

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)). The United States provided views on the status and the immunities of special missions in United States v. Saab (United States v. Saab, 19-cr-20450 (S.D. FL), 23-10066-C (11th Cir.)).

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 considers that certain obligations and/or definitions regarding immunity of special missions derive from customary international law. The United States has acknowledged that certain provisions of the United Nations Convention on Special Missions may reflect customary international law, though the Convention in its entirety does not reflect customary international law. See United States v. Saab, United States’ Response in Opposition to Defendant’s Motion to Dismiss the Indictment, 19-cr-20450, 26-27 (S.D. FL Nov. 7, 2022); United States v. Saab,

Answering Brief for the United States, 23-10066-C, 27-29 (11th Cir. Oct. 24, 2023). The United States has cited with approval the definition of “special mission” at Article 1(a) of the Convention as “a temporary mission, representing the State, which is sent by one 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.” United States v. Saab, Answering Brief for the United States, 23-10066-C, 28 (11th Cir. Oct. 24, 2023). The United States has also cited with approval Article 2 of the Convention: “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.” United States v. Saab, Answering Brief for the United States, 23-10066-C, 27 n. 10 (11th Cir. Oct. 24, 2023).

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. See Official Records of the General Assembly, 22nd Sess., Supp. No. 9 (A/6709/Rev. 1), Annex 1, at 53.

- 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.

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. In United States v. Saab, the district court ruled that transit immunity afforded to a diplomat on a special mission “would require the consent of the transiting state(s).” United States v. Saab, Final Order on the Defendant’s Motion to Dismiss the Indictment 19-cr-20450, 13-15 (S.D. FL Dec. 23, 2022).

- 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. 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 conclusive such suggestions of immunity submitted by the Executive Branch.