

MALAYSIA

Response to the request for information and observations on the implementation of resolution 77/98 of 7 December 2022 on “Criminal accountability of United Nations officials and experts on mission”

7 June 2023

This note provides the response of the Government of Malaysia pursuant to the request from the Office of Legal Affairs of the United Nations vide Note Verbale no. LA/COD/50/1 dated 5 January 2023, and resolution 77/98 of 7 December 2022, for States to provide information and observations on their implementation of the resolution, in particular paragraphs 10, 12, 13, 15, 18 and 20 thereof, as well as any practical problems in the implementation of the resolution. It is noted that the General Assembly also requested, through the same resolution, the Secretary-General to prepare and submit to the Assembly at its seventy-eighth session a report based on such information and observations.

1. With respect to operative paragraph 10 of resolution 77/98, Malaysia Armed Forces (“MAF”) Personnel deployed under UN Mission shall be subjected to Criminal Proceedings of Malaysian Jurisdiction particularly under the Armed Forces Act 1972, Penal Code or any relevant laws enforced. In the event of non-existence of any specific sections to deal with the crime committed, they could alternatively be charged under Section 87 of Malaysia Armed Forces Act 1972 and be dealt with under court-martial.
2. As regards operative paragraph 12 of the resolution, in the event of a criminal proceeding, proper internal investigation shall be conducted, and a Board of Inquiry shall be established by the MAF Authorities in response to the allegations or report of misconduct.
3. In regard to operative paragraph 18 of the resolution, any official information obtained from the UN Secretary-General shall be provided to the MAF Authorities to ascertain and verify the authenticity and credibility of such allegations. Findings or results from the investigation shall be brought to the attention of the relevant authorities for appropriate action.
4. As to operative paragraph 20 of the resolution, any results, findings, or actions taken against the wrongdoer may be disclosed to the UN Secretary-General.

5. Malaysia remains committed to working together with other Member States on this issue and to explore appropriate mechanisms for dealing with the criminal accountability of UN officials and experts on mission. Malaysia recalls that many issues have previously been raised on the practical aspects of establishing extra-territorial criminal jurisdiction and obtaining evidence over such crimes when committed in receiving States. Concerns have also been raised on the information and evidence sharing mechanisms required if the investigations are conducted by the UN. Malaysia is further of the view that such practical and operational issues merit in-depth consideration.