

Translation

Federal Foreign Office  
Legal Adviser and  
Head of the Legal Directorate-General

Bonn, 5 October 1998

Mr Eduardo Valencia-Ospina  
Registrar of the International Court of Justice  
Peace Palace  
2517 KJ The Hague

Dear Sir,

Thank you for your letter of 10 August 198 to the Federal Minister for Foreign Affairs, which was forwarded to me.

In it you suggest that the Government of the Federal Republic of Germany communicates its position on the case in which the United Nations Economic and Social Council in its decision no. 1998/297 of 5 August 1998 at the International Court requests a report on the question of the applicability of Article VI section 22 of the Convention of 13 February 1946 on the Privileges and Immunities of the United Nations in the case of Mr Dato' Param Cumaraswamy as Special Rapporteur to the Commission on Human Rights.

It is the view of the Government of the Federal Republic of Germany that:

- it is the prerogative of the Secretary-General of the United Nations to make a binding decision in the concrete case concerning whether an expert has or does not have immunity pursuant to Art. VI, section 22 of the Convention after examining the question as to whether such immunity would impede the course of justice or whether immunity can be waived without prejudice to the interests of the United Nations, whereby such a decision may be subjected to examination by the International Court of Justice on the application of a member state (Art. VIII, section 30 of the Convention),

- the immunity of an expert pursuant to Article VI of the Convention is to be respected by all government institutions in the States parties to the Convention, including his native country,

- in the concrete case, pursuant to what has been stated above, the Malaysian Government is under the obligation to refrain from all means of coercion and enforcement measures in connection with the legal proceedings against Mr Cumaraswamy, at least as long as the International Court of Justice has not made any statement to the effect that Mr Cumaraswamy's immunity should be lifted. In the view of the Government of the Federal Republic of Germany it would be desirable if the International Court of Justice could, in its report, also state its position on the question of whether Mr Cumaraswamy's immunity would

impede the course of justice and whether his immunity can be waived without prejudice to the interests of the United Nations.

Yours sincerely,

(sgd.) Dr Born

p.p.