



HA 24/2022

The Permanent Mission of Malaysia to the United Nations presents its compliments to the United Nations Office of Legal Affairs and has the honour to refer to the note LA/COD/50/1 dated 11 January 2022 and General Assembly resolution 76/106 of 9 December 2021 entitled "Criminal accountability of United Nations officials and experts on mission".

The Permanent Mission of Malaysia to the United Nations has further the honour to present its response to the request for information and observations on the implementation of the resolution, as enclosed.

The Permanent Mission of Malaysia to the United Nations avails itself of this opportunity to renew to the Office of Legal Affairs the assurances of its highest consideration.

New York 30 March 2022

United Nations Office of Legal Affairs
NEW YORK

**MALAYSIA’S POSITION AND OBSERVATIONS ON THE IMPLEMENTATION OF
GENERAL ASSEMBLY RESOLUTION 76/106 OF 9 DECEMBER 2021
“CRIMINAL ACCOUNTABILITY OF UNITED NATIONS OFFICIALS
AND EXPERTS ON MISSION”**

Malaysia refers to paragraph 31 of General Assembly resolution 76/106 of 9 December 2021 that requested the Secretary-General to report to the General Assembly at its 77th 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

Under Malaysia’s laws, extra-territorial jurisdiction is applicable to some offences under the Penal Code [Act 574] and any offences under any of the written laws specified in the Schedule to the Extra-Territorial Offences Act 1976 [Act 163]. In other words, Malaysia would only be able to establish jurisdiction on offences where the domestic laws allow Malaysia to claim extra-territorial criminal jurisdiction such as for offences of terrorism, offences against the State, corruption, money laundering, trafficking of dangerous drugs, trafficking in persons and smuggling of migrants.

Additionally, section 127A of the Criminal Procedure Code [Act 593] 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.

Apart from that, 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 Armed Forces Act 1972 [Act 77] and the Police Act 1967 [Act 344] 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 respect of the second limb of operative paragraph 10, Malaysia notes that States and appropriate international organisations are urged to provide technical and other appropriate assistance in developing such legal measures to States requesting such support.

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 [Act 479] and Mutual Assistance in Criminal Matters Act 2002 [Act 621] together with its network of extradition and mutual assistance in criminal matters treaties provide the legal basis for such cooperation.

However, Malaysia would like to raise on the issue of practicality with regard to the requirement under OP 12 of the resolution. This paragraph focuses 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 in order to obtain or provide evidence at their disposal.

In furtherance thereto, the current legal regime in Malaysia does not allow the giving or the providing of evidence between Malaysia with an international organisation or tribunal. Further practical issues might arise if such cooperation between a State and the United Nations come into existence such as the need to determine the Central Authority within the United Nations that will act as the conduit in channelling the information and evidence. In that regard, further discussion on practical and operational issues is necessary to enable an effective cooperation between States and the United Nations.

Operative Paragraph 13: Standard of Conduct and Behaviour

The issue of the criminal accountability of United Nations officials and experts on mission is relevant to Malaysia whether as the sending country or the receiving country. As a responsible Member of the United Nations, Malaysia upholds and adheres to its obligations under the United Nations Charter as well as related instruments such as the United Nations Convention on the Privileges and Immunities. Malaysia gives effect to these obligations primarily through the International Organisations (Privileges and Immunities) Act 1992 [Act 485] and Regulations made under it. Malaysia also expects that the United Nations and its officials and experts on mission will respect and comply with Malaysian law and procedures when carrying out their missions on Malaysian territory. Malaysia also fully supports the zero-tolerance policy of the United Nations concerning criminal conduct, especially sexual exploitation and abuse, committed by United Nations officials and experts while on mission.

Operative Paragraph 15: Draft Convention

Malaysia notes that the Group of Legal Experts (GLE) had previously proposed the elaboration of a convention on this issue and had prepared a draft Convention for consideration in its Report (A/60/980). In the event that it is considered timely and appropriate to pursue the draft Convention, Malaysia is of the view that among the issues that need to be further deliberated in detail includes 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.

In relation to the principal of dual criminality, Malaysia notes that the draft Convention seeks to do away with the principal despite it being a true tested element which has been in existence for so long. The principal of dual criminality is a mandatory requirement under Malaysia's domestic laws and in many other jurisdictions. Therefore, 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.

Operative Paragraph 18: Credible Allegations

Malaysia notes the commitment of the Secretary-General to refer credible allegations of sexual exploitation and abuse as well as all allegations of corruption and other financial crimes to the Member States of the United Nations officials or experts on mission for appropriate action. However, if the allegations are found to be valid, it would escalate into an investigation which would lead to prosecution. In this relevant situation, the Secretary-General or officials would be the supplier of the information and would also be a possible witness 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 pertinent 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 to the Secretary-General regarding the status of investigation or prosecution of the credible allegations. The information provided should only be to a certain limit as any information on investigation or prosecution includes confidentiality issues that may prejudice Malaysia's interest.