



INTERNATIONAL COURT OF JUSTICE

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**Difference relating to immunity from legal process
of a Special Rapporteur of the Commission on Human Rights**

Request for an advisory opinion

Order organizing the proceedings

THE HAGUE, 12 August 1998. Following the request by the Economic and Social Council of the United Nations (ECOSOC) for an advisory opinion from the International Court of Justice (ICJ) on a difference between the United Nations and the Government of Malaysia, Judge Shigeru Oda, the Senior Judge, acting President of the Court, made an Order organizing the proceedings.

In that Order, dated 10 August 1998, the Senior Judge decided that the United Nations and the States parties to the Convention on the Privileges and Immunities of the United Nations (the interpretation or application of which is the source of the difference) were likely to furnish information on the question submitted to the Court. He fixed 7 October 1998 as the time-limit within which written statements on the question may be submitted to the Court and 6 November 1998 as the time-limit within which States and organizations having presented written statements may submit written comments on other written statements. The subsequent procedure has been reserved for further decision.

The present case relates to Mr. Dato' Param Cumaraswamy, a Malaysian jurist who was appointed Special Rapporteur on the independence of judges and lawyers in 1994 by the Commission on Human Rights, an organ of ECOSOC.

According to a note addressed to ECOSOC by the UN Secretary-General, Mr. Kofi Annan, on 28 July 1998, Mr. Cumaraswamy currently faces four lawsuits filed in Malaysian courts by different plaintiffs for damages in a total amount of 112 million US dollars following an interview that he gave in November 1995 to International Commercial Litigation, a magazine published in the United Kingdom but also circulated in Malaysia. In that interview, he commented on certain litigations that had been carried out in Malaysian courts. The plaintiffs assert that the words of Mr. Cumaraswamy were defamatory.

After the first lawsuit was filed, the UN Legal Counsel, Mr. Hans Corell, acting on behalf of the Secretary-General, considered the circumstances of the interview and of the controverted passages of the article and determined that Mr. Cumaraswamy had spoken in his official capacity as Special Rapporteur. He stated that accordingly, by virtue of Section 22 of Article VI of the Convention on the Privileges and Immunities of the United Nations, Mr. Cumaraswamy was immune from legal process. On 15 January 1997, the Legal Counsel sent a Note Verbale to the Permanent Representative of Malaysia to the United Nations, requesting the competent Malaysian authorities "to promptly advise the Malaysian courts of the Special Rapporteur's immunity from legal process".

On 7 March 1997, the Secretary-General issued a note confirming that "the words which constitute the basis of plaintiffs' complaint in this case were spoken by the Special Rapporteur in the course of his mission" and that he was "immune from legal process with respect thereto". Identical certificates of the Special Rapporteur's immunity were issued later when new lawsuits were filed. According to the Secretary-General however, these notes did not lead to any appropriate intervention in the Malaysian courts by the Malaysian Government to ensure respect for Mr. Kumaraswamy's immunity, nor were they taken into account by these courts.

Considering that a difference had arisen between the United Nations and the Government of Malaysia with respect to the immunity from legal process of Mr. Kumaraswamy, on 5 August 1998, ECOSOC adopted a resolution requesting the Court to give, on a priority basis, an advisory opinion:

"on the legal question of the applicability of Article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Dato' Param Kumaraswamy as Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers, taking into account the circumstances set out in paragraphs 1 to 15 of the note by the Secretary-General, and on the legal obligations of Malaysia in this case".

The request for an advisory opinion was received in the Registry of the Court on 10 August 1998 by telefax from the UN Secretary-General. The Government of Malaysia has already indicated that it did not oppose the submission of the matter to the Court and that it would make its own presentations to the ICJ.

Website of the Court: <http://www.icj-cij.org>

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