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THE SECRETARY-GENERAL

ECOSOC

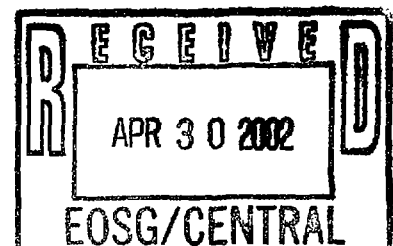
26 April 2002

Dear Mr. President,

I have the honour to inform you and the members of the Economic and Social Council that on 14 March 2002, the Permanent Representative of Malaysia to the United Nations informed the Legal Counsel that, on 7 July 2001, the Kuala Lumpur High Court dismissed the remaining civil suits against Dato' Param Cumaraswamy on the grounds that he enjoyed immunity from legal process in accordance with the advisory opinion of the International Court of Justice of 29 April 1999. In his letter, the Permanent Representative of Malaysia to the United Nations concludes that "the Government of Malaysia has thus discharged its responsibilities in accordance with the ICJ opinion".

The United Nations is grateful that the lawsuits pending in the Malaysian civil courts against Dato' Param Cumaraswamy have finally been dismissed in accordance with the advisory opinion of the International Court of Justice of 29 April 1999. As for the discharge of Malaysia's responsibilities, however, it should be recalled that in commenting on the obligations of Malaysia in its advisory opinion, the International Court of Justice had, inter alia, found, that Dato' Param Cumaraswamy must be held financially harmless from any costs imposed by the Malaysian courts, in particular taxed costs. It is the considered view of the United Nations that the costs imposed by the Malaysian courts within the meaning of the advisory opinion include all legal expenses imposed on Dato' Param Cumaraswamy by virtue of the court orders and proceedings in the Malaysian courts. Thus, in accordance with the advisory opinion of the International Court of Justice, Dato' Param Cumaraswamy's legal expenses are ultimately the responsibility of the Government of Malaysia.

His Excellency  
Mr. Ivan Šimonović  
President of the  
Economic and Social Council  
New York



The United Nations therefore maintains that, in order to fulfil its obligation to hold Dato' Param Cumaraswamy financially harmless, the Government of Malaysia should reimburse the Organization in the amount of US \$118,145.91 for the legal expenses it paid on behalf of Dato' Param Cumaraswamy in connection with the four lawsuits. I wish to recall that in my letter to the President of the Economic and Social Council dated 15 December 1999 (E/1999/124), I informed the Economic and Social Council that the United Nations had submitted a claim for reimbursement to the Government of Malaysia in the amount of US \$110,886.91 for the legal expenses which had accrued between January 1997 and October 1999 in connection with the proceedings in the four lawsuits that the Organization had paid on behalf of Dato' Param Cumaraswamy. A further request for reimbursement was submitted by the Legal Counsel to the Permanent Representative of Malaysia to the United Nations on 14 November 2001 for a final payment of US \$7,259.00 which was paid by the Organization in August 2001 in connection with the afore-mentioned lawsuits for costs which had accrued between November 1999 and June 2001.

Thus while the United Nations is very pleased that the lawsuits against Dato' Param Cumaraswamy have finally been dismissed, I remain concerned that the Organization is reimbursed for his legal expenses in accordance with the advisory opinion of the International Court of Justice of 29 April 1999.

Please accept, Mr. President, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'K. Annan', with a stylized flourish at the end.

Kofi A. Annan

**Economic and Social Council**Distr.: General  
15 December 1999

Original: English

**Resumed substantive session of 1999**

16 December 1999

Agenda item 14 (h)

**Social and human rights questions: human rights****Letter dated 15 December 1999 from the Secretary-General to the President of the Economic and Social Council**

Further to my letter to you of 19 October 1999 (E/1999/121) concerning implementation of the advisory opinion of the International Court of Justice (ICJ) of 29 April 1999 on the difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights (see E/1999/49). I have the honour to refer to the legal expenses incurred by Dato' Param Cumaraswamy, the United Nations Commission on Human Rights Special Rapporteur on the independence of judges and lawyers, in connection with civil proceedings against him in the Malaysian civil courts.

As the United Nations has maintained that Dato' Param Cumaraswamy was acting within the course of the performance of his mission when he spoke the words giving rise to the subject proceedings, the United Nations is obliged to indemnify him for any costs, expenses or damages arising out of those proceedings. The United Nations has also maintained the position that the Government of Malaysia is ultimately responsible for those costs, expenses or damages. In its advisory opinion of 29 April 1999, the International Court of Justice confirmed the foregoing. The Court upheld the Secretary-General's assertion of Dato' Param Cumaraswamy's immunity from legal process and that he was acting in the course of the performance of his mission for the United Nations. The Court also found, in commenting on the obligations of Malaysia, that he must be held financially harmless from any costs imposed by the Malaysian courts, in particular taxed costs. It is our considered view that the costs imposed by the Malaysian courts within the meaning of the ICJ advisory opinion include all legal expenses imposed on Dato' Param Cumaraswamy by virtue of the court orders and proceedings in the Malaysian courts.

The United Nations has therefore submitted a claim for reimbursement to the Government of Malaysia for the legal expenses it has paid on behalf of Dato' Param Cumaraswamy in connection with the proceedings in the four lawsuits. These expenses have been accumulating since January 1997 and currently amount to US\$ 110,886.91 (420,000 ringgit).

As proceedings in the four lawsuits have continued despite the Government of Malaysia's obligations under the Convention on the Privileges and Immunities of the United Nations (General Assembly resolution 22 A (I)), the ICJ advisory opinion and Economic and Social Council resolution 1999/64 of 30 July 1999, Dato' Param Kumaraswamy's legal expenses will also continue to accumulate. Therefore, the Government's intervention, by issuing a certificate to give effect to Dato' Param Kumaraswamy's immunity from legal process, as upheld and required by the Convention, the ICJ advisory opinion and Council resolution 1999/64 and as stipulated under Malaysian law, will avoid further financial burden on the United Nations and, ultimately, the Government of Malaysia.

(Signed) Kofi A. Annan

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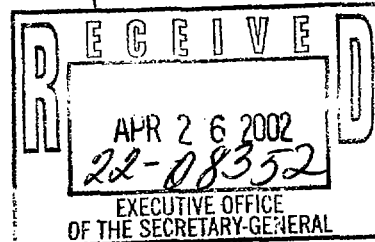
**ROUTING SLIP**

**FICHE DE TRANSMISSION**

TO: A: <b>Mr. Iqbal Riza</b>		
FROM: DE: <b>Hans Corell</b> <i>HC</i>		
Room No. - No de bureau	Extension - Poste	Date
	<b>3-5338</b>	<b>26.04.02</b>
FOR ACTION		POUR SUITE A DONNER
FOR APPROVAL		POUR APPROBATION
FOR SIGNATURE		POUR SIGNATURE
FOR COMMENTS		POUR OBSERVATIONS
MAY WE DISCUSS?		POURRIONS-NOUS EN PARLER ?
YOUR ATTENTION		VOTRE ATTENTION
AS DISCUSSED		COMME CONVENU
AS REQUESTED		SUITE A VOTRE DEMANDE
NOTE AND RETURN		NOTER ET RETOURNER
FOR INFORMATION		POUR INFORMATION

A letter to the President of the Economic and Social Council for your consideration and the SG's signature.

*(Re: Param Kumara...)*



COM.6 (2-78)