

SPAIN

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.