No. 7 of 1973 on Procedures Required in Case of Diplomatic or Other Immunities (Hungarian Law Gazette 1973/20 (III. 18.)) should be mentioned as a piece of domestic legislation governing procedural questions relating to immunities. Based on this Decree courts or administrative bodies must suspend an ongoing procedure if information is provided that one of the parties or (in criminal proceedings) the accused is likely to enjoy diplomatic or other immunity based on international law. In this case the relevant court or administrative authority, with the involvement of respective supervisory bodies, must seek the advice of the ministry responsible for foreign affairs on the question of immunity. If the immunity is confirmed, the court or administrative authority must terminate its procedure. (The same rules apply to employment disputes.) Government Decree 152/2014. (Hungarian Law Gazette 2014/79 (VI. 06.) on the tasks and responsibilities of i.a. the Minister of Foreign Affairs and Trade states that "the minister … ascertains the existence of diplomatic or other immunities stemming from international law."

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.

No such statement or report is available.

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.

No official analysis has been made on the scope of immunities of special missions under customary 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.

See answer to question 5.

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 Hungarian case law in the field of immunities of special missions.

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?

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?

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

There is no formal domestic process put in place in this respect. Hungary is of the view that it is for the sending state and the receiving state to agree in this regard, which may take different forms.

IRELAND

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?

Ireland has neither signed nor ratified the Convention. It has no plans currently to accede to the Convention.

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

A number of multilateral instruments connected with Ireland's membership of various international organisations contain provisions that would apply to visiting missions/officials/delegations, such as the Convention on the Privileges and Immunities of the United Nations, the Protocol on the Privileges and Immunities of the European Union, and the General Agreement on Privileges and Immunities of the Council of Europe.

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

Sections 44 and 45 of the Diplomatic Relations and Immunities Act 1967 permit the Minister for Foreign Affairs and Trade to publish details of international conferences being held in the State in the Government's official journal, Iris Oifigiúil. Representatives attending the conference will thereby enjoy equivalent privileges and immunities as those enjoyed by members of diplomatic missions accredited to Ireland. In practice this provision is not utilised, on the understanding that immunities can be applicable to special missions by virtue of customary international law, which forms part of Irish law.

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);

http://www.irishstatutebook.ie/1967/en/act/pub/0008/index.html

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).

n/a

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.

No.

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.

Ireland accepts that members of special missions may be entitled to certain immunities but has not taken a position as to the precise scope of immunities applicable to special missions under customary international law. Any situation that was to arise would be considered on a case by case basis. If an issue of special mission immunity arose in the context of legal proceedings in Ireland, it would be for the relevant court to determine to what extent immunity applied with reference to customary 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.

See previous answer.

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).

No.

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?

No, with the exception of the legislative procedure for international conferences in sections 44 and 45 of the Diplomatic Relations and Immunities Act 1967 described above.

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?

Sections 44 and 45 of the Diplomatic Relations and Immunities Act 1967 provides for a procedure in respect of international conferences – described above. If, in the context of court proceedings, confirmation of an individual's entitlement to immunity under this procedure was sought, the Minister for Foreign Affairs and Trade could issue a certificate pursuant to section 47 of the Act, which constitutes prima facie evidence of entitlement to immunity. The section 44/45 procedure is not utilised in practice, however.

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

This is somewhat uncertain, as there are no domestic judicial precedents to draw on, although our understanding is that the behaviour of governmental authorities would be relevant in any determination of whether a visit constituted a special mission.

ITALY
(Revised reply of 19 September 2017)

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?

Italy has not ratified the UN Convention on special missions (1969). There are no current plans to do so.

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

Italy is party to several multilateral and bilateral agreements in this area: among them, the Vienna Conventions on diplomatic relations (1961) and on consular relations (1963), the Convention on privileges and immunities of the United Nations (1946) and of specialized agencies (1947). It also applies agreements granting immunities and privileges to the personnel of those international organizations whose headquarters are in Italy, or of which Italy is a member.

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

Italy has not adopted any specific 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).

In so far as the immunity of special missions is part of customary international law, Article 10.1 of the Italian Constitution stipulates as follows: “The Italian legal system conforms to the generally recognised principles of international law”.

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.

n/a

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.

In the view of the Italian authorities, a “special mission” is a temporary mission, representing a State, which is sent by this State to another State with the consent of the latter, in order to deal on specific questions with it or to perform a specific task in relation to it. The mutual consent of the sending and the receiving State is necessary to determine the functions of a special mission. The consent of the receiving State is previously obtained by the sending State through the diplomatic

channel or another agreed or mutually acceptable channel. Consent may also be given implicitly; in particular cases, it might be given retroactively.

Italy considers that immunity of the members of special missions from judicial proceedings, and in particular from criminal proceedings, is part of customary international law. Beyond this, States enjoy discretion with regard to the exact scope of immunities granted to a special mission, depending on its function and the necessities it entails.

In order to enable the receiving State to guarantee such immunities, customary international law requires the sending State to notify the exact composition of the special mission, its travel dates and its seat in the host State.

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;

The scope of immunities granted beyond the core requirements of customary international law varies according to the agreement between sending and receiving State, which in turn depends on the functions and necessities of each special mission. In this regard, the Vienna Convention on Diplomatic Relations serves as guideline.

b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);

Immunities apply to all members of a special mission to whom the receiving State has consented. Also in this regard, the Vienna Convention on Diplomatic Relations serves as guideline, in particular for differences between immunities granted to diplomats and the technical and administrative personnel of the special mission.

c. The scope *ratione materiae*, in particular by specifying if there are exceptions to the granting of the immunity;

As stated under 6a, the extent of immunities granted beyond the core requirements of customary international law depends on the functions and necessities of each special mission, with the 1961 Vienna Convention serving as a guideline.

d. The temporal limits of the immunities accorded to special missions.

Special missions are of a temporary character. Since immunities depend on the specific task of the mission, they are granted during its duration. However, immunities of members of special missions continue to subsist with regard to acts performed by them in the exercise of their functions.

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).

n/a

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?

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?

In order to obtain the consent of the receiving State, the sending State is required to send a formal notification to the Italian Ministry of Foreign Affairs, indicating the exact composition of the special mission, travel dates and the place of seat in the host State. The Italian Ministry of Foreign Affairs is the competent authority to deliver the consent of the Government.

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

An official reception by competent Italian officials would normally indicate implied consent to the special mission.

LATVIA

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?

No, Latvia has not signed or ratified the Convention.

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

Other international legal instruments binding for Latvia related to this matter of immunities of representatives of other states are the Vienna Convention 1961 on Diplomatic Relations and the Vienna Convention 1963 on Consular Relations.

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).

Since Latvia has never had special mission sent or received any special mission, there is no national regulation regarding immunities of special missions.

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.

No, Latvian authorities have not released official statements or other documents concerning the status and immunities of special missions.

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.

Since Latvia has not had sent or received any special mission the customary law of diplomatic missions had never been applied.

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.

n/a

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).

n/a

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?

c. 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?

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

n/a

MALTA
(New reply of 6 September 2017)

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?

Malta has neither signed nor ratified the Convention. It has no current plans to accede to the Convention.

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

Malta is a party to the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations and maintains a number of bilateral consular conventions. Malta is a member of a number of international organisations in connexion with there exist agreements that provide for privileges and immunities to be granted to the staff of these organisations and/or the representatives of the member states thereof. Furthermore, Malta hosts a number of international organisations with which it has host country agreements (HCAs).

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

The Diplomatic Immunities and Privileges Act 1966 (Chapter 191 of the Laws of Malta) provides for the grating of immunities to 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);

http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8704

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).

n/a

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.

No.

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.

Whilst Malta acknowledges that members of special missions may be entitled to certain immunities, it has not as yet taken a formal position as to the precise scope of these under customary international law, and any situation that were to arise would be considered on an individual basis.

Any questions concerning the immunities of a special mission in the context of legal proceedings in Malta would be determined by the competent court with reference to customary 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;

Persons on a special mission enjoy personal inviolability and immunity from criminal jurisdiction, and also immunity from civil jurisdiction in so far as the assertion of civil jurisdiction would hinder them performing their official functions as members of a special mission.

b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);

Special mission immunity applies to all members of a special mission to whom the receiving State has consented and received as such.

c. The scope *ratione materiae,* in particular by specifying if there are exceptions to the granting of the immunity.

As other persons enjoying immunity *ratione personae*, the members of a special mission enjoy personal inviolability and immunity from criminal jurisdiction without exception.

d. The temporal limits of the immunities accorded to special missions.

The immunity *ratione personae* enjoyed by members of a special mission subsists for as long as is necessary for the accomplishment of their mission, including the relevant periods of travel, and will continue to subsist in respects of acts performed by them during the exercise of their functions as a member of the special mission.

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).

No.

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 Diplomatic Immunities and Privileges Act (section 7) provides for a procedure concerning the holding of international conferences in Malta**.**

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?

The Ministry of Foreign Affairs is responsible for providing express confirmation of consent to a special mission. Such confirmation would be made at the request of a party to litigation or at the request of the court. The courts will treat such confirmation as conclusive.

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

There is no recent local case-law concerning this matter.

NETHERLANDS
(Revised reply of 11 October 2017)

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 Netherlands has not signed and/or ratified the United Nations Convention on special missions, nor does it have the intention to do so at this moment.

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

On the basis of various multilateral conventions and headquarters agreements with International Organisations, representatives of member states of International Organisations generally enjoy full immunity from criminal jurisdiction when attending meetings of the organisation. Examples include:

- Article 4 of the Convention on the Privileges and Immunities of the United Nations; and
- Article 21 of the Headquarters Agreement between the ICC and The Netherlands.

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

No, there is no specific legislation. In general, Article 13A of the Act on General Provisions (*Wet Algemene Bepalingen*) states that the jurisdiction of the courts and the execution of judicial decisions and deeds are subject to exceptions recognised in international law. That covers both treaties entered into by the Netherlands and customary international law. Article 3A of the Bailiffs Act (*Gerechtsdeurwaarderswet*) stipulates that bailiffs must inform the Minister of Justice before proceeding with acts that might be incompatible with the obligations of the State under international law. Article 3A empowers the Minister of Justice to intervene in case of such acts, whether or not prompted by the bailiff.

In addition, the International Crimes Act (*Wet Internationale Misdrijven*) stipulates that (section 16):

> 'Criminal prosecution for one of the crimes referred to in this Act is excluded with respect to:
> (a) foreign heads of state, heads of the government and ministers of foreign affairs, as long as they are in office, and other persons insofar as their immunity is recognised under international law;
>
> (b) persons who have immunity under any convention applicable to the Netherlands within the Kingdom.'

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.

In May 2011 the Advisory Committee on Issues of Public International Law (*Commissie van advies inzake Volkenrechtelijke Vraagstukken*, CAVV) produced an Advisory report on the immunity of foreign state officials.[5] In this report, immunity in the case of special missions is discussed in detail. By letter to the parliament of 26 April 2012[6], responding to the Advisory report on behalf of the government, the Minister of Foreign Affairs has described the status and immunities of special missions (referred to as "official missions" by the government of the Netherlands).

[5] The report is available in English on the website of the CAVV: www.cavv-advies.nl/publications .

[6] Tweede Kamer, vergaderjaar 2011–2012, 32 635, nr. 5; an unofficial English translation of the merits is to be found on the website of the CAVV, supra.

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.

In the view of the Netherlands, there is sufficient basis to conclude an obligation exists under customary international law to accord full immunity to the members of official missions. The underlying reason for the immunity of members of official missions is to facilitate the smooth conduct of international relations. Members of official missions may be seen as 'temporary diplomats'. They, like diplomats, require this immunity in order to carry out their mission for the sending state without interference. Unlike diplomats, members of special missions only require this immunity for a short period, namely the duration of the mission to the receiving state. Therefore, members of official missions enjoy immunity in the Netherlands based on the provisions of Dutch law as mentioned in answer 3. above.

It is doubtful that all of the provisions of the Convention on Special Missions have the status of customary international law. In particular, in the view of the Netherlands, its provisions on privileges and facilities should not be considered as reflecting customary 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;

Members of official missions enjoy full immunity - for the duration of the mission - for all their acts, whether performed in an official or in a private capacity, provided that the Dutch authorities have, at the very least, consented to the mission and have been informed of its composition. That includes immunity for international crimes on the basis of section 16 of the International Crimes Act.

b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);

The members of an official mission need not be state officials. The immunity of members of an official mission is not linked to the office and term of office, but to the presence of the relevant mission, representing another state, in the Netherlands. Members of an official mission may be non-state officials, such as parliamentarians or business persons. The members may also represent an opposition faction in an internal conflict visiting another state to conduct peace negotiations. In this last example the members of the official mission would not enjoy full immunity if the sending state does not consent or notify the receiving state of the official mission. Family members of the members of an official mission who travel together and have been accepted as such by the receiving state also enjoy full immunity.

c. The scope *ratione materiae*, in particular by specifying if there are exceptions to the granting of the immunity;

All the members of the official mission enjoy full immunity.

d. The temporal limits of the immunities accorded to special missions.

The full immunity applies only for the (short) duration of the mission.

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 on this issue in the Netherlands.

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?

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?

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

In the Netherlands, there is no requirement to give an explicit decision in advance designating a foreign delegation as an official mission. In the letter to the Parliament of 26 April 2012 the minister of Foreign Affairs describes when an official visit from state officials to the Netherlands qualifies as an official mission. For a visit to be an official mission, four conditions need to be met:

1. temporary character
2. the special mission must represent another state
3. visiting another state
4. consent to visit from the receiving state.

If the above mentioned four conditions are met, the mission is legally speaking an official mission. The consent, mentioned under 4., may be in the form of an official invitation or an agreed agenda for a visit. However, holding a visa (for countries that still need a visa to visit the Netherlands) is not enough to qualify as an official visit with the status of an official mission.

NORWAY

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?

Norway has not signed the convention, and there are no current plans to do so.

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

Norway is a member of several international organisations in relation to which relevant agreements provide for privileges and immunities to be granted to the staff and/or the representatives of the member States of those organisations. Norway has separate Headquarters Agreements with NAMMCO, The Barents Euro-Arctic Council and the Arctic Council Secretariat.

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 Norwegian legislation on this point. But several laws, including our criminal and civil procedure codes contain a general obligation to respect international law. Furthermore in accordance with established national case law, Norwegian courts will, as far as possible, interpret and apply national legislation in accordance with International law, thereby avoiding conflicts. The Civil Procedure Code enables the Government to intervene in cases before the Supreme Court if intervention is deemed necessary or desirable to ensure respect for Norway's international obligations.

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.

There are no relevant national documents on the status and the immunities of special missions.

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.

Norway does see an emerging customary law developing on this topic, but has not taken a position as to the precise scope of immunities applicable to special missions. Any situation that was to arise would be considered on a case by case. We welcome a future discussion on the topic.

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.

See previous answer.

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).

For the time being there are no rulings from our domestic courts.

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?

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?

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

There is no mechanism of formal agreement in advance.

REPUBLIQUE DE MOLDOVA
(Nouvelle réponse du 8 septembre 2017)

BASE LEGALE

1. Votre Etat a-t-il signé et/ou ratifié la *Convention des Nations Unies sur les missions spéciales* (1969) ? Si non, votre Etat envisage-t-il de signer/ratifier la Convention ?

La République de Moldova n'a pas signé ou ratifié la Convention des Nations Unies sur les missions spéciales. L'adhésion à la Convention ne fait pas partie des priorités immédiates du gouvernement.

2. Votre Etat applique-t-il d'autres instruments juridiques internationaux en la matière (ex : accords bilatéraux, multilatéraux ou accords de siège) ?

La République de Moldova est partie à la Convention de Vienne du 18 avril 1961 sur les relations diplomatiques, la Convention de Vienne du 24 avril 1963 sur les relations consulaires, la Convention du 13 février 1946 sur les privilèges et immunités des Nations Unies, la Convention du 21 novembre 1947 sur les privilèges et immunités des institutions spécialisées, et a signé des accords bilatéraux.

3. Votre Etat a-t-il adopté une législation nationale spécifique en matière d'immunité des missions spéciales ?

a. Dans l'affirmative, veuillez fournir des informations concernant les dispositions législatives pertinentes (en particulier titre, source et contenu ; si possible, veuillez fournir des traductions officielles en français ou en anglais et/ou les références renvoyant à des sources Internet) ;

b. Si non, la question des immunités des missions spéciales est-elle couverte par une autre partie de votre législation ? Dans l'affirmative, veuillez fournir des informations concernant ces dispositions législatives pertinentes (en particulier titre, source et contenu ; si possible, veuillez fournir des traductions officielles en français ou en anglais et/ou les références renvoyant à des sources Internet).

Il n'y pas de législation nationale spécifique adopté par l'Etat en matière d'immunité des missions spéciales. Les Conventions de Vienne sur les relations diplomatiques et consulaires, la Convention sur les privilèges et immunités des Nations Unies et la Convention sur les privilèges et immunités des institutions spécialisées, et des traités bilatéraux sont directement appliquées dans le droit national.

4. Les autorités de votre Etat ont-elles émis des déclarations officielles, rapports ou tout autre document concernant le statut et les immunités des missions spéciales? Dans l'affirmative, veuillez fournir toute information pertinente relative à ces documents.

Les autorités de l'Etat n'ont pas émis de déclarations officielles, rapports ou document concernant le statut et les immunités des missions spéciales.

5. Votre Etat considère-t-il que certaines obligations et/ou définitions en matière d'immunité des missions spéciales dérivent du droit international coutumier ? Dans l'affirmative, veuillez fournir une brève description des principales exigences de ce droit à cet égard.

L'Etat ne le considère pas.

6. Veuillez fournir des informations sur la portée des immunités des missions spéciales, en particulier :

a. L'étendue des privilèges et immunités accordés aux missions spéciales et à leurs membres ;

b. Le champ d'application *ratione personae* (catégories d'individus susceptibles de jouir d'une immunité de mission spéciale);

c. Le champ d'application *ratione materiae*, notamment en précisant s'il existe des exceptions à l'octroi de l'immunité;

d. Les limites temporelles des immunités reconnues aux missions spéciales.

n/a

PRATIQUE NATIONALE ET PROCEDURE

7. Existe-t-il des jurisprudences nationales en matière d'immunité des missions spéciales ? Dans l'affirmative, veuillez fournir des informations sur ces décisions (date du jugement, autorité ayant rendu le jugement, noms des parties, principaux points de droit, traduction française ou anglaise du jugement ou résumé en anglais ou en français du jugement).

Il n'y a pas de jurisprudences nationales dans la matière.

8. Existe-t-il un mécanisme d'agrément formel des missions spéciales, c'est-à-dire un processus suivant lequel votre Etat peut accepter à l'avance qu'une visite officielle constitue ou non une mission spéciale ?

a. Si oui, quelle autorité délivre ces agréments ? Quel est le poids accordé par les tribunaux à de tels agréments ? Existe-t-il une procédure formelle de notification ou de communication entre les autorités gouvernementales et les tribunaux ?

b. En l'absence d'un agrément formel, un consentement implicite peut-il dériver du comportement des autorités gouvernementales ?

n/a

ROMANIA

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?

No, Romania has not signed or ratified the United Nations Convention on Special Missions and does not, for the time being, intend to accede to it.

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

The Headquarters Agreement between Romania and the Regional Center of Southeast European Cooperative Initiative for Combating Transborder Crime (SECI – currently SELEC) provides, in art. 19, for a series of privileges and immunities so far as may be necessary for the effective exercise of their functions and during their journeys in connection with such functions and during attendance at the Headquarters

Article 19:

1. Experts shall enjoy, within and with respect to the host country, the following privileges and immunities so far as may be necessary for the effective exercise of their functions and during their journeys in connection with such functions and during attendance at the Headquarters:
(a) immunity from personal arrest or detention;
(b) immunity from seizure of their personal and official baggage, and the same immunities from inspection in respect of such baggage as are accorded to diplomatic agents;
(c) immunity from legal process of any kind with respect to words spoken or written, and all acts done by them, in the performance of their official functions, such immunity to continue although the persons concerned may no longer be employed on missions for, serving on committees of, or acting as consultants for, the SECI Center, or may no longer be present at the Headquarters or attending meetings convened by the SECI Center. In any event, such immunity shall not extend to civil action by a third party for damages arising from a road traffic accident caused by a motor vehicle, operated by an expert where these damages are not recoverable from insurance;
(d) inviolability of all papers, documents and other official material;
(e) the right, for the purpose of all communications with the SECI Center, to use codes and encrypted systems and to dispatch or receive papers, correspondence or other official material by courier or in sealed bags;
(f) exemption with respect to themselves and their spouses from immigration restrictions and alien registration obligation;
(g) the same protection and repatriation facilities as are accorded in time of international crisis to the members of diplomatic missions in accordance with the Vienna Convention; and
(h) the same privileges with respect to currency and exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions.
2. Experts who are citizens or permanent residents of ROMANIA shall enjoy only the privileges and immunities, accorded by subparagraphs 1(a – e) of this Article."

The Headquarters Agreements between Romania and various UN agencies (e.g. UNICEF, UNDP) having offices located in Romania generally contain provisions concerning experts on mission by reference to the relevant provisions of the Convention on the Privileges and Immunities of the UN and of the Convention on the Privileges and Immunities to the Specialized Agencies.

On a number of occasions, agreements having temporary application have been concluded, when a conference of an international organization has been organized on the territory of Romania. Such agreements normally contain provisions on privileges and immunities of experts on mission and of participants to a certain conference (e.g. the 2015 Agreement by exchange of letters between the Government of Romania and the International Criminal Police Organization – INTERPOL concerning the privileges and immunities of the participants to the 43rd European Regional

Conference of the International Criminal Police Organization – INTERPOL, for the period 12-22 May 2015).

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).

No, Romania has not adopted a specific national legislation in the field of immunities of special missions nor is the issue covered by another part of the legislation.

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.

No such official statements, reports or documents have been released.

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.

Although not a party to the UN Convention on Special Missions, Romania considers that its provisions reflect the customary international law in this field and Romania applies the Convention as such.

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;

According to the UN Convention on Special Missions.

b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);

According to the UN Convention on Special Missions. In practice, immunity of special missions would be granted to holders of diplomatic passports or service passports (for members of the administrative and technical staff).

c. The scope *ratione materiae*, in particular by specifying if there are exceptions to the granting of the immunity;

According to the UN Convention on Special Missions.

d. The temporal limits of the immunities accorded to special missions.

According to the UN Convention on Special Missions.

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).

No relevant case law has been identified.

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?

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?

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

No formal process is necessary, except for the agreement, via diplomatic or other channels, between Romanian hosting authority and the foreign counterpart as to the official visit on Romanian territory.

RUSSIAN FEDERATION
(Revised reply of 5 July 2018)

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 Russian Federation has not signed the 1969 United Nations Convention on special missions. The Russian Federation has no intention to sign the Convention.

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

The Russian Federation does not apply any specific international legal instruments in the area of immunities of special missions. Customary international law is considered as the main legal source in this regard.

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

The Russian Federation has not adopted any 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).

The issue of immunities of special missions is covered by another part of the Russian legislation.

In this regard the Federal Law of 03.11.2015 “On the Jurisdictional Immunities of a Foreign State and the Property of a Foreign State in the Russian Federation” is applicable. In particular Art. 16 (1) accords immunity to a foreign State’s special mission from enforcement of court decisions and measures to secure a claim. Art. 8 (2) of the law grants the judicial immunity to a diplomatic employee of a special mission with respect to disputes arising from the employment contract between the foreign State and the employee concerning work performed in the territory of the Russian Federation.

The Commercial Procedural Code of the Russian Federation (Art. 256.1, 256.3) and Civil Procedural Code of the Russian Federation (Art. 417.1, 417.3) refer on a number of occasions to the norms of the Federal Law of 03.11.2015 “On the Jurisdictional Immunities of a Foreign State and the Property of a Foreign State in the Russian Federation”.

The Criminal Code of the Russian Federation stipulates that the issue of criminal responsibility of diplomatic representatives of foreign States and other individuals enjoying immunity shall be settled in conformity with the norms of international law (Art. 11 (4)). According to the interpretation by the Supreme Court of the Russian Federation in the Resolution “On application by the general

jurisdiction courts of the universally recognized principles and norms of international law" N5 of 10.10.2003, the issue of criminal responsibility of diplomatic representatives of foreign States and other individuals enjoying immunity shall be settled in conformity with the norms of the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations, the 1946 Convention on the Privileges and Immunities of the United Nations, the 1947 Convention on the Privileges and Immunities of the Specialized Agencies.

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.

Authorities of the Russian Federation have not released any official statement, report or other document concerning the status and the immunities of special missions.

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.

The Russian Federation is not a party to the 1969 UN Convention on the special missions and considers the customary international law as the main legal source in this regard. Certain provisions of this Convention are recognized as reflecting customary international law.

Russian legislation does not contain any codified acts specifically devoted to the issue of special missions.

A determination of whether a foreign official can be considered part of a special mission has to be done on a case by case basis, taking into account all relevant circumstances. In particular, it is important to establish, whether such person acted in official capacity, purpose of his/her visit to Russia, type of visa and passport (diplomatic or not), inviting body/authority/organization in Russia, etc.

The Ministry of Foreign Affairs of the Russian Federation can provide clarifications in this regard on an *ad hoc* basis.

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;

The status of personnel of special missions as reflected in the Convention generally appears to reflect rules of customary international law. However in practice of the Russian Federation there have been no situations requiring it to establish the exact scope of privileges and immunities of personnel of special missions.

b. The scope ratione personae (categories of individuals who may enjoy an immunity of special mission).

The Ministry of Foreign Affairs of the Russian Federation can provide clarifications in this regard on an *ad hoc* basis.

c. The scope ratione materiae, in particular by specifying if there are exceptions to the granting of the immunity.

The Ministry of Foreign Affairs of the Russian Federation can provide clarifications in this regard on an *ad hoc* basis.

d. The temporal limits of the immunities accorded to special missions.

Normally members of a special mission enjoy privileges and immunities while performing official functions in the territory of the receiving State.

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 Russian Federation in the filed of immunities of special missions.

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?

There is no such mechanism in the Russian Federation.

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?

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

There is no case law and law enforcement procedures in Russia which could clarify the issue of such implied consent.

SERBIA

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?

Yes, our State signed and ratified the United Nations Convention on special missions (1969).

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

No, it doesn't.

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);

n/a

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).

No, our State didn't adopt a specific national legislation in the field of immunities of special missions.

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.

No, they are not.

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.

Yes, it does.

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;

The extent of the privileges and immunities granted to special missions is determined according to the United Nations Convention on special missions (1969):

Article 25
Inviolability of the premises

1. The premises where the special mission is established in accordance with the present Convention shall be inviolable. The agents of the receiving State may not enter the said premises, except with the consent of the head of the special mission or, if appropriate, of the head of the permanent diplomatic mission of the sending State accredited to the receiving State. Such consent may be assumed in case of fire or other disaster that seriously endangers public safety, and only in the event that it has not been possible to obtain the express consent of the head of the special mission or, where appropriate, of the head of the permanent mission.
2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the special mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
3. The premises of the special mission, their furnishings, other property used in the operation of the special mission and its means of transport shall be immune from search, requisition, attachment or execution.

Article 26
Inviolability of archives and documents

The archives and documents of the special mission shall be inviolable at all times and wherever they may be. They should, when necessary, bear visible external marks of identification.

Article 27
Freedom of movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the special mission such freedom of movement and travel in its territory as is necessary for the performance of the functions of the special mission.

Article 28
Freedom of communication

1. The receiving State shall permit and protect free communication on the part of the special mission for all official purposes. In communicating with the Government of the sending State, its diplomatic missions, its consular posts and its other special missions or with sections of the same mission, wherever situated, the special mission may employ all appropriate means, including couriers and messages in code or cipher. However, the special mission may install and use a wireless transmitter only with the consent of the receiving State.
2. The official correspondence of the special mission shall be inviolable. Official correspondence means all correspondence relating to the special mission and its functions.
3. Where practicable, the special mission shall use the means of communication, including the bag and the courier, of the permanent diplomatic mission of the sending State.
4. The bag of the special mission shall not be opened or detained.
5. The packages constituting the bag of the special mission must bear visible external marks of their character and may contain only documents or articles intended for the official use of the special mission.
6. The courier of the special mission, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.
7. The sending State or the special mission may designate couriers ad hoc of the special mission. In such cases the provisions of paragraph 6 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier ad hoc has delivered to the consignee the special mission's bag in his charge.
8. The bag of the special mission may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. The captain shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the special mission. By arrangement with the appropriate authorities, the special mission may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

The extent of the privileges and immunities granted to members of special missions is determined according to the United Nations Convention on special missions (1969):

Article 29
Personal inviolability

The persons of the representatives of the sending State in the special mission and of the members of its diplomatic staff shall be inviolable. They shall not be liable to any form of arrest or detention. The receiving State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity.

Article 30
Inviolability of the private accommodation

1. The private accommodation of the representatives of the sending State in the special mission and of the members of its diplomatic staff shall enjoy the same inviolability and protection as the premises of the special mission.

2. Their papers, their correspondence and, except as provided in paragraph 4 of article 31(the United Nations Convention on special missions (1969)), their property shall likewise enjoy inviolability.

Article 31
Immunity from jurisdiction

1. The representatives of the sending State in the special mission and the members of its diplomatic staff shall enjoy immunity from the criminal jurisdiction of the receiving State.

2. They shall also enjoy immunity from the civil and administrative jurisdiction of the receiving State, except in the case of:
(a) a real action relating to private immovable property situated in the territory of the receiving State, unless the person concerned holds it on behalf of the sending State for the purposes of the mission;
(b) an action relating to succession in which the person concerned is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
(c) an action relating to any professional or commercial activity exercised by the person concerned in the receiving State outside his official functions;
(d) an action for damages arising out of an accident caused by a vehicle used outside the official functions of the person concerned.

3. The representatives of the sending State in the special mission and the members of its diplomatic staff are not obliged to give evidence as witnesses.

4. No measures of execution may be taken in respect of a representative of the sending State in the special mission or a member of its diplomatic staff except in the cases coming under subparagraphs (a), (b), (c) and (d) of paragraph 2 of this article and provided that the measures concerned can be taken without infringing the inviolability of his person or his accommodation.

5. The immunity from jurisdiction of the representatives of the sending State in the special mission and of the members of its diplomatic staff does not exempt them from the jurisdiction of the sending State.

Article 32
Exemption from social security legislation

1. Subject to the provisions of paragraph 3 of this article, representatives of the sending State in the special mission and members of its diplomatic staff shall, in respect of services rendered for the sending State, be exempt from social security provisions which may be in force in the receiving State.
2. The exemption provided for in paragraph 1 of this article shall also apply to persons who are in the sole private employ of a representative of the sending State in the special mission or of a member of its diplomatic staff, on condition:

(a) that such employed persons are not nationals of or permanently resident in the receiving State; and
(b) that they are covered by the social security provisions which may be in force in the sending State or a third State.
3. Representatives of the sending State in the special mission and members of its diplomatic staff who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.
4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the receiving State where such participation is permitted by that State.
5. The provisions of this article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

Article 33
Exemption from dues and taxes

The representatives of the sending State in the special mission and the members of its diplomatic staff shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:
(a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
(b) dues and taxes on private immovable property situated in the territory of the receiving State, unless the person concerned holds it on behalf of the sending State for the purposes of the mission;
(c) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of article 44;
(d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;
(e) charges levied for specific services rendered;
(f) registration, court or record fees, mortgage dues and stamp duty, subject to the provisions of article 24.

Article 34
Exemption from personal services

The receiving State shall exempt the representatives of the sending State in the special mission and the members of its diplomatic staff from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 35
Exemption from customs duties and inspection

1. Within the limits of such laws and regulations as it may adopt, the receiving State shall permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:
(a) articles for the official use of the special mission;
(b) articles for the personal use of the representatives of the sending State in the special mission and the members of its diplomatic staff.

2. The personal baggage of the representatives of the sending State in the special mission and of the members of its diplomatic staff shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. In such cases, inspection shall be conducted only in the presence of the person concerned or of his authorized representative.

Article 36
Administrative and technical staff

Members of the administrative and technical staff of the special mission shall enjoy the privileges and immunities specified in articles 29 to 34, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 2 of article 31 shall not extend to acts performed outside the

course of their duties. They shall also enjoy the privileges mentioned in paragraph 1 of article 35 in respect of articles imported at the time of their first entry into the territory of the receiving State.

b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);

That scope is regulated by the United Nations Convention on special missions (1969):

Those categories of individuals are the persons of the representatives of the sending State in the special mission and of the members of its diplomatic staff. According to that, the following is provided:

Article 36
Administrative and technical staff

Members of the administrative and technical staff of the special mission shall enjoy the privileges and immunities specified in articles 29 to 34, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 2 of article 31 (the United Nations Convention on special missions (1969)) shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges mentioned in paragraph 1 of article 35 in respect of articles imported at the time of their first entry into the territory of the receiving State.

Article 37
Service staff

Members of the service staff of the special mission shall enjoy immunity from the jurisdiction of the receiving State in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment, and exemption from social security legislation as provided in article 32 (the United Nations Convention on special missions (1969)).

Article 38
Private staff

Private staff of the members of the special mission shall be exempt from dues and taxes on the emoluments they receive by reason of their employment. In all other respects, they may enjoy privileges and immunities only to the extent permitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the special mission.

Article 39
Members of the family

1. Members of the families of representatives of the sending State in the special mission and of members of its diplomatic staff shall, if they accompany such members of the special mission, enjoy the privileges and immunities specified in articles 29 to 35 (the United Nations Convention on special missions (1969)) provided that they are not nationals of or permanently resident in the receiving State.

2. Members of the families of members of the administrative and technical staff of the special mission shall, if they accompany such members of the special mission, enjoy the privileges and immunities specified in article 36 provided that they are not nationals of or permanently resident in the receiving State.

c. The scope *ratione materiae*, in particular by specifying if there are exceptions to the granting of the immunity;

The United Nations Convention is directly applicable in the Republic of Serbia.

d. The temporal limits of the immunities accorded to special missions.

The temporal limits of the immunities accorded to special missions are subject to the United Nations Convention on special missions (1969):

> Article 43
> Duration of privileges and immunities
>
> 1. Every member of the special mission shall enjoy the privileges and immunities to which he is entitled from the moment he enters the territory of the receiving State for the purpose of performing his functions in the special mission or, if he is already in its territory, from the moment when his appointment is notified to the Ministry of Foreign Affairs or such other organ of the receiving State as may be agreed.
>
> 2.When the functions of a member of the special mission have come to an end, his privileges and immunities shall normally cease at the moment when he leaves the territory of the receiving State, or on the expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, in respect of acts performed by such a member in the exercise of his functions, immunity shall continue to subsist.
>
> 3. In the event of the death of a member of the special mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the territory of the receiving State.

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 judgement, authority that issued the judgement, name of the parties, main points of law, French or English translation of the judgement or summary of the judgement in English or in French).

n/a

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?

n/a

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?

n/a

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

n/a

SLOVENIA
(New reply of 17 November 2017)

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 Slovenia is a party to the United Nations Convention on special missions (1969) (notification of succession of 6 July 1992).

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

The Republic of Slovenia is party to various multilateral treaties that contain provisions that would apply to visiting missions and their members, such as the Convention on the Privileges and Immunities of the United Nations, the Protocol on the Privileges and Immunities of the European Union, General Agreement on Privileges and Immunities of the Council of Europe, etc. The Republic of Slovenia in also party to the Vienna Convention on Diplomatic Relations (1961) and the Vienna Convention on Consular Relations (1963).

The Republic of Slovenia has concluded headquarters and other agreements with international organizations that have established their headquarters or other offices in Slovenia (Agreements between the Government of the Republic of Slovenia and the Agency for the Cooperation of Energy Regulators, Headquarters Agreement between the Government of the Republic of Slovenia and the Center of Excellence in Finance, Agreement between the Republic of Slovenia and the International Center for Promotion of Enterprises on the Amendments to the Agreement between the Socialist Federal Republic of Yugoslavia and the International Center for Public Enterprises in Developing Countries regarding the Headquarters of the International Center for Public Enterprises in Developing Countries, Agreement between the Government of the Republic of Slovenia and the European Bank for Reconstruction and Development on the Establishment and Activities of the Resident Office of the European Bank for Reconstruction and Development in the Republic of Slovenia, Framework Agreement between the Republic of Slovenia and European Investment Bank governing EIB activities in Slovenia, Agreement Between The Government Of The Republic Of Slovenia And The United Nations High Commissioner For Refugees).

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

The UN Convention on special missions forms a part of the Slovenian legal order. The internal legislation of the Republic of Slovenia does not specifically regulate the issues of immunities of special missions. There are provisions in the national procedural laws regarding persons enjoying immunities, that mostly refer to the provisions of the international law. The Law on Offences however includes special provisions regarding the immunity in the offence procedures.

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).

As mentioned above there are general provisions in the national laws concerning persons enjoying immunity in Slovenia, that direct to the provisions of the international law. The Law on Offences includes some special provisions regarding the immunity in the offence procedures (Art. 12, 136, 202).

Criminal Procedure Act, Article 141:
"(1) The exemption from prosecution of persons granted immunity in the Republic of Slovenia under International Law shall be governed by the provisions of the ratified and published international agreements.
(2) If doubt arises about the eligibility of a person to such exemption, the court shall consult the Ministry, competent for foreign affairs."

Civil Procedure Act, Article 28:
"(1) Regarding the jurisdiction of the courts of the Republic of Slovenia for the trial of foreigners who enjoy immunity in the Republic of Slovenia, and of foreign countries and international organizations, the rules of international law shall be applied.
(2) In doubt about the existence and extent of the right of immunity, the Ministry, competent for justice shall give an explanation."

General Administrative Procedure Act, Article 24:
"(1) Regarding the jurisdiction of domestic agencies in matters in which the party is a foreigner who enjoys the right of immunity in Slovenia, a foreign country or international organization, the treaties and other rules of international law that bind Slovenia shall be applied.
(2) In doubt about the existence and extent of the right of immunity, the Ministry competent for foreign affairs shall give an explanation.
(3) Official acts relating to persons with immunity shall be performed through the Ministry, competent for foreign affairs."

Minor Offences Act, Article 12 (Immunity):
"(1) Against the foreigners in the Republic of Slovenia enjoying immunity under international law, the misdemeanor proceedings only lead to infringements other than those covered by this immunity rule may be given only a fine or a warning.
(2) In case of doubt whether a person or an infringement which is comprised of immunity, the misdemeanor body turns for explanation to the Ministry, competent for foreign affairs.
(3) The offense committed by a foreigner who enjoys immunity under international law, the misdemeanor authority shall inform the Ministry, competent for foreign affairs, in the case referred to in the first paragraph of this article, accompanied by a decision on the offense."

Article 136 (Judgment of the procedure stops):
"(1) Judgment of the offense with which the process stops, shall be issued:

1. if the offense is not an offense;
2. if the accused for the same offense has already been finally found liable or process has been stopped him, unless it was stopped because the accusation proposal made ineligible applicant (first and second paragraphs of Article 103);

3. if the defendant enjoying immunity under the rules of international law;
4. if the prosecution time-barred;
5. If there is no proof that the accused has committed an offense;
6. if the accused during the process dies;
7. If the law stipulates that the perpetrator does not impose a penalty for an offense;
8. if circumstances exist which according to this law exclude responsibility for the offense;
9. If an offense is minor in nature, special circumstances, low level of responsibility or the perpetrator's personal circumstances indicate that the process would not be reasonable;
10. if there exist other circumstances that preclude misdemeanor proceedings.

(2) The court shall discontinue the proceedings if the applicant withdraws the proposal process. The proposal may be withdrawn by the issuing of a misdemeanor judgement."

Article 202 (enforcement)
"(12) The fines imposed under the first paragraph of Article 12 of this Act shall not be enforced."

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.

No such official statements, reports or documents have been released.

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.

The Republic of Slovenia is of the view that the UN Convention on special missions to a large extent reflects customary 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;

The Republic of Slovenia grants the privileges and immunities to special missions and to their members according to the UN Convention on special missions, provided that the Slovene authorities have consented to the mission and have been informed of its composition.

b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);

Immunities are accorded to the members of the missions according to the UN Convention on special missions.
Privileges and immunities are in principle not granted to the members of the missions who are nationals of or permanently resident in the receiving State, with the exception of the immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of their functions, that is granted also to the representatives of the sending State in the special mission and to the members of its diplomatic staff who are nationals of or permanently resident in the receiving State (according to the UN Convention on special missions).

c. The scope *ratione materiae*, in particular by specifying if there are exceptions to the granting of the immunity;

According to the UN Convention on Special Missions.

d. The temporal limits of the immunities accorded to special missions.

Immunities accorded to special missions are only granted during the duration of the mission.

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.

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?

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?

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

No special mechanism has been established so far. In principle a prior explicit consent is expected. The special mission should be announced in advance through diplomatic channels seeking consent, which should in principle be explicit (by Ministry of Foreign Affairs) and communicated through diplomatic channels.

SPAIN
(New reply of 17 November 2017)

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?

Spain acceded to both the *United Nations Convention on special missions* (1969) and its *Optional Protocol concerning the compulsory settlement of disputes* through its national Instrument of Accession of 28 May 2001, deposited with the Secretary General of the UN on 31 May 2001.

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

Spain, as a host country to a number of international organizations, including UN agencies, applies a number of headquarters agreements which contemplate immunities for experts on mission and members of other temporary missions. Some examples include the headquarters agreements concluded with UNWTO, the Secretariat of the Union for the Mediterranean, the International Olive Council, the Ibero-American General Secretariat, the Inter-American Institute for Cooperation on Agriculture, or the European Forest Institute, among others.

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).

Spain has recently adopted legislation that addresses, among other issues, the field of immunities of special missions: the *Ley Orgánica 16/2015, de 27 de octubre, sobre privilegios e inmunidades de los Estados extranjeros, las Organizaciones Internacionales con sede u oficina en España y las Conferencias y Reuniones internacionales celebradas en España* (Organic Law 16/2015, of October 27th, about privileges and immunities of foreign States, International Organizations with headquarters in Spain, and international conferences and meetings celebrated in Spain; complete text available in Spanish in the Official Journal of Spain, https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-11545). This law mentions explicitly the immunities of special missions on two occasions:

- Article 10.2.b.iii: Even if, in general terms, a foreign State cannot claim jurisdictional immunity before Spanish courts in procedures related to a labor contract between such State and a physical person when the activity covered by such contract is executed in Spain, this general rule ceases to apply (i.e., the foreign State can claim jurisdiction immunity in this situation) if the employee is a member of the diplomatic staff of a special mission.
- Article 20.1.a: Official bank accounts and other goods in Spain which are used, or destined for use, by special missions of a foreign State in their official activity shall enjoy enforcement immunity from Spanish courts.

Article 96 of the Spanish Constitution provides that all treaties concluded by the State, once officially published in Spain, become part of its internal legal order. Their dispositions may only be altered or suspended by the means established in the treaties themselves or in accordance with general International Law.

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 authorities of Spain have not released any major official statement, report or other document concerning exclusively the status and the immunities of special missions.

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.

Spain considers that current obligations and/or definitions regarding immunity of special missions are essentially those explicitly established by the UN Convention on special missions and by its national legislation (see question 3), but does not exclude *a priori* the possible application of customary international law to cases which may not be explicitly covered by the aforementioned texts.

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.

Apart from the two elements already described in the answer to question 3, Spain has not developed further the provisions of the UN Convention on special missions regarding (a) the extent of the privileges and immunities granted to special missions and to their members, (b) the scope *ratione personae*, (c) the scope *ratione materiae*, (d) nor the temporal limits of immunities accorded to special missions.

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).

So far there is no Spanish national case law in the field of immunities of special missions.

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 status of official visits is assessed and negotiated on a case-by-case basis with the foreign State by the Ministry of Foreign Affairs and Cooperation.

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?

N/A

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

In case the status of a specific mission was not agreed upon beforehand in written form, an official reception of a special envoy by competent Spanish officials would normally indicate implied Spanish consent to the mission.

SWEDEN
(Revised reply of 21 November 2017)

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?

Sweden has not signed or ratified the United Nations Convention on special missions and has no intentions at the moment to do so.

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

The provisions regarding immunities in the Vienna Convention on Diplomatic Relations (1961) as well as the Vienna Convention on Consular Relations (1963) are incorporated in Swedish law through the Act on Immunity and Privileges in Certain Cases (1976:661).

Incorporated in the aforementioned Swedish Act are also the UN Convention on the Privileges and Immunities of the Specialized Agencies (1947) and specific host agreements between Sweden and international organizations located in Sweden. Special missions, as defined in the United Nations Convention on special missions (1969), are not explicitly mentioned in the Act. However, Sweden has ratified, and incorporated in the Act, the UN Convention on the Privileges and Immunities of the United Nations (1946), which gives representatives of Members to conferences convened by the United Nations some privileges and immunities while exercising their functions and during the journey to and from the place of meeting. There is also a specific agreement from 2003 between Sweden and the United Nations on privileges and immunities and certain other matters concerning United Nations seminars, symposia, courses, workshops and other meetings held in Sweden, which likewise has been incorporated in the Act.

Immunities not regulated by the Swedish Act on immunity and Privileges in Certain Cases may also follow from international customary law, which could be the case for e.g. a head of state, a head of government or a minister for foreign affairs, on visit to Sweden. Sweden has ratified the United Nations Convention on Jurisdictional Immunities of States and their property from 2004 and has incorporated it into Swedish law.

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

No, Sweden has not adopted any specific 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).

The issue of immunities of special missions is not covered by any other part of Swedish legislation than the abovementioned.

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.

In the preparatory work to the Swedish Act on jurisdictional immunity of states and their property (prop. 2008/09:204) there is a reference to special missions stating that Sweden has not signed the convention and that it is uncertain if the convention reflects customary law. There is no position expressed in the matter.

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.

See answer to question four above.

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.

See above.

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).

Not to our knowledge.

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?

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?

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

There is no mechanism of formal agreement of special missions in advance.

SUISSE

BASE LEGALE

1. **Votre Etat a-t-il signé et/ou ratifié la *Convention des Nations Unies sur les missions spéciales* (1969) ? Si non, votre Etat envisage-t-il de signer/ratifier la Convention ?**

Oui. La Suisse a déposé son instrument de ratification le 3 novembre 1977. La Convention est entrée en vigueur pour la Suisse le 21 juin 1985.

2. **Votre Etat applique-t-il d'autres instruments juridiques internationaux en la matière (ex : accords bilatéraux, multilatéraux ou accords de siège) ?**

Oui. La Suisse est partie à divers traités bilatéraux ou multilatéraux en matière de privilèges et immunités. Il s'agit notamment des instruments suivants (liste non exhaustive) : la Convention de Vienne du 18 avril 1961 sur les relations diplomatiques, la Convention de Vienne du 24 avril 1963 sur les relations consulaires, la Convention du 13 février 1946 sur les privilèges et immunités des Nations Unies, la Convention du 21 novembre 1947 sur les privilèges et immunités des institutions spécialisées, les accords de siège avec les organisations internationales établies en Suisse.

3. **Votre Etat a-t-il adopté une législation nationale spécifique en matière d'immunité des missions spéciales ?**

    a. **Dans l'affirmative, veuillez fournir des informations concernant les dispositions législatives pertinentes (en particulier titre, source et contenu ; si possible, veuillez fournir des traductions officielles en français ou en anglais et/ou les références renvoyant à des sources Internet) ;**

La Convention sur les missions spéciales est directement applicable.

Par ailleurs, la Suisse a adopté la loi fédérale du 22 juin 2007 sur les privilèges, les immunités et les facilités, ainsi que sur les aides financières accordés par la Suisse en tant qu'Etat hôte (loi sur l'Etat hôte, LEH). Cette loi est entrée en vigueur le 1er janvier 2008. La LEH définit à son article 2, alinéa 1, les bénéficiaires institutionnels auxquels la Confédération peut accorder des privilèges et immunités. Cette disposition mentionne les missions spéciales à sa lettre g).

En application de la LEH, le Conseil fédéral suisse a adopté l'Ordonnance du 7 décembre 2007 relative à la loi fédérale sur les privilèges, les immunités et les facilités, ainsi que sur les aides financières accordés par la Suisse en tant qu'Etat hôte (Ordonnance sur l'Etat hôte, OLEH). Celle-ci est également entrée en vigueur le 1er janvier 2008. L'OLEH règle les dispositions de mise en œuvre de la LEH. Elle prévoit notamment à son article 6, alinéa 4, que les missions spéciales se voient en particulier appliquer la Convention du 8 décembre 1969 sur les missions spéciales. Les catégories de personnes bénéficiaires pour les missions spéciales sont définies à l'art. 11, al. 3, OLEH.

http://www.eda.admin.ch/eda/fr/home/topics/intla/privim/reslaw.html

    b. **Si non, la question des immunités des missions spéciales est-elle couverte par une autre partie de votre législation ? Dans l'affirmative, veuillez fournir des informations concernant ces dispositions législatives pertinentes (en particulier titre, source et contenu ; si possible, veuillez fournir des traductions officielles en français ou en anglais et/ou les références renvoyant à des sources Internet).**

n/a

4. **Les autorités de votre Etat ont-elles émis des déclarations officielles, rapports ou tout autre document concernant le statut et les immunités des missions spéciales ? Dans l'affirmative, veuillez fournir toute information pertinente relative à ces documents.**

La Suisse collabore activement aux travaux de la Commission du droit international (CDI) relatifs à l'immunité de juridiction pénale étrangère des représentants de l'Etat. Nous renvoyons à cet égard aux rapports de la CDI.

5. **Votre Etat considère-t-il que certaines obligations et/ou définitions en matière d'immunité des missions spéciales dérivent du droit international coutumier ? Dans l'affirmative, veuillez fournir une brève description des principales exigences de ce droit à cet égard.**

Oui. Nous pouvons mentionner les éléments suivants (liste non exhaustive qui ne préjuge pas de la position de la Suisse à l'égard d'autres domaines qui ne seraient pas évoqués ci-dessous) :

- De manière générale, la Suisse considère que la Convention sur les missions spéciales constitue dans une large mesure une codification du droit international coutumier, s'agissant en particulier de la portée des privilèges et immunités.
- Principe visant à accorder des privilèges et immunités à la mission spéciale et à ses membres dans une mesure comparable à ce qui est accordé aux missions diplomatiques et à leurs membres.
- Statut du chef d'Etat, chef de gouvernement et ministre des affaires étrangères, étant entendu que la définition prévue à l'art. 21 de la Convention sur les missions spéciales ne saurait limiter les immunités dont ces personnes peuvent jouir en vertu du droit international coutumier lorsqu'elles ne sont pas en mission spéciale au sens de la Convention.

6. **Veuillez fournir des informations sur la portée des immunités des missions spéciales, en particulier :**

    a. **L'étendue des privilèges et immunités accordés aux missions spéciales et à leurs membres ;**

Voir réponse à la question 3 a). L'étendue des privilèges et immunités, leur champ d'application personnelle et matérielle, ainsi que leur durée sont déterminés par la Convention sur les missions spéciales. Le cercle des personnes bénéficiaires ressort en outre de l'art. 11 OLEH.

    b. **Le champ d'application *ratione personae* (catégories d'individus susceptibles de jouir d'une immunité de mission spéciale);**

Voir réponse ci-dessus.

    c. **Le champ d'application *ratione materiae*, notamment en précisant s'il existe des exceptions à l'octroi de l'immunité;**

Voir réponse ci-dessus.

    d. **Les limites temporelles des immunités reconnues aux missions spéciales.**

Voir réponse ci-dessus.

PRATIQUE NATIONALE ET PROCEDURE

7. **Existe-t-il des jurisprudences nationales en matière d'immunité des missions spéciales ? Dans l'affirmative, veuillez fournir des informations sur ces décisions (date du jugement, autorité ayant rendu le jugement, noms des parties, principaux points de droit, traduction française ou anglaise du jugement ou résumé en anglais ou en français du jugement).**

Il n'y a pas de jurisprudence publiée en la matière.

8. **Existe-t-il un mécanisme d'agrément formel des missions spéciales c'est-à-dire un processus suivant lequel votre Etat peut accepter à l'avance qu'une visite officielle constitue ou non une mission spéciale ?**

    a. **Si oui, quelle autorité délivre ces agréments ? Quel est le poids accordé par les tribunaux à de tels agréments ? Existe-t-il une procédure formelle de notification ou de communication entre les autorités gouvernementales et les tribunaux ?**

La Convention sur les missions spéciales est appliquée en Suisse de manière pragmatique, compte tenu du nombre de réunions internationales qui se tiennent en Suisse. Son application dans un cas concret peut découler p. ex. d'une invitation à participer à une visite officielle ou de l'autorisation donnée à d'autres Etats de se réunir sur le territoire suisse (art. 18 de la Convention sur les missions spéciales).

De manière générale, la Suisse n'exige pas systématiquement le respect de l'ensemble des procédures prévues par la Convention, notamment les procédures prévues aux articles 8 (nomination des membres de la mission spéciale) et 11 de la Convention (notifications). En effet, la plupart des informations nécessaires ressortent généralement des documents liés à l'organisation des réunions prévues ou aux procédures relatives aux visas.

La Suisse applique la Convention sur les missions spéciales aux délégations officielles participant aux conférences internationales qui se tiennent en Suisse au sens de l'art. 2, al. 1, let. h, LEH, lorsque la conférence concernée et les personnes qui y participent ne bénéficient pas déjà de privilèges et immunités en vertu d'un autre traité international (p. ex. un accord de siège conclu entre la Suisse et l'organisation internationale qui tient la conférence).

Conformément à l'article 23, alinéa 2, OLEH, le DFAE est compétent pour accorder des privilèges et immunités pour une durée maximale d'un an aux missions spéciales et aux conférences internationales.

    b. **En l'absence d'un agrément formel, un consentement implicite peut-il dériver du comportement des autorités gouvernementales ?**

Comme mentionné ci-dessus, la Convention sur les missions spéciales est appliquée de façon pragmatique. Son application peut découler p. ex. d'une invitation officielle ou d'une autorisation donnée à des Etats tiers de tenir une réunion en Suisse.

UKRAINE
(New reply of 9 October 2017)

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?

Yes. Ukraine has ratified the United Nations Convention on special missions (1969) and it entered into force in respect of Ukraine on 14.07.1993. Ratified by the Decree N3383-XII of the Verkhovna Rada of Ukraine. At the same time Ukraine is not a party to the Optional Protocol to the Convention on special missions concerning the compulsory settlement of disputes.

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

Currently, Ukraine does not apply any other multilateral international legal instrument specifically in the area of the immunities of special missions.

However, in this regard it is worth to mention that Ukraine hosts the seat of the Organization for democracy and economic development (GUAM), established in 2001 by four Former Soviet Union Republics: the Republic of Azerbaijan, Georgia, the Republic of Moldova and Ukraine. For special missions to this international organisation the respective agreements are relevant: Charter of Organization for democracy and economic development – GUAM (Article 16), signed on 23 May 2006 (http://guam-organization.org/en/node/450), and Agreement on privileges and immunities of the Organization for democracy and economic development – GUAM, signed on 19 June 2007 (http://guam-organization.org/node/365).

Besides that, it is pertinent to recall that on 28 July 2014 Ukraine and the Kingdom of the Netherlands signed the Agreement on the International Mission for Protection of Investigation regarding the accident of the downing of a civilian aircraft, Malaysian Airlines flight MH 17 on 17 July 2014. The Article 6 of this Agreement stipulates that "*Personnel of the Mission shall be accorded the status equivalent to that accorded to the administrative and technical staff of a diplomatic mission of a State that is a party to the Vienna Convention on Diplomatic Relations of 18 April 1961*". This Agreement was concluded for the duration of one year, but, taking into account the necessity to facilitate prompt completion of the investigation into the MH17 tragedy, it has already been extended twice and remains in force. Ukrainian version only: http://zakon5.rada.gov.ua/laws/show/528_039.

In this context, it should be also noted that a large number of agreements on special missions of international organisations were concluded by Ukraine during last years.

The European Union Border Assistance Mission to Moldova and Ukraine (EUBAM) was launched in 2005. This advisory, technical body promotes border control, customs and trade norms and practices that meet EU standards. The Memorandum of Understanding, signed by the Governments of Moldova and Ukraine and the European Commission on 7 October 2005(http://eubam.org/wp-ontent/uploads/2015/11/memorandum_of_understanding_en.pdf), as well as Addendum to the Memorandum of Understanding, signed on 24 November 2015, constitute the legal basis for EUBAM (http://eubam.org/wp-content/uploads/2015/12/Addendum-1-to-MoU-EC_English-version.pdf). Ukraine regards EUBAM as a special mission. Its mandate is established by the Article 1 of the Memorandum of Understanding. Privileges and immunities are granted to staff on the basis of the Article 3 of the Memorandum and respective provisions of the Addendum thereto. The mandate of the Mission has already been extended four times (in 2007, 2009, 2011 and 2015), with the current mandate expiring on 30 November 2017.

OSCE Special Monitoring Mission in Ukraine (SMM) was deployed on 21 March 2014, following a request to the OSCE by Ukraine's Government and a consensus decision by all 57 OSCE participating States (http://www.osce.org/special-monitoring-mission-to-ukraine). The SMM is an unarmed, civilian mission, present on the ground 24/7 in all regions of Ukraine. Its main tasks are to observe and report in an impartial and objective way on the situation in Ukraine; and to facilitate dialogue among all the parties concerned. The activities of SMM are regulated by the provisions of the Decision of the OSCE Permanent Council No 1117 of March 21, 2014 and the Memorandum of Understanding between the Government of Ukraine and the Organization for Security and Cooperation in Europe (OSCE) on the deployment of a special monitoring mission of the OSCE of April 14, 2014. These two instruments outline the SMM's structure, composition and mandate. According to the Article 5 of the Memorandum of Understanding, the Mission and its staff will enjoy on the territory of Ukraine the same status, rights, privileges and immunities as are accorded by the Government of Ukraine to diplomatic representations and the diplomatic agents accredited in Ukraine in accordance with the Vienna Convention on Diplomatic Relations of 1961. In February 2016, its mandate was extended until 31 March 2017, with the possibility of further extension if necessary.

EU Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine) began operations from its headquarters in Kyiv on 1 December 2014, following the Maidan revolution of 2013/14 and an invitation issued by the Ukrainian Government. EUAM Ukraine aims to assist the Ukrainian authorities towards a sustainable reform of the civilian security sector. The Agreement between Ukraine and the European Union on the status of the European Union Consultative Mission for the Reform of the Civil Security Sector of Ukraine of 17 November 2014 constitutes the legal basis for this special mission. Article 5 of the Agreement outlines privileges and immunities of EUAM Ukraine granted by the Host State, Article 6 – privileges and immunities of EUAM Ukraine personnel. The full text is available via the following link:
http://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=17101.

UN Human Rights Monitoring Mission in Ukraine (HRMMU) was deployed in March 2014 by the Office of the United Nations High Commissioner for Human Rights at the request of the Ukrainian Side to evaluate and report on the human rights situation and to provide support to the Government of Ukraine in the promotion and protection of human rights. The Agreement between the Office of the United Nations High Commissioner for Human Rights and the Government of Ukraine concerning the deployment of a short-term UN Human Rights Monitoring Mission in Ukraine (HRMMU), concluded on 31 July 2014, is the legal basis for HRMMU's activities. This Agreement regulates the conditions and modalities relating to the establishment and functioning of the HRMMU, its status and the status of its officials and premises. According to the Article III of the Agreement, the Government of Ukraine shall apply to the HRMMU, Officials and Experts on Mission, Persons performing services on behalf of the HRMMU the provisions of the privileges and immunities set out in the Agreement between the Government of Ukraine and the United Nations relating to the establishment of a United Nations Interim Office of 6 October 1992.

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).

Ukraine has ratified the United Nations Convention on special missions (1969) by the Decree N 3383-XII of the Verkhovna Rada of Ukraine. Article 9 of the Constitution of Ukraine stipulates that "*International treaties in force, consented by the Verkhovna Rada of Ukraine as binding, shall be an integral part of the national legislation of Ukraine*". Article 19 of the Law of Ukraine "On International Treaties of Ukraine" states that international treaties in force, consented by the Verkhovna Rada of Ukraine as binding, shall be an integral part of the national legislation of Ukraine and have to be applied in a manner similar to any other act of national legislation. Therefore, the United Nations Convention on special missions (1969) is an integral part of national legislation and its provisions are directly applicable in Ukraine.

Article 6.2 of the Code of Criminal Procedure of Ukraine prescribes that criminal proceedings against a person enjoying diplomatic immunity may be exercised in accordance with the rules of this Code only with the consent of such person or with the consent of the competent authority of the State (international organization) represented by such person, in accordance with the procedure provided by the legislation of Ukraine and international agreements of Ukraine (https://rm.coe.int/16802f6016).

According to the Plenary Session resolution of the High Specialized Court for Civil and Criminal Cases for consideration of civil cases with foreign element of 16.05.2013 №2754/0/4-13, the diplomatic representatives of foreign States accredited in Ukraine and other persons specified in the relevant laws of Ukraine and international treaties of Ukraine are subject to the jurisdiction of the courts of Ukraine only within the limits defined by the principles and norms of international law or international treaties of Ukraine (Part Two of Article 79 of the Law of Ukraine "On International private law", Ukrainian version only: http://zakon3.rada.gov.ua/laws/show/2709-15/page). International organizations are subject to the jurisdiction of the courts of Ukraine within the limits defined by international treaties of Ukraine or the laws of Ukraine (Part Three of Article 79 of the Law of Ukraine "On Private International Law").

According to the Decree of the President of Ukraine №198/93 of 10.06.93 "*Regulations on Diplomatic and Consular Missions of Foreign States in Ukraine*" (Ukrainian version only: http://zakon2.rada.gov.ua/laws/show/198/93), in order to ensure the efficient performance of its functions, diplomatic representation (embassy, mission) of a foreign State in Ukraine and consular post (consulate-general, consulate, vice-consulate or consular agency) of a foreign State in Ukraine, as well as the staff of a diplomatic representation and a consular post shall enjoy privileges and immunities, provided in the Regulations, in accordance with relevant provisions of Vienna Convention on Diplomatic Relations of 18 April 1961 and Vienna Convention on Consular Relations of 24 April 1963. Paragraphs from 6 to 26 of the Regulations clarify the content and the scope of privileges and immunities granted to diplomatic representations and consular posts on the territory of Ukraine. This list includes but is not limited to: personal inviolability; inviolability of the premises; inviolability of archives and documents ; immunity from jurisdiction for their official acts; freedom of movement and communication, etc. Paragraph 27 specifies that privileges and immunities, provided in the Regulations for diplomatic staff, cover representatives of foreign States, members of parliamentary and government delegations visiting Ukraine with the aim of participating in bilateral or multilateral interstate negotiations, international conferences and summits or with other official purposes, as well as accompanying members of their families, who are not nationals of Ukraine. Representatives of foreign States, members of parliamentary and government delegations of foreign States, who transit through the territory of Ukraine with the same aims, as well as accompanying members of their families, who are not nationals of Ukraine, enjoy personal inviolability and such other immunities as may be required to ensure their transit. Paragraph 28 stipulates that privileges and immunities, which are granted in Ukraine to the international intergovernmental organizations, missions of the foreign States to these organizations, as well as to their officials are stipulated by the corresponding agreements, which Ukraine is a party to.

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.

Not available. Ukrainian authorities have not released any official statements, reports or any other document concerning the status and the immunities of special missions.

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.

Ukraine is of the view that the United Nations Convention on special missions (1969) to large extent reflects customary international law. Its provisions relating to the mutual consent of the sending and the receiving State to send / to receive a special mission, the scope of privileges and immunities were repeatedly recognized as customary international law. Thus, the International Court of Justice in its case concerning the Arrest Warrant of 11 April 2000 noted that the New York Convention provides *"useful guidance on certain aspects of the question of immunities"* (Dem. Rep. Congo v. Belg.; // I.C.J. – 2002. – No 3 (Feb. 14). – Para. 52; http://www.icj-cij.org/files/case-related/121/121-20020214-JUD-01-00-EN.pdf). In the process of the elaboration of the New York Convention by the International Law Commission there was no doubt that, at least, some of its provisions had the nature of customary international law, particularly as regards to such basic principles as the requirement of consent, inviolability and immunity of persons on special missions, premises, correspondence, property, transport etc. It seems that the customary nature of the Convention's provisions is also widely recognized by the doctrine of international law.

For the purposes of this questionnaire and without prejudice to the position of Ukraine in other areas, we are of the opinion that such elements should be considered as a part of customary international law (non-exhaustive list):

- special mission is a temporary mission, representing a State, which is sent by this State to another State with the consent of the latter for the purpose of dealing with it on specific questions or of performing in relation to it a specific task;
- the functions (mandate, terms of reference) of a special mission shall be determined by the mutual consent of the sending and the receiving State;
- a State may send a special mission to another State with the consent of the latter, previously obtained through the diplomatic or another agreed or mutually acceptable channel;
- customary international law calls for notification of the exact composition of the special mission, travel dates and its seat in the host State in order to enable the latter to guarantee the mission's privileges and immunities;
- members of special missions enjoy privileges and immunities at least comparable to those accorded to diplomatic missions and their staff members. In any event the representatives of the sending State in the special mission and the members of its diplomatic staff shall enjoy immunity from the criminal jurisdiction of the receiving State;
- in case of explicit consent on transit, customary law also stipulates the granting of privileges necessary for transit;
- the receiving State may, at any time and without having to explain its decision, notify the sending State that any representative of the sending State in the special mission or any member of its diplomatic staff is persona non grata or that any other member of the staff of the mission is not acceptable. The sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission.

Ukraine also takes the view that under customary international law the Head of State, Head of Government and the Minister for Foreign Affairs, mentioned in Article 21 of the Convention, enjoy immunity ratione personae irrespective of their status as members of a special mission.

Within the framework of international law currently in force, there are no general treaty provisions, which regulate the modalities of forming, sending and determining the functions (mandate, terms of reference) of special missions of international organizations to the Member States outside the regular monitoring cycles or *ad-hoc* missions, the possibility of sending which is regulated by valid international treaties.

In view of the fact that the United Nations Convention on special missions (1969) is considered to a large extent as a reflection of customary norms, which are applicable to all special missions, its provisions can also be applied *mutatis mutandis* to special missions sent by international organizations.

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;

In general terms, the extent of the privileges and immunities granted to special missions is determined according to the United Nations Convention on special missions. At the same time Ukraine enjoys discretion concerning the exact scope of immunities and privileges of special missions representing States which are not parties to the Convention or international organizations. In such cases, the customary nature of relevant rules is assessed on a case-by case basis.

b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);

The rules on special missions apply to all members of the special mission regardless of their rank. The relevant criterion for the applicability of the Convention is the consent of the receiving State to the mission and its members.

c. The scope *ratione materiae*, in particular by specifying if there are exceptions to the granting of the immunity;

Every member of a special mission enjoys immunity from criminal jurisdiction for official acts. As to immunity in civil and administrative proceedings, Article 31 (2) of the Convention applies. As to private acts, there is no immunity from jurisdiction for certain members of the mission (see Article 37 of the Convention relating to service staff). It depends on the type of the member of a special mission (diplomatic staff, administrative and technical staff, service staff, private staff) whether immunity is granted.

d. The temporal limits of the immunities accorded to special missions.

According to Article 43 of the Convention on special missions, members of the special mission enjoy the privileges and immunities from the moment they enter the territory of the receiving State for the purpose of performing their functions in the special mission or from the moment when their appointments are notified to the relevant authority of the receiving State if they are already present in its territory. The privileges and immunities cease at the moment of leaving the territory of the receiving State or on expiry of a reasonable period in which to do so, except for the immunity in respect of acts performed by them in the exercise of their functions.

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 available information on this issue.

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?

No special mechanism has been established so far. In order to be considered as a special mission it is necessary to obtain consent of the receiving State. This consent can take different forms: international (bilateral or multilateral) treaty concluded in accordance with national legislation of both the sending and the receiving States; memorandum of understanding, mandate, terms of reference, any other bilateral or multilateral document agreed following negotiations or consultations between the sending and the receiving States; exchange of letters between Heads of State, Heads of Government, Ministers of Foreign Affairs or any other competent high-ranked State officials, exchange of verbal notes between Ministries of Foreign Affairs of the sending and the receiving States. At least, as envisaged by the Convention on special missions, the sending State is required to notify to the receiving State the exact composition of the special mission, travel dates and the place of seat in the host State.

Ukraine does not accept that the behaviour of the governmental authorities may constitute implied consent.

UNITED KINGDOM

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 UK signed the Convention on 17 December 1970. However the UK has not ratified it yet, and there are no current plans to do so.

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

The UK has ratified the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations and maintains a number of bilateral consular conventions. In addition the UK is a member of a number international organisations (including as host State to some 40 organisations), in relation to which relevant agreements provide for privileges and immunities to be granted to the staff of those organisations and/or the representatives of the member States.

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

No.

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);

n/a

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).

No. In so far as the immunity of special missions is part of customary international law, it is also a source of the common law. The common law is applied and developed by the courts, through the system of binding precedent (the rule of stare decisis).

4. Have the autorities 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 most recent Government statement on this issue was made in a Written Ministerial Statement to Parliament by the Foreign Secretary on 4 March 2013. The statement reads as follows:

> "I wish to inform the House of a new pilot process by which the Government will be informed of inward visits which may qualify for special mission immunity status.
>
> A special mission is a temporary mission, representing a state, which is sent by one state to another with the consent of the latter, in order to carry out official engagements on behalf of the sending state.
>
> In the case of *Khurts Bat v. the Federal Court of Germany* [2011]EWHC 2029 (Admin) the High Court recognised that, under customary international law, members of a special mission enjoy immunities,

including immunity from criminal proceedings and inviolability of the person, and that these immunities have effect in the United Kingdom by virtue of the common law. However, the Court made it clear that not everyone representing a state on a visit of mutual interest is entitled to the immunities afforded to members of a special mission but only where a visit is consented to as a special mission. In the case of inward missions to the United Kingdom, the Court affirmed that it is a matter for Her Majesty's Government to decide whether to recognise a mission as a special mission.

In order to avoid uncertainty as to the status of particular missions, the Government will put in place a new pilot process so that the Government's consent to a special mission can be addressed expressly before the mission arrives in the UK. Embassies and High Commissions in London will be invited to inform the FCO of forthcoming visits in cases where they wish to seek the Government's express consent as a special mission. The FCO will respond with Government's consent or otherwise to the visit as a special mission. Any legal consequences would ultimately be a matter for the courts."

(Online reference: http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130304/wmstext/130304m0001.htm#1303041000005)

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.

Yes. As the statement at q.4 (above) sets out, the UK considers that a special mission is a temporary mission, representing a State, which is sent by one State to another with the consent of the latter, in order to carry out official engagements on behalf of the sending State.

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;

It is clear that persons on a special mission enjoy personal inviolability and immunity from criminal jurisdiction. It is likely that persons on a special mission would enjoy immunity from civil jurisdiction in so far as the assertion of civil jurisdiction would hinder them performing their official functions as members of a special mission. However there are no recent judicial precedents concerning the immunity of members of a special mission from civil jurisdiction.

b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);

Special mission immunity applies to all members of a special mission to whom the receiving State has consented and received as such.

c. The scope *ratione materiae*, in particular by specifying if there are exeptions to the granting of the immunity;

As other persons enjoying immunity ratione personae, the members of a special mission enjoy personal inviolability and immunity from criminal jurisdiction without exception.

d. The temporal limits of the immunities accorded to special missions.

The immunity ratione personae enjoyed by members of a special mission subsists for as long as is necessary for the accomplishment of their mission, including during relevant periods of travel. However, the immunities of members of special missions will continue to subsist in respects of acts performed by them in the exercise of their functions as a member of the special mission (see Art 43

(2) of the 1969 Convention on Special Missions, and by way of analogy, Article 39(1) of the Vienna Convention on Diplomatic Relations).

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 judgement, authority that issued the judgement, name of the parties, main points of law, French or English translation of the judgement or summary of the judgement in English or in French).

The leading UK case is *Khurts Bat v. the Federal Court of Germany* ([2011] EWHC 2029 (Admin) - online reference: http://www.bailii.org/ew/cases/EWHC/Admin/2011/2029.html).

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?

Following some high profile cases, the Foreign Secretary's statement of 4 March 2013 (see q.4 above) instituted an administrative procedure so that sending States could, if they wished, obtain express confirmation of whether the UK had consented to a visit as a special mission. Accordingly all diplomatic missions in London were invited to submit details of forthcoming official visits in respect of which they sought such express confirmation to the Foreign and Commonwealth Office.

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?

It is the Foreign and Commonwealth Office which is charged with providing express confirmation of consent to a special mission under the administrative process described above.

As regards the communication of the fact of the Government's consent or not to a special mission, the Court in the Khurts Bat case found that this was a question of fact within the conduct of foreign policy, on which the Foreign and Commonwealth Office was in a unique position to provide a definitive answer. At the request of a party to litigation or at the request of the court, the Foreign and Commonwealth Office may provide a certificate of such facts, and the courts will treat such a certificate as conclusive.

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

Yes, in the *Khurts Bat case* the Government made the following statement of its practice to the court:

> "In the view of Her Majesty's Government a Special Mission is a means to conduct ad hoc diplomacy in relation to specific international business, beyond the framework of permanent diplomatic relations that is now set out in the Vienna Convention on Diplomatic Relations. As is the case for permanent diplomatic relations, the fundamental aspect of a Special Mission is the mutuality of consent of both the sending and the receiving States to the Special Mission. Whilst in FCO practice there are no prescribed formalities, such consent would normally be demonstrated by, for example, an invitation by the receiving State and an acceptance by the sending State, an agreed programme of meetings, an agreed agenda of business and so on."

The administrative process described above is not intended to replace the previous practice, but simply to provide a means by which sending States can obtain express confirmation on the question of consent if they so wish.

REPLIES BY OTHER STATES PARTICIPATING IN THE CAHDI

REPONSES D'AUTRES ETATS PARTICIPANT AU CAHDI

BELARUS
(Revised reply of 26 July 2017)

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 theirs 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.

CANADA
(New reply of 11 July 2018)

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?

Canada has not ratified or signed the United Nations Convention on special missions (1969). Any future intent to accede to the Convention would be subject to a decision by the Governor in Council, and thus not information that can be shared publicly.

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

No, Canada does not apply any other international legal instruments with respect to the immunities of special missions.

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).

Canada has not adopted specific national legislation in the field of immunities of special missions. To the extent that immunities of special missions exist under customary international law, they are present within Canada. It would rest with the courts to determine the extent of any such immunities, although the Government of Canada would likely assert a role for the executive in determining whether it had consented to the presence of a special mission in the first place, even in the absence of the express system created in the United Kingdom.

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.

No, Canadian authorities have not released official statements, reports or any other documents concerning the status and immunities of special missions.

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.

Yes, Canada considers that certain obligations and/or definitions regarding the immunity of special missions are derived from customary international law, but has not undertaken to define the requirements of customary 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.

Canada has not undertaken to define the limits of the immunities of special missions under customary international law.

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 Canada in the field of immunities of special missions.

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?

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?

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

There is no mechanism of formal agreement of special missions in Canada; the existence and extent of such immunities would be something for the courts to determine.

ISRAEL
(Revised reply of 11 April 2018)

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?

Israel signed the Convention on Special Missions (1969) (hereinafter: "The Convention") in 1970. The Convention was not ratified by Israel. However, Israel's domestic law provides a mechanism to afford immunities and privileges to special missions, as set forth in the Law of Immunities and Privileges (International Organizations and Special Missions), 5743-1983 (hereinafter: "The Law").

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

The Law authorizes the Minister of Foreign Affairs to issue a specific Order granting immunities and privileges, *inter alia*, to special missions of foreign states or international organizations, which are due to arrive in Israel for carrying out a duty set forth under an international treaty to which Israel is a party. The issuance of such order requires the establishment of a bilateral agreement between the sending state or international organization and Israel, which specifies the special mission's duties. The order is therefore issued on the basis of the relevant bilateral agreement. Two such agreements were signed by Israel throughout the last three years.

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).

Please find in the Appendix to the reply an unofficial translation of the Law.

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.

Pursuant to Article 5 of the Law, every Ministerial Order which grants immunities and privileges to special missions requires a process of consultation with the Attorney General, after which it must be approved by the Government and published in the official governmental gazette.

Two recent Ministerial Orders for privileges and immunities of special missions were issued between the years 2015-2016. *[Note: These two Ministerial Orders were sent to the Secretariat only in Hebrew and are available upon request].*

Other than the Law and any orders issued on the basis of this legislation, we are unaware of any official statements or reports in Israel regarding the immunities of special missions.

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.

Israel is of the view that the general principle that privileges and immunities may be accorded to special missions that were acknowledged as such by the sending and receiving States, derives from customary international law.

However, Israel recognizes that States' views and practice differ with respect to the implementation of this general principle including, *inter alia*, regarding the precise scope of privileges and immunities granted to such special missions and the modalities and conditions for agreement of special mission status between the sending and the receiving States.

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.

Article 4 of the Law grants the Minister of Foreign Affairs the authority to determine the extent of immunities and privileges enjoyed by a special mission, as well as their duration. The Law itself does not determine categories of individual members of special missions who may enjoy privileges and immunities, nor does it determine the temporal limits of such immunities.

However, it should be noted that Article 6 of the Law specifically excludes citizens and residents of Israel from being granted privileges and immunities under the Law.

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).

We are unaware of any court rulings in Israel regarding the immunities of special missions.

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?

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?

As aforementioned, privileges and immunities to special missions in Israel can only be granted through a Ministerial Order issued by the Minister of Foreign Affairs and approved by the government following a process of consultation with the Attorney General. The Order must be on the basis of a bilateral agreement. The issuance process is led and facilitated by the legal

department of the Ministry of Foreign Affairs, in conjunction with the relevant departments of the Ministry of Justice.

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

Given the requirement set forth in Article 4 of the Law, according to which a Ministerial Order can only be issued for a special mission whose duty was set forth in an international treaty to which Israel is a party, no implied consent or non-formal agreement can be a basis for granting special missions with privileges or immunities in Israel.

APPENDIX TO THE REPLY OF ISRAEL

Immunities and Privileges Law (International Organizations and Special Missions), 5743-1983* *[(Amendment No. 1) 5767 - 2006]*

1. **Definitions**

Under this Law –

“International Organization” - an inter-ministerial organization of which Israel is a member or that is a party to an international convention with Israel as well as an organization in which central banks of countries are members, listed under the Addendum; *[(Amendment No. 1) 5767 - 2006]*

“Immunities and Privileges” - diplomatic immunities and privileges as well as immunities and privileges granted pursuant to international conventions to which Israel is a party, including the restrictions under such conventions. *[(Amendment No. 1) 5767 - 2006]*

2. **International organizations** *[(Amendment No. 1) 5767 - 2006]*

The Minister of Foreign Affairs shall be entitled to set forth under an Order which immunities and privileges shall be granted in Israel to each of the following, and all in general or to types thereof:

(1) A certain international organization, the employees of the organization, the organization’s property or assets;

(2) A certain accredited international organization mission, the mission’s employees, their families or assets;

(3) Assets held by a certain international organization that engages in banking or where the assets of a third party are held per the instructions of such international organization in his name or at his order.

3. **Conferences** *[(Amendment No. 1) 5766 - 2006]*

(a) the Minister of Foreign Affairs shall be entitled to set forth under an Order which immunities and privileges shall be granted in Israel to an international organization due to a conference held in Israel on behalf of the organization, its employees, officers, state representatives, experts and consultants participating in the conference, all as shall be set forth under the Order; the Order shall set forth, inter alia, the period during which such immunities and privileges shall apply.

(b) Under this Section, “Conference ”- including a conference, rally and any convention held in Israel on behalf of an international organization.

Published Book of Laws 5743 No. 1087 dated 21.7.1983, pp. 124 Bills 5743 No. 1609, pp. 46).

Amended Book of Laws 5767 No. 2070 dated 19.11.2006, pp. 12 (Government Bill 5766 No. 233, pp. 252) - Amendment No. 1.

4. **Special missions** *[(Amendment No. 1) 5767 - 2006]*

The Minister of Foreign Affairs shall be entitled to set forth under an Order which immunities and privileges shall be granted in Israel to a special mission of another state or of an international organization, arriving at Israel for carrying out a duty set forth under an international convention to which Israel is a party, its members and employees, all as shall be set forth under the Order; the Order shall set forth, inter alia, the period during which such immunities and privileges shall apply.

5. Orders

An Order pursuant to Sections 2, 3 and 4 shall be approved by the government, after consulting with the Attorney General.

6. **Exception** *[(Amendment No. 1) 5767 - 2006]*

Immunities and privileges pursuant to this Law shall not be granted to Israeli citizens or residents.

7. Corporation

(a) An international organization regarding which an Order had been issued pursuant to Section 2 shall constitute a corporation in Israel. *[(Amendment No. 1) 5767 - 2006]*

(b) An international organization regarding which an Order had been issued pursuant to Section 3 shall constitute a corporation in Israel for the period during which the immunities and privileges had been applied and in respect of an action entailed in holding the conference.

8. Implementation and regulations

The Minister of Foreign Affairs shall be responsible for the implementation of this Law and he shall be entitled to install regulations for any issue concerning its implementation.

9. **Nullification** *[(Amendment No. 1) 5766 - 2006]*

The International Organizations ’Status Law, 5740 - 1980 - nullified.

ADDENDUM

(Section 1)

1. Bank for International Settlements.

JAPAN
(New reply of 19 March 2018)

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?

No, Japan has not signed or ratified the United Nations Convention on Special Missions (1969) and currently has no intention to sign/ratify it.

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

With respect to the privileges and immunities of diplomatic missions and consular posts, Japan has ratified the Vienna Convention on Diplomatic Relations (1961), has acceded to the Vienna Convention on Consular Relations (1963) and has concluded several bilateral consular agreements.

With respect to the privileges and immunities of international organizations, Japan has concluded various instruments providing for privileges and immunities of the representatives of Member States to international organizations as one of the Member States, including the Convention on the Privileges and Immunities of the United Nations (1946) and of the Specialized Agencies (1947). Japan has also concluded several headquarters agreements with international organizations which are located in Japan and granted necessary privileges and immunities to them.

Japan has also acceded to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973).

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

No, Japan has not adopted a specific national legislation focusing on 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);

n/a

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).

The issue of immunities of special missions is not specifically covered by another part of the Japanese legislations. There may nonetheless be areas in which practices applied for diplomatic missions are followed mutatis mutandis for special missions. The status of the members of special missions will be determined on the basis of applicable international legal instruments and customary international law.

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.

No. There are no official statements, reports or other documents that the Government of Japan issued on the status and immunities of special missions as such.

(Note: The statements and comments by the Government of Japan at the Sixth Committee which considered the Draft Convention on Special Missions are the official statements/comments which were made public at the time.)

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.

Japan considers that incumbent foreign Heads of State, Heads of Government and Foreign Ministers on an official visit to Japan enjoy immunities *ratione personae* under customary international law for the duration of their visit in Japan. Other state officials accompanying them can enjoy certain privileges and immunities for the duration of their visit in Japan. The visit must be official (not an incognito visit). For practical reason, it would also be necessary that the names and functions of those personnel accompanying the Head of State, Head of Government or Foreign Minister are notified to the Government of Japan in advance so that relevant privileges and immunities may be recognized.

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;

See answer to Q5.

b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);

As stated in Q5, Japan considers that at least incumbent foreign Heads of State, Heads of Government and Foreign Ministers on an official visit to Japan enjoy *immunities ratione personae* under customary international law for the duration of their visit in Japan.

c. The scope *ratione materiae*, in particular by specifying if there are exceptions to the granting of the immunity;

See answer to Q5. Japan considers that former Heads of State, Heads of Government and Foreign Ministers on an official visit to Japan enjoy immunity *ratione materiae* for the acts performed by them in the exercise of their official functions even after their visit.

Other foreign state officials on an official visit to Japan may enjoy immunity from at least Japanese criminal jurisdiction for the acts performed by them in the exercise of their official functions during their visit.

d. The temporal limits of the immunities accorded to special missions.

See answer to Q5. Except for the *immunity ratione materiae* which continues even after their official visit, any privileges and immunities that are granted specifically for the purpose of facilitating their official visit to Japan will be considered terminated at the end of their official visit.

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).

No. There are no national case law before the court in the field of immunities of special missions.

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?

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?

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

At present, there is no formal procedure to agree with the sending state that visit of certain officials constitutes “special mission” or not.

However, as stated in the answer to Q5, it would be necessary that the names and functions of those personnel accompanying the Head of State, Head of Government or Foreign Minister are notified to the Government of Japan in advance so that relevant privileges and immunities may be recognized. At present, when the Ministry of Foreign Affairs receives from the respective Embassies in Japan the list of visiting foreign state dignitaries and officials accompanying them including their names, dates of birth, passport numbers, and flight details, the Ministry of Foreign Affairs facilitates immigration, customs and quarantine process on their arrival and departure, with relevant Ministries and the airport authorities.

MEXICO
(Revised reply of 19 September 2017)

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?

Mexico joined the United Nations Convention on Special Missions (UNCSM) through accession on January 31, 1979.

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

Mexico is a party to several bilateral and multilateral agreements related to privileges and immunities (*e.g.*, Vienna Convention on Diplomatic Relations, Vienna Convention on Consular Relations, Convention on the Privileges and Immunities of the United Nations, United Nations Convention on Jurisdictional Immunities of States and their Property, and headquarters agreements with international organizations).

Mexico is not a party to any other international legal instrument regarding immunities of special missions besides the UNCSM.

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

No.

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).

The issue of immunities of special missions is not covered by another part of Mexican legislation. However, by virtue of the Mexican Constitution and case law of the Mexican Supreme Court regarding hierarchy of norms, the UNCSM is applicable and legally binding within the Mexican 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.

No.

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.

Mexico acknowledges the existence of certain State practice regarding immunity of special missions that might be interpreted as an emerging rule of customary international law. However, Mexico has

not taken a position as to the existence of a customary rule of international law in this field. Rather, Mexico has voluntarily opted to be legally bound by the rules codified in the UNCSM.

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;

Mexico applies the provisions of the UNCSM to determine the extent of the privileges and immunities granted to special missions and to their members, without prejudice to provide its consent to extend such scope on a case-by-case basis.

b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);

Mexico applies the provisions of the UNCSM to determine the scope *rationae personae*, without prejudice to provide its consent to extend the scope of applicable provisions on a case-by-case basis.

c. The scope *ratione materiae*, in particular by specifying if there are exceptions to the granting of the immunity;

Mexico applies the provisions of the UNCSM to determine the scope *rationae materiae*, without prejudice to provide its consent to extend the scope of the applicable provisions on a case-by-case basis.

d. The temporal limits of the immunities accorded to special missions.

Mexico applies the provisions of the UNCSM to determine the temporal limits of the immunities accorded to special missions, without prejudice to provide its consent to extend such scope on a case-by-case basis.

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 case law on this particular issue in Mexico.

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?

Although there is neither a special mechanism of formal agreement nor a process under which Mexico accepts in advance the visit and reception of a special mission, Mexico would expect a diplomatic note of the sending State requesting the previous consent of the former. That note should specify the functions, composition and duration of the special mission, among any other relevant information.

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?

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

An official reception by high-level officers of the Mexican Government would usually indicate implied consent to the special mission. However, that should be ascertained on a case-by-case basis.

UNITED STATES OF AMERICA

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 United States has not signed or ratified the United Nations Convention on Special Missions and has no present intention to accede to it.

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

As a general matter, there are a variety of international legal instruments that address the immunities of foreign government officials in the United States other than those accredited to diplomatic missions or consulates. For example, the United States is a party to several headquarters agreements (e.g., the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, the Headquarters Agreement between the Organization of American States and the Government of the United States of America), multilateral treaties (e.g., the Convention on the Privileges and Immunities of the United Nations), and bilateral agreements (e.g., status of forces agreements). However, the United States does not apply any international legal instruments specifically in the area of the immunities of special missions.

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).

The United States has not adopted specific national legislation to address the immunities of special missions, nor is the issue of immunities of special missions covered by another part of U.S. legislation.

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.

Suits against ministerial level foreign officials in the United States on official business have been very rare, but the United States has submitted suggestions of immunity in several civil cases involving attempts to serve senior representatives of foreign governments while they were in the United States temporarily on official visits (e.g., In re Matter of the Application of Mikhail B. Khodorkovsky for an Order Seeking Discovery under 28 U.S.C. § 1782, No. 09-mc-205 (D.D.C. 2009); Li Weixum v. Bo Xilai, No. 04-cv-649 (D.D.C. 2006), and Kilroy v. Charles Windsor, Prince of Wales, No. C-78-291 (N.D. Ohio, 1978)).

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.

The United States has noted that while the full extent of special missions immunity remains unsettled, there is a widespread consensus that, at a minimum, it is generally inappropriate for States to exercise jurisdiction over ministerial-level officials invited on a special diplomatic mission. The United States has noted that special missions immunity would not, however, encompass all foreign official travel or even all high-level visits of officials. For example, no personal immunity is extended to persons based on their mere assignment to temporary duty at a foreign mission for a brief period of time. We are continuing to review and evaluate our practice in this area and look forward to understanding the practices and policies of other states in this area.

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 Executive Branch has recognized the immunity of high-level officials on special diplomatic missions from the jurisdiction of United States federal and state courts in certain cases, taking the position that those senior foreign officials who are deemed to be on recognized special diplomatic missions, upon an appropriate Executive Branch determination, are immune from local court jurisdiction for the duration of the special mission where that jurisdiction is based on their physical presence in the United States. As noted above, we are continuing to review and evaluate our practice in this area and look forward to understanding the practices and policies of other states in this area.

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).

Decisions include Li Weizum v. Bo Xilai, 568 F. Supp. 2d 35 (D.D.C. 2008) and Kilroy v. Charles Windsor, Prince of Wales, No. C-78-291 (N.D. Ohio 1978). In the Khodorkovsky case referenced above, following the U.S. filing, the plaintiff's lawyers withdrew the subpoena at issue.

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?

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?

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

There is no formal mechanism in place by which the United States determines in advance whether an official visit constitutes a special mission. As noted above, we are continuing to review and evaluate our practice in this area and look forward to understanding the practices and policies of other states in this area. With respect to communications between the Executive Branch and the courts, in certain civil cases, the Executive Branch has recognized the immunity of a high-level foreign official on a special diplomatic mission and then filed a suggestion of immunity to inform the court that the United States, through the Department of State, recognizes and allows the immunity of the official. Such filings are submitted pursuant to a U.S. statute, 28 U.S.C. § 517, which provides that the "Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit in a court of the United States, or in a court of a State, or to attend to any other interest of the United States." In the cases where this issue has been addressed, U.S. courts have recognized as binding such suggestions of immunity submitted by the Executive Branch.