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20 July 2015

Mr. Sam Kahamba Kutesa
President of the United Nations General Assembly
United Nations Secretariat
405 East 42nd Street
New York, NY 10017

Sir,

**REQUESTING YOUR HELP TO ADDRESS A GRAVE INJUSTICE BEING
PERPETRATED AGAINST SRI LANKA BY THE HUMAN RIGHTS COUNCIL**

I am a citizen of Sri Lanka.

Since 2012, the Human Rights Council has adopted three resolutions against Sri Lanka on the subject of "accountability" for violations of humanitarian law and human rights law allegedly committed during the civil war that ended in May 2009.

The resolution in March 2014 authorized an investigation into the aforesaid alleged violations, to be carried out by the Office of the High Commissioner for Human Rights (OHCHR).

I have evidence to show that certain irregularities and/or illegalities were committed both in the manner the respective resolutions were pursued at the Council, as well as the way the investigation was finally authorized in March-2014.

The aforesaid evidence is contained in four essays, three of which were originally published in the well-respected online magazine, *Foreign Policy Journal*. Two of those essays were subsequently posted on the website of the Peace Palace Library, the prestigious library attached to The Hague.

I re-published the aforesaid four essays in two books, the first (*The UN's Relentless Pursuit of Sri Lanka, and the need for effective counter-measures*) in 2013, and the second (*The UN's Subversion of International Law: The Sri Lanka Story*) in 2015.

(I have taken the liberty to forward two copies of the said books along with this letter, for your convenience.)

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In the course of my research over the past three years, I found that, one, the call for an international investigation was based on the High Commissioner's recommendation in a series of reports in 2013 and 2014, and two, the basis for the High Commissioner's aforesaid recommendation was the recommendation for an international investigation made in the Report of the Secretary General's Panel of Experts (POE) in 2011.

The POE was a document produced for the Secretary General's personal use, and not to be submitted in any official capacity to the General Assembly, the Human Rights Council, or any other U.N. organ.

The POE, however, was submitted indirectly to the Human Rights Council, and went on to become the basis for the call for an international investigation by the Council, in 2012, 2013 and 2014.

The POE, since it was not an official document, was never placed on the record at the Human Rights Council, and Sri Lanka never had an opportunity to respond to it directly and officially before that body.

In the circumstances, the Council's use of the POE as its principal basis for authorizing an international investigation against Sri Lanka is illegal.

If my surmises above are correct, the investigation is illegal, and Sri Lanka has been subjected—indeed continues to be subjected—to a grave injustice at the Human Rights Council.

Since the Human Rights Council is a creation of the U.N. General Assembly, the responsibility for the aforesaid injustice ultimately rests with the General Assembly itself.

The basic problem I have at present is as follows: given the grave injustice that I consider the UNHRC has committed against Sri Lanka as described herein-before, as a citizen of Sri Lanka, I have no venue at the U.N. where I can have my grievance heard.

In contrast, a country that considers itself wronged by the U.N. can take up the matter at the International Court of Justice (ICJ) by requesting an Advisory Opinion.

Meanwhile, to turn to the Human Rights Council, its Complaint Procedure facility under Resolution 5/1 allows persons and parties to bring to the attention of the Council grave violations of human rights taking place *within* a country. But, this facility does not allow complaints to be brought that deal with wrongs the *U.N.* may have committed against a country.

Thus, to repeat, to the best of my knowledge, there is no forum or venue, within the U.N. where an individual citizen harmed in some way or other by U.N. action against his or her *country*, can have their complaints heard and legally adjudicated.

In my view, there is a lacuna in international law in respect to the above matter.

I am willing to concede that the Founders of the U.N. did not envision a situation where the U.N. would have to answer to complaints by individual citizens of its member countries.

The U.N., as originally conceived, was primarily a mechanism to facilitate universal peace: thus, it was intended as a forum where the Governments of countries (or other designated agencies) could be heard, and not individuals with personal complaints.

In my view, the fact that only Governments (or other designated agencies) can be heard at the U.N. does not mean that, where the U.N.'s actions touch the lives of individual citizens of particular countries adversely, those citizens ought not to have any means of redress.

I am a firm believer in the legal maxim:

Ubi jus, ibi remedium (Equity will not suffer a wrong without a remedy)

I also take as self-evident that, changes in circumstances often necessitate corresponding advances in the law.

Thus, I am now compelled to turn to you, to ask for your help in finding a venue or a forum where I can have my grievance heard within the U.N., or, in the event there is no such forum, your advice on how I can go about initiating changes in the relevant law, to make possible the creation of such a forum.

I must inform you further that, if I cannot find a suitable venue or forum as discussed above, I shall explore ways to gain redress from the U.N. through the domestic laws of my country.

I should like to tax your patience with regard to one final matter, to wit: explain briefly why you should take an interest in what has happened to Sri Lanka at the UNHRC independently of the personal request I have made above.

In my view, the U.N., for all its faults, remains the best means through which the nations of the world can maintain a modicum of peace among themselves, and also protect and promote human rights. For this reason, it is imperative that the U.N. not only continue as an institution, but be strengthened.

It is a fact, however, that no institution can remain viable for long, if the public loses faith in it. Unfortunately, there is a growing perception among many people, particularly in the developing world, that the U.N. has become a tool of certain powerful nations, i.e. an institution that, advertently or inadvertently, allows itself to be used for purposes of furthering the national or geopolitical goals of those powerful nations.

The best example of the type of incident that fosters the above perception is the invasion of Iraq by the United States in 2003, under the pretext of implementing a Security Council resolution. I shall not repeat here the sordid history of that unfortunate episode. Suffice it to say almost all experts on the subject, including Americans, now admit that the case for war against Iraq, as presented by its advocates, particularly the United States and Great Britain, was based on obfuscations, fabrications, and outright lies.

I shall now turn to the investigation against Sri Lanka. In my view, the case for the Sri Lanka investigation is also characterized by obfuscations, fabrications, and at times outright lies, though not in as grand a scale as in Iraq.

More ominous, high U.N. officials, including the Secretary General and the High Commissioner, have pushed the investigation in what appears to be a biased and partisan way.

I shall indicate just two instances of the above.

- a) When the POE was being compiled, a number of newspapers in Sri Lanka reported that certain Tamil Diaspora elements had produced sample letters containing various allegations against the Government, and got their supporters to submit those letters to the Panel via e-mail. Some of the letters themselves were also published. (See, *"How Moon Panel Gathered 'War Crimes' Info Revealed," Shamindra Ferdinando, The Island, 20 April 2012*)

To my knowledge, no attempt was made by the Panel, or the Secretary General, to pursue the above allegations. Meanwhile, all materials related to the POE, including the evidence on which the Panel relied to come to its conclusions, have been sealed for 20 years (on the Secretary General's orders). So, no one can check whether in fact the evidence the Panel considered includes sample letters of the type described above.

- b) When the OHCHR investigation was launched in August 2014, OHCHR announced that the public had till 30 October 2014 to make submissions. In November, the Government alleged that it had arrested a person who had in his possession 6 complaint forms signed in blank, to be completed later with fabricated "eye witness" reports and submitted to OHCHR.

The Government also alleged that the aforesaid suspect had revealed he was working under the supervision of an individual with close connections to a conglomerate of Tamil Political Parties, which conglomerate was one of the most vociferous local advocates of the investigation.

The Government alleged further, that the suspect had revealed he was told by his handlers to inform potential 'witnesses' they would receive monetary compensation from the U.N. for their testimony. (See, *Media Statement by the Ministry of External Affairs, 5 November 2014, www.mea.gov.lk*)

To my knowledge, the OHCHR made no attempt to follow-up the Government's allegations. Instead, the High Commissioner issued a vehement statement accusing the Government of an "insidious" attempt to subvert the investigation.

The High Commissioner said, *inter alia*:

"Since the end of the conflict in 2009, Sri Lanka has continued to obstruct any independent investigation despite the persistent, compelling and widespread allegations that possible serious international crimes were committed by both sides during the conflict in Sri Lanka." (See, "*Zeid condemns persistent disinformation designed to discredit UN investigation on Sri Lanka*," 7 November 2014, www.ohchr.org)

I wish to draw your attention to two points. First, nowhere in the High Commissioner's statement does he explicitly *deny* that the OHCHR, either directly or indirectly, offered money for testimony.

Second, the High Commissioner seems to have made up his mind that the allegations against the Government have merit. Note, he uses the word "compelling" in relation to the allegations against the Government and the LTTE.

(Let's forget about the LTTE for a moment, because, even if it is eventually found that they committed war crimes, there is no longer anyone to punish, since all the main LTTE leaders were killed during the war. So, the High Commissioner's statement actually applies only to the Government.)

The point is that the word "compelling" entails a subjective and normative judgment. How can the High Commissioner decide that the allegations against the Government are "compelling" before the investigation is complete? Presumably, it is the task of the investigation to decide if the allegations are compelling or not.

One should also recall that the High Commissioner's office is tasked with overseeing the investigation, which means, among other things, the evidence that the Investigating Panel reviews is collected by persons hand-picked by the High Commissioner.

If the High Commissioner, at the very out-set of the investigation, has decided the allegations against the Government are *compelling*, what are the chances the Panel will conclude anything different, even if we presume the Panel is completely independent?

When one considers matters such as the above, in the context of what is known about the goings-on in the run-up to the Iraq war, it is difficult to avoid the suspicion that something untoward has been done to Sri Lanka at the UNHRC.

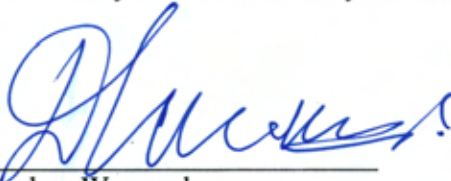
(It does not help, meanwhile, that the United States and Great Britain, the two countries—the same two ‘suspects’ if you will—behind the Iraq war, are behind the call for the Sri Lanka investigation also!)

In short, to the extent that members of the general public, especially outside Sri Lanka, learn the facts about the Sri Lanka investigation, it puts the spotlight, once again, on the *credibility* of the United Nations.

Sri Lanka is just one country. How many other countries are being subjected to similar treatment, or will be in the future? How many blows to its credibility can the U.N. take before people lose faith in the Organization completely? And when that happens, as I mentioned earlier, is there any reason for the U.N. to continue in existence at all?

Therefore, I believe it is incumbent on you to take an interest in what has happened to Sri Lanka at the UNHRC, quite independently of my personal request for help in finding a venue or forum within the U.N. where I can have my particular grievances about the investigation heard.

I shall thank you in advance for your kind attention to this matter.



Dharshan Weerasekera

Copies To:

- 1) Mr. Ban Ki Moon, Secretary General of the United Nations
- 2) Prince Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights
- 3) Mr. Joachim Rucher, President of the Human Rights Council
- 4) His Lordship Justice Ronny Abraham, President of the International Court of Justice
- 5) Mr. Maithripala Sirisena, President of Sri Lanka

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22 July 2015

Mr. Ban Ki Moon
United Nations Secretary General
United Nations Secretariat
405 East 42nd Street,
New York, NY 10017
U. S. A

Sir,

Please be advised that I have written to the President of the United Nations General Assembly regarding the matter more fully described in the attached letter.

Respectfully,



Dharshan Weerasekera