



**STATEMENT BY
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ATTORNEY GENERAL'S CHAMBERS OF MALAYSIA**

**ON AGENDA ITEM 75:
CRIMINAL ACCOUNTABILITY OF UNITED NATIONS OFFICIALS AND EXPERTS
ON MISSION**

**AT THE SIXTH COMMITTEE OF THE
71ST SESSION OF THE GENERAL ASSEMBLY**

NEW YORK, 7 OCTOBER 2016

Mr. Chairman,

1. Malaysia wishes to express its appreciation and gratitude to the Secretariat for preparing the comprehensive Report of the Secretary-General on this topic A/71/167 which was prepared pursuant to Resolution 70/114. Malaysia notes paragraph 24 of Resolution 70/114 of 18 December 2015 that requested for the Secretary-General to report to the General Assembly at its 71st Session on the implementation of this resolution in particular with respect to paragraphs 7, 9, 12, 15 and 16 of the resolution.

2. With reference to paragraph 7 of the General Assembly resolution 70/114 which strongly urges States to consider establishing jurisdiction over crimes committed by their nationals while serving as UN officials or experts on mission, under Malaysia's laws, extra-territorial jurisdiction is applicable to 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. In addition, section 127A of the Criminal Procedure Code provides that any other written law which the commission have been certified by the Attorney General to affect the security of Malaysia can also have extra-territorial application.

3. Further, Malaysia supports the call in paragraphs 8 and 9 of the General Assembly resolution 70/114 for cooperation among States and the UN in the exchange of information and the facilitation of investigations and prosecutions to ensure there is no impunity for serious crimes committed by officials and experts on UN missions. However, the current legal regime in Malaysia does not allow the giving or providing of evidence between Malaysia with an international organization or tribunal. Further practical issues may also arise if such cooperation between a State and the UN come into existence such as the need to determine the Central Authority within the UN that will act as the conduit in channelling the information and evidence. As regards to this, Malaysia is of the view that further discussion on the best practises is necessary to enable the cooperation between States and the UN to be effective.

4. In relation to paragraph 12 of the General Assembly resolution 70/114, Malaysia notes that the Group of Legal Experts had previously proposed the elaboration of a convention on this issue and has 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 include 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. For Malaysia, the principal of dual criminality is a mandatory requirement under our domestic laws and we believe this position is also similar 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.

5. As envisaged under paragraph 15 of the General Assembly resolution 70/114, Malaysia notes the commitment of the Secretary-General to refer credible allegations of sexual exploitation and abuse and also all allegations of corruption and other financial crimes to the Member State of the UN 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 of 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. Therefore, these possibilities must be further explored as other various legal and administrative issues may arise such as the immunities of the Secretary General or official as well as the safe conduct of these persons when they appear before the local court.

6. In accordance with the request under paragraph 15 of the General Assembly resolution 70/114, paragraph 16 of the General Assembly resolution 70/114 urged Member States to provide to the Secretary-General periodic updates on the status of investigation or prosecution of the credible allegations referred to them. 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 include confidentiality issues that may prejudice Malaysia's interest.

Mr. Chairman,

7. Malaysia reiterates its commitment to work together with the other Member States on this issue and to explore appropriate mechanisms for dealing with the criminal accountability of UN officials and experts on mission. This includes the possibility to conduct further study on the proposed draft Convention.

Thank you.