

**MALAYSIA’S POSITION AND OBSERVATIONS ON THE IMPLEMENTATION OF
GENERAL ASSEMBLY RESOLUTION 74/181 OF 18 DECEMBER 2019
“CRIMINAL ACCOUNTABILITY OF UNITED NATIONS OFFICIALS AND
EXPERTS ON MISSION”**

Malaysia refers to paragraph 31 of General Assembly resolution 74/181 of 18 December 2019 that requested the Secretary-General to report to the General Assembly at its 75th session on the implementation of this resolution as well as any practical problems in its implementation, on the basis of information received from Governments and the Secretariat.

Operative Paragraph 10: Extra-territorial Jurisdiction

Malaysia is able to establish jurisdiction over serious crimes committed by its military and civilian police personnel in their capacity as officials and experts on mission on the basis that the Armed Forces Act 1972 and the Police Act 1967 continue to apply to such personnel wherever they may be deployed. This is also provided in the applicable United Nations Status of Forces arrangements. In addition, Malaysia may also claim extra-territorial criminal jurisdiction in accordance with its laws and the principles of international law over serious crimes such as terrorism, offences against the State, corruption, money laundering, drug trafficking and trafficking in persons. Extra-territorial jurisdiction is applicable to some offences under the Penal Code and any offence under any of the written laws specified in the Schedule to the Extra-Territorial Offences Act 1976. Additionally, section 127A of the Criminal Procedure Code provides that any other written law, the commission of which have been certified by the Attorney General to affect the security of Malaysia, may have extra-territorial application.

Operative Paragraph 11 & 12: Cooperation Among States and the UN

Malaysia supports the call for cooperation among States and the United Nations in the exchange of information and the facilitation of investigations and prosecutions to ensure the elimination of impunity for serious crimes committed by officials and experts on United Nations missions. Malaysia’s Extradition Act 1992 and Mutual Assistance in Criminal Matters Act 2002 together with its network of extradition and mutual assistance in criminal matters treaties provide the legal basis for such cooperation. However, the current legal regime in Malaysia does not allow the giving or the providing of evidence between Malaysia and an international organisation or tribunal. Further discussion on practical and operational issues is necessary to enable an effective cooperation between States and the United Nations in this regard.

Operative Paragraph 15: Draft Convention

In the event that it is considered timely and appropriate to pursue the draft Convention proposed by the Group of Legal Experts in its report A/60/980, Malaysia is of the view that among the issues that need to be further deliberated are the definition of the terms used throughout the draft Convention especially in relation to ‘serious crimes’, the scope of application, limitation to the types of offences and the principle of dual criminality.

Malaysia notes that the draft Convention seeks to do away with the principal of dual criminality. The said principal is a mandatory requirement under Malaysia's domestic laws and many other jurisdictions. If this proposal is to be considered, strong legal justification must be presented and thorough deliberation which considers all facets of the principle must be discussed.

Malaysia recalls that paragraph 12 of the resolution sets out requirements focused on the States' responsibility to provide each other assistance in connection with criminal investigations or criminal or extradition proceedings, in accordance with their national law, treaties or other arrangements on extradition and mutual legal assistance that may exist between them. In this regard, a State may need to invoke the due process of mutual legal assistance to obtain or provide evidence at their disposal. Although the draft Convention has a provision on Cooperation (Article 10) and Extradition of Alleged Offenders (Article 8), difficulties may arise if the provision of evidence is to be carried out by a failed State. Malaysia is of the view that the matter requires careful consideration, including on whether issues could be sufficiently addressed by adopting the appropriate domestic legislation without the need for a Convention.

Operative Paragraph 18: Credible Allegations

Malaysia notes the Secretary-General's commitment to refer credible allegations of sexual exploitation and abuse and all allegations of corruption and other financial crimes to the Member State of the United Nations officials or experts on mission for appropriate action. However, should the process lead to prosecution, the Secretary-General or officials would be the supplier of the information and would also be possible witnesses in the proceedings to be held in the Member State's court. Various legal and administrative issues may arise when involving persons who may be entitled to immunity from process, as well as in ensuring the safe conduct of these persons when they appear before the Member State's court. It is also important to safeguard the United Nations officials or experts on mission who provided the said information against retaliation or intimidation.

Operative Paragraph 20: Periodic Updates on the Handling of Allegations

Malaysia is of the view that there should be a clear demarcation as to the extent of information to be provided by Member States to the Secretary-General regarding the status of the investigations or prosecutions of the credible allegations referred to them. The information provided should only be to a certain limit as any information on investigation or prosecution includes confidentiality issues that may prejudice Member State's interest.