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Part Three. Judicial decisions on questions relating to the United Nations and related intergovernmental organizations

Chapter VII. Decisions and advisory opinions of international tribunals

Chapter VII

DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

International Court of Justice

APPLICABILITY OF ARTICLE VI, SECTION 22, OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS[1] (REQUEST FOR ADVISORY OPINION)

Request for an advisory opinion by the Economic and Social Council of the United Nations — Competence of I.C.J. in case — Propriety of I.C.J. to give an advisory opinion in case — "Experts on mission" — Question of members and special rapporteurs of the Subcommission being regarded as experts on mission — Question of whether health problems changed status of individual appointed special rapporteur

On 24 May 1989 the Economic and Social Council of the United Nations adopted resolution 1989/75, whereby it requested the Court to give, on a priority basis, an advisory opinion

> "on the legal question of the applicability of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations[2] in the case of Mr. Dumitru Mazilu as Special Rapporteur of the Subcommission"

on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights.

The letter from the Secretary-General, transmitting to the Court the request for advisory opinion and certified copies of the English and French texts of the resolution, was received in the Registry on 13 June 1989.

In an Order of 14 June 1989 (*I.C.J. Reports 1989*, p. 9), the President of the Court decided that the United Nations and the States parties to the Convention on the Privileges and Immunities of the United Nations were considered likely to be able to furnish information on the question and, bearing in mind that the request was expressed to be made "on a priority basis", fixed 31 July 1989 as the time limit for the submission of written statements and 31 August 1989 for the submission of subsequent written comments on those statements.

Pursuant to the Statute, the Secretary-General of the United Nations transmitted to the Court a dossier of documents likely to throw light upon the question.

Written statements were filed, within the time limit fixed, by the United Nations and by Canada, the Federal Republic of Germany, Romania and the United States of America.

At public sittings held on 4 and 5 October 1989, oral statements were made before the Court by Mr. Carl-August Fleischhauer, the United Nations Legal Counsel, on behalf of the Secretary-General, and by Mr. Abraham Sofaer, Legal

Adviser, Department of State, on behalf of the United States of America. Questions were put by Members of the Court to the representative of the Secretary-General, and answered before the close of the oral proceedings.

At a public sitting held on 15 December 1989, the Court delivered its Advisory Opinion (*I.C.J. Reports 1989*, p. 177), of which a summary outline and the complete text of the operative paragraph are given below.

I. *Review of the proceedings and summary of facts* (paras. 1-26)

The Court outlined the successive stages of the proceedings before it (paras. 1-8) and then summarized the facts of the case (paras. 9-26).

On 13 March 1984 the Commission on Human Rights — a subsidiary organ of the Economic and Social Council (hereinafter called "the Council"), created by it in 1946 in accordance with Articles 55 (*c*) and 68 of the Charter of the United Nations — elected Mr. Dumitru Mazilu, a Romanian national nominated by Romania, to serve as a member of the Subcommission on Prevention of Discrimination and Protection of Minorities — a subsidiary organ set up in 1947 by the Commission on Human Rights (hereinafter called "the Commission") — for a three-year term due to expire on 31 December 1986. As the Commission had called upon the Subcommission on Prevention of Discrimination and Protection of Minorities (hereinafter called "the Subcommission") to pay due attention to the role of youth in the field of human rights, the Subcommission at its thirty-eighth session adopted on 29 August 1985 resolution 1985/12 whereby it requested Mr. Mazilu to:

> "prepare a report on human rights and youth analysing the efforts and measures for securing the implementation and enjoyment by youth of human rights, particularly, the right to life, education and work"

and requested the Secretary-General to provide him with all necessary assistance for the completion of the task.

The thirty-ninth session of the Subcommission, at which Mr. Mazilu's report was to be presented, was not convened in 1986 as originally scheduled but was postponed until 1987. The three-year mandate of its members — originally due to expire on 31 December 1986 — was extended by Council decision 1987/102 for an additional year. When the thirty-ninth session of the Subcommission opened in Geneva on 10 August 1987 no report had been received from Mr. Mazilu, nor was he present. By a letter received by the United Nations Office at Geneva on 12 August 1987, the Permanent Mission of Romania to that Office informed it that Mr. Mazilu had suffered a heart-attack and was still in hospital. According to the written statement of the Secretary-General, a telegram signed "D. Mazilu" was received in Geneva on 18 August 1987 and informed the Subcommission of his inability, owing to heart illness, to attend the current session. In these circumstances, the Subcommission adopted decision 1987/112 on 4 September 1987, whereby it deferred consideration of item 14 of its agenda — under which the report on human rights and youth was to have been discussed — until its fortieth session rescheduled for 1988. Notwithstanding the scheduled expiration on 31 December 1987 of Mr. Mazilu's term as a member of the Subcommission, the latter included reference to a report to be submitted by him, identified by name, under the agenda item "Prevention of discrimination

and protection of children", and entered the report, under the title "Human rights and youth" in the "List of studies and reports under preparation by members of the Subcommission in accordance with the existing legislative authority".

After the thirty-ninth session of the Subcommission, the Centre for Human Rights of the United Nations Secretariat in Geneva made various attempts to contact Mr. Mazilu to provide him with assistance in the preparation of his report, including arranging a visit to Geneva. In December 1987, Mr. Mazilu informed the Under-Secretary-General for Human Rights that he had not received the previous communications of the Centre. In January 1988, Mr. Mazilu informed him that he had been twice in hospital in 1987, and that he had been forced to retire, as of 1 December 1987, from his various governmental posts. He also stated that he was willing to travel to Geneva for consultations, but that the Romania authorities were refusing him a travel permit. In April and May 1988, Mr. Mazilu, in a series of letters, further described his personal situation; in particular, he alleged that he had refused to comply with the request addressed to him on 22 February 1988 by a special commission from the Romanian Ministry of Foreign Affairs voluntarily to decline to submit his report to the Subcommission and, moreover, consistently complained that strong pressure had been exerted on him and on his family.

On 31 December 1987, the terms of all members of the Subcommission, including Mr. Mazilu, expired as has already been indicated. On 29 February 1988 the Commission, upon nomination by their respective Governments, elected new members of the Subcommission among whom was Mr. Ion Diaconu, a Romanian national.

All the rapporteurs and special rapporteurs of the Subcommission were invited to attend its fortieth session (8 August-2 September 1988), but Mr. Mazilu again did not appear. A special invitation was cabled to him, to go to Geneva to present his report, but the telegrams were not delivered and the United Nations Information Centre in Bucharest was unable to locate Mr. Mazilu. On 15 August 1988, the Subcommission adopted decision 1988/102, whereby it requested the Secretary-General:

> "to establish contact with the Government of Romania and to bring to the Government's attention the Subcommission's urgent need to establish personal contact with its Special Rapporteur Mr. Dumitru Mazilu and to convey the request that the Government assist in locating Mr. Mazilu and facilitate a visit to him by a member of the Subcommission and the secretariat to help him in the completion of his study on human rights and youth if he so wished".

The Under-Secretary-General for Human Rights informed the Subcommission on 17 August 1988 that, in contacts between the Secretary-General's Office and the Chargé d'affaires of the Permanent Mission of Romania to the United Nations in New York, he had been told that the position of the Romanian Government was that any intervention by the United Nations Secretariat and any form of investigation in Bucharest would be considered interference in Romania's internal affairs. On 1 September 1988, the Subcommission adopted resolution 1988/37, by which, *inter alia*, it requested the Secretary-General to approach once more the Government of Romania and invoke the applicability of the Convention on the Privileges and Immunities of the United Nations (hereinafter

called "the General Convention"); and further requested him, in the event that the Government of Romania did not concur in the applicability of the provisions of that Convention in that case, to bring the difference between the United Nations and Romania immediately to the attention of the Commission in 1989. It also requested the Commission, in that event, to urge the Council:

> "to request, in accordance with General Assembly resolution 89 (I) of 11 December 1946, from the International Court of Justice an advisory opinion on the applicability of the relevant provisions of the Convention on the Privileges and Immunities of the United Nations to the present case and within the scope of the present resolution".

Pursuant to that resolution the Secretary-General, on 26 October 1988, addressed a note verbale to the Permanent Representative of Romania to the United Nations in New York, in which he invoked the General Convention in respect of Mr. Mazilu and requested the Romanian Government to accord Mr. Mazilu the necessary facilities in order to enable him to complete his assigned task. As no reply had been received to that note verbale, the Under-Secretary-General for Human Rights on 19 December 1988 wrote a letter of reminder to the Permanent Representative of Romania to the United Nations Office at Geneva, in which he asked that the Romanian Government assist in arranging for Mr. Mazilu to visit Geneva so that he could discuss with the Centre for Human Rights the assistance it might give him in preparing his report. On 6 January 1989, the Permanent Representative of Romania handed to the Legal Counsel of the United Nations an aide-mémoire in which was set forth the Romanian Government's position concerning Mr. Mazilu. On the facts of the case, Romania stated that Mr. Mazilu, who had not prepared or produced anything on the subject entrusted to him, had in 1987 become gravely ill; that he had had repeatedly to go into hospital; that he had, at his own request, been placed on the retired list on grounds of ill-health for an initial period of one year, in accordance with Romanian law; and that retirement had been extended after he had been further examined by a similar panel of doctors. On the law, Romania expressed the view that "the problem of the application of the General Convention [did] not arise in this case". It went on to explain, *inter alia*, that the Convention "does not equate rapporteurs, whose activities are only occasional, with experts on missions for the United Nations"; that "even if rapporteurs are given some of the status of experts … they can enjoy only functional immunities and privileges"; that the "privileges and immunities provided by the Convention begin to apply only at the moment when the expert leaves on a journey connected with the performance of his mission"; and that "in the country of which he is a national … an expert enjoys privileges and immunities only in respect of actual activities … which he performs in connection with his mission". Moreover, Romania stated expressly that it was opposed to a request for advisory opinion from the Court of any kind in this case. Similar contentions were also put forward in the written statement presented by Romania to the Court.

On 6 March 1989, the Commission adopted its resolution 1989/37 recommending that the Council request an advisory opinion from the Court. The Council on 24 May 1989 adopted its resolution 1989/75, by which it requested the Court to render an opinion.

The Court had also been informed by the Secretary-General of the following events which occurred after the request for advisory opinion was made: A report on human rights and youth prepared by Mr. Mazilu was circulated as a document of the Subcommission bearing the date 10 July 1989; the text of this report had been transmitted by Mr. Mazilu to the Centre for Human Rights through various channels. On 8 August 1989, the Subcommission decided, in accordance with its practice, to invite Mr. Mazilu to participate in the meetings at which his report was to be considered: no reply was received to the invitation extended. By a note verbale dated 15 August 1989 from the Permanent Mission of Romania to the United Nations Office at Geneva addressed to that office, the Permanent Mission referred to "the so-called report" by Mr. Mazilu, expressed surprise "that the medical opinions made available to the Centre for Human Rights … have been ignored" and indicated, *inter alia*, that since becoming ill in 1987, Mr. Mazilu did not

> "possess the intellectual capacity necessary for making an objective, responsible and unbiased analysis that could serve as the substance of a report consistent with the requirements of the United Nations".

On 1 September 1989, the Subcommission adopted resolution 1989/45, entitled "The report on human rights and youth prepared by Mr. Dumitru Mazilu" by which, noting that Mr. Mazilu's report had been prepared in difficult circumstances and that the relevant information collected by the Secretary-General appeared not to have been delivered to him, it invited him to present the report in person to the Subcommission at its next session, and also requested the Secretary-General to continue providing Mr. Mazilu with all the assistance he might need in updating his report, including consultations with the Centre for Human Rights.

II. *The question laid before the Court* (para. 27)

The Court recalled the terms of the question laid before it by the Council. It pointed out that, in his written statement, the Secretary-General had emphasized that the Council's request related to the applicability of section 22 of the Convention in the case of Mr. Mazilu but not to

> "the consequences of that applicability, that is … [the question of] what privileges and immunities Mr. Mazilu might enjoy as a result of his status and whether or not these had been violated".

The Court moreover noted that, during the oral proceedings, the representative of the Secretary-General had observed that it was suggestive of the Council's intention that, having referred to a "difference", it "then did not attempt to have that difference as a whole resolved by the question it addressed to the Court", but "merely addressed a preliminary legal question to the Court".

III. *Competence of the Court to give an advisory opinion* (para. 28-36)

The Court began by pointing out that the request for advisory opinion was the first request made by the Council, pursuant to paragraph 2 of Article 96 of the Charter. It went on to note that, in accordance with that provision, the Gen-

eral Assembly, by its resolution 89 (I) of 11 December 1946, had authorized the Council to request advisory opinions of the Court on legal questions arising within the scope of its activities. Then, having considered the question which was the subject of the request, the Court took the view, first, that it was a legal question in that it involved the interpretation of an international convention in order to determine its applicability and, moreover, that it was a question arising within the scope of the activities of the Council, as Mr. Mazilu's assignment was pertinent to a function and programme of the Council and as the Subcommission, of which he was appointed special rapporteur, was a subsidiary organ of the Commission which was itself a subsidiary organ of the Council.

As Romania had nonetheless contended that the Court "cannot find that it has jurisdiction to give an advisory opinion" in this case, the Court then considered its arguments. Romania claimed that, because of the reservation made by it to section 30 of the General Convention, the United Nations could not, without Romania's consent, submit a request for advisory opinion in respect of its difference with Romania. The reservation, it was said, subordinated the competence of the Court to "deal with any dispute that may have arisen between the United Nations and Romania, including a dispute within the framework of the advisory procedure," to the consent of the parties to the dispute. Romania pointed out that it did not agree that an opinion should be requested of the Court in this case.

Section 30 of the General Convention provides that:

> "All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties."

The reservation contained in Romania's instrument of accession to that Convention is worded as follows:

> "The Romanian People's Republic does not consider itself bound by the terms of section 30 of the Convention which provide for the compulsory jurisdiction of the International Court in differences arising out of the interpretation or application of the Convention; with respect to the competence of the International Court in such differences, the Romanian People's Republic takes the view that, for the purpose of the submission of any dispute whatsoever to the Court for a ruling, the consent of all the parties to the dispute is required in every individual case. This reservation is equally applicable to the provisions contained in the said section which stipulate that the advisory opinion of the International Court is to be accepted as decisive."

The Court began by referring to its earlier jurisprudence, recalling that the consent of States is not a condition precedent to its competence under Article 96 of the Charter and Article 65 of the Statute to give advisory opinions, although such advisory opinions are not binding. This applies even when the request for

an opinion is seen as relating to a legal question pending between the United Nations and a Member State. The Court then noted that section 30 of the General Convention operates on a different plane and in a different context from that of Article 96 of the Charter as, when the provisions of that section are read in their totality, it is clear that their object is to provide a dispute settlement mechanism. If the Court had been seised with a request for an advisory opinion made under section 30, it would of course have had to consider any reservation which a party to the dispute had made to that section. However, in this case, the Court recalled that the Council's resolution contained no reference to section 30 and considered that it was evident from the dossier that, in view of the existence of the Romanian reservation, it was not the intention of the Council to invoke that section. The Court found that the request was not made under section 30 and that it accordingly did not need to determine the effect of the Romanian reservation to that provision.

Romania had, however, contended, *inter alia*, that

> "If it were accepted that a State party to the Convention, or the United Nations, might ask for disputes concerning the application or interpretation of the Convention to be brought before the Court on a basis other than the provisions of section 30 of the Convention, that would disrupt the unity of the Convention, by separating the substantive provisions from those relating to dispute settlement, which would be tantamount to a modification of the content and extent of the obligations entered into by States when they consented to be bound by the Convention."

The Court recalled that the nature and purpose of the proceedings before it were those of a request for advice on the applicability of a part of the General Convention, and not the bringing of a dispute before the Court for determination. It added that the "content and extent of the obligations entered into by States" — and, in particular, by Romania — "when they consented to be bound by the Convention" were not modified by the request and by the Court's advisory opinion.

The Court thus found that the reservation made by Romania to section 30 of the General Convention did not affect the Court's jurisprudence to entertain the request submitted to it.

IV. *Propriety of the Court giving an opinion* (paras. 37-39)

While the absence of the consent of Romania to the proceedings before the Court could have no effect on its jurisdiction, the Court found that this was a matter to be considered when examining the propriety of its giving an opinion. The Court had recognized in its earlier jurisprudence, *inter alia*, that in "certain circumstances … the lack of consent of an interested State may render the giving of an advisory opinion incompatible with the Court's judicial character" and had observed that an

> "instance of this would be when the circumstances disclose that to give a reply would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent".

The Court considered that in this case to give a reply would have no such effect. Certainly the Council, in its resolution 1989/75, did conclude that a difference had arisen between the United Nations and the Government of Romania as to the *applicability* of the Convention to Mr. Dumitru Mazilu. It nonetheless seemed to the Court that this difference, and the question put to the Court in the light of it, was not to be confused with the dispute between the United Nations and Romania with respect to the *application* of the General Convention in the case of Mr. Mazilu. Accordingly, the Court did not find any "compelling reason" to refuse an advisory opinion, and decided to reply to the legal question on which such an opinion had been requested.

V. *Meaning of article VI, section 22, of the General Convention* (paras. 40-52)

The General Convention contains an article VI entitled "Experts on missions for the United Nations", divided into two sections. Section 22 provides as follows:

> "Experts (other than officials coming within the scope of article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:
>
> (*a*) Immunity from personal arrest or detention and from seizure of their personal baggage;
>
> (*b*) 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. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;
>
> (*c*) Inviolability for all papers and documents;
>
> (*d*) For the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
>
> (*e*) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
>
> (*f*) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys."

The Court considered first what was meant by "experts on missions" for the purposes of section 22 and noted that the General Convention gave no definition of "experts on missions". From section 22 it was clear, firstly that the officials of the Organization, even if chosen in consideration of their technical

expertise in a particular field, were not included in the category of experts within the meaning of that provision; and secondly that only experts performing missions for the Organization were covered by section 22. That section did not, however, furnish any indication of the nature, duration or place of these missions. Nor did the *travaux préparatoires* provide any more guidance in this respect. The Court found that the purpose of section 22 is nevertheless evident, namely, to enable the United Nations to entrust missions to persons who do not have the status of an official of the Organization and to guarantee them "such privileges and immunities as are necessary for the independent exercise of their functions". The Court noted that in practice, according to the information supplied by the Secretary-General, the United Nations had had occasion to entrust missions — increasingly varied in nature — to persons not having the status of United Nations officials. Such persons had been entrusted with mediation, with preparing reports, preparing studies, conducting investigations or finding and establishing facts. In addition, many committees, commissions or similar bodies whose members served, not as representatives of States, but in a personal capacity, had been set up within the Organization. In all these cases, the practice of the United Nations showed that the persons so appointed, and in particular the members of these committees and commissions, had been regarded as experts on missions within the meaning of section 22.

The Court then turned its attention to the meaning of the phrase "during the period of their missions, including the time spent on journeys", which is part of that Section. In this connection the question arose whether "experts on missions" are covered by section 22 only during missions requiring travel or whether they are also covered when there is no such travel or apart from such travel. To answer this question the Court considered it necessary to determine the meaning of the word "mission" in English and "*mission*" in French, the two languages in which the General Convention was adopted. Initially, the word referred to a task entrusted to a person only if that person was sent somewhere to perform it. It had however long since acquired a broader meaning and nowadays embraced in general the tasks entrusted to a person, whether or not those tasks involved travel. The Court considered that section 22, in its reference to experts performing missions for the United Nations, used the word "mission" in a general sense. While some experts have necessarily to travel in order to perform their tasks, others can perform them without having to travel. In either case, the intent of section 22 was to ensure the independence of such experts in the interests of the Organization by according them the privileges and immunities necessary for the purpose. The Court accordingly concluded that section 22 was applicable to every expert on mission, whether or not he travelled.

The Court finally took up the question whether experts on missions can invoke the privileges and immunities provided for in section 22 against the States of which they are nationals or on the territory of which they reside. In this connection, it noted that section 15 of the General Convention provides that the terms of article IV, sections 11, 12 and 13, relating to the representatives of Members, "are not applicable as between a representative and the authorities of the State of which he is a national or of which he is or has been the representative", and observed that article V, concerning officials of the Organization, and article VI, concerning experts on missions for the United Nations, did not contain any comparable rule. It found that this difference of approach could readily

be explained: the privileges and immunities of articles V and VI were conferred with a view to ensuring the independence of international officials and experts in the interests of the Organization; this independence should be respected by all States, including the State of nationality and the State of residence. The Court noted, moreover, that some States parties to the General Convention had entered reservations to certain provisions of article V or of article VI itself, as regards their nationals or persons habitually resident on their territory. In its view, the very fact that it was necessary to make these reservations confirmed that in the absence of such reservations, experts on missions enjoyed the privileges and immunities provided for under the General Convention in their relations with the States of which they were nationals or on the territory of which they resided.

To sum up, the Court took the view that section 22 of the General Convention was applicable to persons (other than United Nations officials) to whom a mission had been entrusted by the Organization and who were therefore entitled to enjoy the privileges and immunities provided for in this section with a view to the independent exercise of their functions; that during the whole period of such missions, experts enjoyed these functional privileges and immunities whether or not they travelled; and that those privileges and immunities might be invoked as against the State of nationality or of residence unless a reservation to section 22 of the General Convention had been validly made by that State.

VI. *Applicability of article VI, section 22, of the General Convention to special rapporteurs of the Subcommission* (paras. 53-55)

Having emphasized that the situation of rapporteurs of the Subcommission was one which touched on the legal position of rapporteurs in general and was thus one of importance for the whole of the United Nations system, the Court noted that on 28 March 1947, the Council had decided that the Subcommission would be composed of 12 eminent persons, designated by name, subject to the consent of their respective national Governments, and that the members of the Subcommission, at present 25 in number, had subsequently been chosen by the Commission under similar conditions; it observed that the Council, in its resolution 1983/32 of 27 May 1983, expressly "recall[ed] ... that members of the Subcommission are elected by the Commission ... as experts in their individual capacity". The Court therefore found that, since their status was neither that of a representative of a Member State nor that of a United Nations official, and since they performed independently for the Subcommission functions contemplated in its remit, the members of the Subcommission should be regarded as experts on missions within the meaning of Section 22.

The Court further noted that, in accordance with the practice followed by many United Nations bodies, the Subcommission had from time to time appointed rapporteurs or special rapporteurs with the task of studying specified subjects; it also noted that, while these rapporteurs or special rapporteurs are normally selected from among members of the Subcommission, there have been cases in which special rapporteurs have been appointed from outside the Sub-

commission or have completed their report only after their membership of the Subcommission had expired. In any event, rapporteurs or special rapporteurs are entrusted by the Subcommission with a research mission. The Court concluded that since their status is neither that of a representative of a Member State nor that of a United Nations official, and since they carry out such research independently on behalf of the United Nations, they must be regarded as experts on missions within the meaning of section 22, even in the event that they are not, or are no longer, members of the Subcommission. This led the Court to infer that they enjoy, in accordance with that section, the privileges and immunities necessary for the exercise of their functions, and in particular for the establishment of any contacts which may be useful for the preparation, the drafting and the presentation of their reports to the Subcommission.

VII. *Applicability of article VI, section 22, of the General Convention in the case of Mr. Mazilu* (paras. 56-60)

The Court observed, in the light of the facts presented, that Mr. Mazilu had, from 13 March 1984 to 29 August 1985, the status of a member of the Subcommission; that from 29 August 1985 to 31 December 1987, he was both a member and a rapporteur of the Subcommission; and finally that, although since the last-mentioned date he had no longer been a member of the Subcommission, he had remained a special rapporteur. The Court found that at no time during the period had he ceased to have the status of an expert on mission within the meaning of section 22, or ceased to be entitled to the privileges and immunities provided for therein.

The Court nevertheless recalled that doubt had been expressed by Romania as to whether Mr. Mazilu was capable of performing his task as special rapporteur after being taken seriously ill in May 1987 and being subsequently placed on the retired list pursuant to decisions taken by the competent medical practitioners, in accordance with the applicable Romanian legislation; that Mr. Mazilu himself had informed the United Nations that the state of his health did not prevent him from preparing his report or from going to Geneva; and finally that, when a report by Mr. Mazilu had been circulated as a document of the Subcommission, Romania had called into question his "intellectual capacity" to draft "a report consistent with the requirements of the United Nations". After pointing out that it was not for it to pronounce on the state of Mr. Mazilu's health or on its consequences on the work he had done or was to do for the Subcommission, the Court pointed out that it was for the United Nations to decide whether in the circumstances it wished to retain Mr. Mazilu as special rapporteur and took note that decisions to that effect had been taken by the Subcommission.

The Court was of the opinion that in those circumstances Mr. Mazilu continued to have the status of special rapporteur, that as a consequence he should be regarded as an expert on mission within the meaning of section 22 of the General Convention and that that section was accordingly applicable in the case of Mr. Mazilu.

Operative paragraph (para. 61)

"For these reasons,

THE COURT,

Unanimously,

Is of the opinion that article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations is applicable in the case of Mr. Dumitru Mazilu as a special rapporteur of the Subcommission on Prevention of Discrimination and Protection of Minorities."

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Judges Oda, Evensen and Shahabuddeen appended separate opinions to the Advisory Opinion (*I.C.J. Reports 1989*, pp. 200-209, 210-211 and 212-221).

NOTES

[1]*I.C.J. Yearbook 1989-90*, p. 145.
[2]United Nations, *Treaty Series*, vol. I, p.15.