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SOCIAL AND HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS

Finland* ** and Malta*: draft resolution

Applicability of the Convention on the Privileges and Immunities of the United Nations in the case of Dato' Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers

The Economic and Social Council,

Considering that a difference has arisen between the United Nations and the Government of Malaysia, within the meaning of section 30 of the Convention on the Privileges and Immunities of the United Nations, 1/ with respect to the immunity from legal process of Dato' Param Cumaraswamy, the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers,

Considering that Malaysia has acknowledged its obligations under article VIII, section 30, of that Convention, according to which the advisory opinion given by the International Court of Justice shall be accepted as decisive by the parties to the dispute,

* In accordance with rule 72 of the rules of procedure of the Economic and Social Council.

** On behalf of the States Members of the United Nations that are members of the European Union.

1/ General Assembly resolution 22 A (I).

Considering that the conduct of any organ of a State must be regarded as an act of that State,

Having requested, on a priority basis, in its decision 1998/297 of 5 August 1998, 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 in the case of Dato' Param Cumaraswamy 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, ² and on the legal obligations of Malaysia in that case,

1. Expresses its appreciation to the International Court of Justice for having given the advisory opinion on 29 April 1999, ³ which states:

"(1) (a) ...

"That article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations is applicable in the case of Dato' Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers,

"(b) ...

"That Dato' Param Cumaraswamy is entitled to immunity from legal process of every kind for the words spoken by him during an interview as published in an article in the November 1995 issue of International Commercial Litigation,

"(2) (a) ...

"That the Government of Malaysia had the obligation to inform the Malaysian courts of the finding of the Secretary-General that Dato' Param Cumaraswamy was entitled to immunity from legal process,

"(b) ...

"That the Malaysian courts had the obligation to deal with the question of immunity from legal process as a preliminary issue to be expeditiously decided in limine litis,

²E/1998/94 and Add.1.

³E/1999/49, annex.

"(3) ...

"That Dato' Param Cumaraswamy shall be held financially harmless for any costs imposed upon him by the Malaysian courts, in particular taxed costs,

"(4) ...

"That the Government of Malaysia has the legal obligation to communicate the advisory opinion to the Malaysian courts, in order that Malaysia's international obligations be given effect and Dato' Param Cumaraswamy's immunity be respected";

2. Takes note of the stated commitment by the Government of Malaysia to abide by the advisory opinion, 3/ and notes in this regard that the Government has conveyed the advisory opinion to the competent judicial authorities;

3. Stresses the obligation of Malaysia as a State party to the Convention on the Privileges and Immunities of the United Nations to make further efforts, in order that its international obligations thereunder be given effect and Dato' Param Cumaraswamy's immunity be respected, in accordance with the advisory opinion of the International Court of Justice.
