



EMBASSY OF SWEDEN

The Embassy of Sweden presents its compliments to the Registrar of the International Court of Justice, and with reference to the letter of 10 August 1998 by which the Government of Sweden was invited to present its views regarding the case of Dato' Param Cumaraswamy, has the honour to communicate the following.

The Government of Sweden is very concerned about the case of Dato' Param Cumaraswamy, Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers. The Government therefore considers it essential to convey its views on the legal questions pending before the International Court of Justice. It is the Government's firm belief that undermining the immunity of a Special Rapporteur appointed by the Commission on Human Rights would constitute a serious threat to well established UN mechanisms for the monitoring of human rights.

The *raison d'être* of the privileges and immunities of international organisations is their functional necessity. This doctrine is generally accepted and has through a number of cases, both before the International Court of Justice (ICJ) and the Court of Justice of the European Communities, become legal practice.

The very essence of this doctrine is that certain protection is given to the organisation *vis-à-vis* national authorities in order to protect the independent exercise of its functions. Without this protection no international organisation would function properly.

As is the case in many international organisations, the United Nations (UN) to a certain extent employs experts who do not enjoy the status of UN officials. The use of such experts is a fundamental part of the overall ability of the United Nations to function properly. The experts have been regarded by the UN as "experts on missions" within the meaning of Article VI, Sections 22 - 23, of the Convention on the Privileges and Immunities of the United Nations (the Convention). This view has subsequently been confirmed by the ICJ in the so called Mazilu case.

In order to guarantee the independence of international organisations, it is normally stipulated in agreements concerning privileges and immunities that the head of the organisation has the exclusive right to determine whether the immunity of an expert shall be waived or not.

This is also the case concerning the UN. Article VI, Section 23, of the Convention stipulates;

"Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations."

Thus, the Convention has left to the Secretary-General (S-G) to determine whether or not, in his opinion, the immunity of an expert can be waived without prejudice to the interests of the UN.

To be able to do so the S-G must of course first determine whether a certain act has been done or words have been spoken or written by an expert in the course of the performance of his or her mission, *i.e.* if there is any immunity to waive. Not until then can he determine whether or not, in his opinion, the immunity of an expert can be waived without prejudice to the interests of the UN in the case at hand. Thus, the right to determine whether an expert is protected by immunity or not is solely and exclusively vested in the S-G.

Since the right to determine whether an expert is protected by immunity has been solely and exclusively conferred to the S-G, such a decision must also be considered to be conclusive, subject only to the possibility to challenge the decision in accordance with the procedure set forth in section 30 of the Convention in which case the matter will be decided by the ICJ with binding effect for both parties.

The Embassy of Sweden avails itself of this opportunity to renew the assurances of its highest consideration.

The Hague, 6 October 1998

The International Court of Justice

THE HAGUE