



**Permanent Mission of**  
**Malaysia**  
**to the United Nations**

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**STATEMENT BY THE HONOURABLE MR. WIRA AHMAD HAMZAH, MEMBER OF PARLIAMENT MALAYSIA ON AGENDA ITEM 73: CRIMINAL ACCOUNTABILITY OF UNITED NATIONS OFFICIALS AND EXPERTS ON MISSION AT THE SIXTH COMMITTEE OF THE SIXTY THIRD SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK 10<sup>TH</sup> OCTOBER 2008**

Mr. Chairman,

Malaysia records its appreciation to the Secretary-General for his report titled "Criminal Accountability of United Nations officials and experts on mission", contained in Document A/63/260. Malaysia also welcomes the progress made in the work of the Ad Hoc Committee which met from 7 to 9 and 11 April 2008 to deliberate further on this important topic.

Mr. Chairman,

2. As a party to the Convention on the Privileges and Immunities of the United Nations ("the General Convention"), Malaysia accords privileges and immunities as provided under that Convention to the UN and its officials and experts under its domestic law. Malaysia's personnel also benefit from such privileges and immunities when they serve under the UN banner in peacekeeping missions and elsewhere. These privileges and immunities are not lightly granted by sovereign States and this grant has been done to enable the UN to fulfil its purposes as required under Article 105(1) of the Charter of the United Nations. These privileges and immunities are not absolute and are limited to the official functions of the UN and its personnel as is clearly established by the decisions of national courts in various countries.

3. Further thereto, it is trite law that the UN officials and experts are only granted functional immunity (*ratione materiae*) i.e. immunity for acts performed in pursuit of their official tasks. The commission of crimes, especially sexual offences, should under no circumstances be under impunity. Establishing criminal accountability and enforcing it are two separate matters. In addition to these questions, there are issues which need to be addressed, such as the capacity to investigate and prosecute, particularly where it applies to overlapping jurisdiction.

4. Thus the opportunity to clarify and elucidate the applicable law and principles in this area in the Sixth Committee of the General Assembly, in particular the Ad Hoc Committee established under General Assembly resolution 61/21 is welcomed. In this regard, the comprehensive and in-depth study carried out by the Group of Legal Experts (GLE) has been an important starting point. Malaysia is committed to this process to

ensure that a practical mechanism is developed to ensure the criminal accountability of UN officials and experts on mission without compromising the operational requirements of such personnel and without impinging on existing and future status-of-forces and status-of-mission agreements and other similar instruments.

5. Many important issues have already been highlighted for further study of the Ad Hoc Committee such as the scope of coverage, both in terms of personnel as well as in the categories of crimes, and the priority of jurisdiction between the host State, sending State and third States. Additional procedural issues such as the investigative and evidence gathering mechanism and the means of cooperation between the investigative and prosecution authorities of the UN, the host State and the sending States are to be further considered by the Working Group on Criminal Accountability established at this 63<sup>rd</sup> Session. The informal working paper prepared by the Chairperson during the Ad Hoc Committee meeting in April 2008 [Annex II to Document A/63/54] will be a useful guide for these deliberations.

Mr. Chairman,

6. With reference to the call to establish jurisdiction over crimes of a serious nature, Malaysia's Penal Code and other criminal laws already criminalize the acts being considered for inclusion for the criminal accountability of UN officials and experts on mission. However in line with its common law tradition, Malaysia's criminal law is generally limited to events occurring within Malaysia's territorial jurisdiction, although there has been some statutory extension of jurisdiction for certain offences with a transnational nature and those provided under multilateral conventions, on the internationally accepted bases for extra-territorial jurisdiction. Under the Malaysian Armed Forces Act 1972, Malaysian law continues to apply to military personnel deployed abroad. Similar provision is being considered in the Police Act 1967 which applies to Royal Malaysia Police personnel deployed on UN Peacekeeping Missions.

7. With reference to paragraph 4 of General Assembly resolution 62/63 and the call to enhance cooperation with the UN in the exchange of information and the facilitation of investigations, Malaysia is willing to do so in the interest of ensuring there is no impunity for crimes. Without due accountability, such allegations would be detrimental to the reputation and image of the UN as well as that of the military and police personnel serving on its peacekeeping missions.

8. In this regard, Malaysia's Extradition Act 1992 and Mutual Assistance in Criminal Matters Act 2002 already enable it to provide the relevant assistance to States with or without a bilateral treaty. However cooperation with the UN itself would have to be rendered on an informal basis under general Malaysian law as these Acts do not cover mutual assistance and extradition with international organizations.

9. Malaysia will participate actively in the deliberations of the Working Group on Criminal Accountability under the able stewardship of Ms. Maria Telalian of Greece and reaffirms its commitment to the process as a whole.

Thank you.