

INTERNATIONAL COURT OF JUSTICE**DIFFERENCE RELATING TO IMMUNITY FROM LEGAL PROCESS
OF A SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN
RIGHTS****(Request for an Advisory Opinion by the United Nations
Economic and Social Council)***Statement of the Government of the United Kingdom*

OCTOBER 1998

1. By decision 1998/297 of 5 August 1998 the United Nations Economic and Social Council has requested, on a priority basis, pursuant to Article 96 of the Charter of the United Nations and in accordance with General Assembly resolution 89 (I) of 11 December 1946, an advisory opinion from the International Court of Justice on the legal question of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations ("the General Convention") in the case of Dato' Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers and on the legal obligations of Malaysia in this case.
2. Pursuant to the provisions of Article 66 (2) of the Statute of the International Court of Justice ("the Court") and in response to the invitation of the Registrar contained in his letter of 10 August 1998, the Government of the United Kingdom hereby submit a written statement in this case.
3. The Government of the United Kingdom welcome the submission of this matter to the Court and fully support the Secretary-General's efforts to resolve this difference in accordance with the provisions of Article VIII, Section 30 of the General Convention. In the view of the Government of the United Kingdom this provision is an essential mechanism for ensuring that the privileges and immunities conferred under the General Convention are respected and that any uncertainty as to its interpretation or application can be resolved by conclusive adjudication.
4. It is of fundamental importance that experts performing missions for the United Nations are able to act with independence and impartiality. It is well established that Special Rapporteurs are "experts on missions" within the terms of Article VI, Section 22 of the General Convention and therefore essential that they be accorded the privileges and immunities provided for under that Section. The United Kingdom is a firm supporter of the system of Special Rapporteurs developed by the Commission on Human Rights. It is essential for the proper functioning of their mandates that Special Rapporteurs receive the full co-operation of governments and are not impeded in their ability to receive or communicate information

relevant to their work. For these reasons the European Union raised their concerns about Mr. Cumaraswamy's situation with the Government of Malaysia in August 1997.

5. Section 22(b) of the General Convention states that experts on missions shall be accorded:

"In respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind..."

The Government of the United Kingdom believe that it is vital that full and proper effect be given to this provision in the light of the stated purpose of Article VI, which is to accord such privileges and immunities as are necessary for the independent exercise of an expert's functions.

6. Where a question arises as to whether or not an individual is entitled to immunity under Section 22 in a particular case, any views expressed by the Secretary-General will be crucial. The Government of the United Kingdom consider it to be essential that all due weight is given to such views by the national courts. The expert is after all on mission for the United Nations and the Secretary-General will therefore be aware of the scope of the mission and can provide an authoritative view as to whether the expert is in the course of performing the mission in particular circumstances. The United Kingdom would not expect a national court to take a different view from the Secretary-General except for the most compelling reasons. The United Kingdom is not aware of any such reasons in the present case.

7. In this context, the practice of the United Kingdom is that the Secretary of State for Foreign and Commonwealth Affairs may issue certificates for the purpose of court proceedings under domestic legislation on privileges and immunities. These certificates are limited to stating facts relating to the question of entitlement to privileges and immunities, and are conclusive evidence as to the facts which they certify; they cannot address questions of law or interpretation. In the case of persons connected with international organisations, for example, section 8 of the International Organisations Act 1968 provides that:

"If in any proceedings a question arises whether a person is or is not entitled to any privilege or immunity by virtue of this Act or any Order in Council made thereunder, a certificate issued by or under the authority of the Secretary of State stating any fact relating to that question shall be conclusive evidence of that fact."

8. In conclusion, the United Kingdom recalls that under Article 56 of the United Nations Charter, all Members of the United Nations have pledged themselves to take joint and separate action in co-operation with the United Nations for the achievement of the purpose of the promotion of universal respect for and observance of human rights and fundamental freedoms in accordance with Article 55 of the Charter. In the United Kingdom's view, the thematic procedures established by the Commission on Human Rights are a vital element of the agreed United Nations machinery for the protection of human rights.