

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 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 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 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 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.