

9(2)(a)

From: SEA
Sent: Monday, 22 February 2016 8:47 a.m.
To: GENEVA
Cc: SEA; UNHC
Subject: RE: FORMAL MESSAGE: Sri Lanka: Visit by UN High Commissioner for Human Rights

Categories: [REDACTED]

Belated thanks for this very useful readout – and thanks for persevering to be able to report before the PM’s visit. [REDACTED]

6(a)

9(2)(a)

6(b)

From: GENEVA
Sent: Thursday, 18 February 2016 8:25 a.m.
To: SEA
Cc: GENEVA; NEW DELHI; DS AAG; FM.P/S MFA; RIYADH; CANBERRA; CEO; LONDON; AUCKLAND; BEIJING; ...EAS POSTS; LONDON; VIENNA; FM.DPMC (FPA); WASHINGTON; NEW YORK; DCE; FM.NAB (Seemail); IDG GLO; NAD; ...COMMONWEALTH POSTS
Subject: RE: FORMAL MESSAGE: Sri Lanka: Visit by UN High Commissioner for Human Rights

Summary

The Office of the High Commissioner for Human Rights considered the visit of the High Commissioner a success, with the reaffirmation by President Sirisena and Prime Minister Wickremesinghe of the commitment to implement the Human Rights Council resolution promoting reconciliation, accountability and human rights in Sri Lanka. [REDACTED]

6(b)

Action

For information.

Report

1 After a week of attempts, we managed to reach the head of OHCHR’s Asia-Pacific Division, [REDACTED] 9(2)(a) to discuss the High Commissioner’s recent visit to Sri Lanka (in which he participated). He said the visit “went as well as could be hoped”, after concerns in the weeks preceding the visit due to statements from the Sri Lankan President and Prime Minister which were seen as taking a step back from prior [REDACTED] 6(a). The key deliverable from the

visit was a clear reaffirmation by the President and the Prime Minister to implement the Human Rights Council resolution (attached, and see earlier FMs). [REDACTED]

[REDACTED] **6(a)**

2

[REDACTED] **6(a)** Sri Lanka had taken some initial steps to implement the resolution. Constitutional reform discussions were quite advanced, as they had been accorded a high priority as it was part of the government's election manifesto. This reform would help address a range of issues raised in the Human Rights Council resolution, by strengthening fundamental rights, improving the independence of the judiciary, establishing civilian control of the military etc. [REDACTED]

[REDACTED] **6(a)**

3

[REDACTED] **6(a)**

OHCHR's role

4 OHCHR currently have two people advising the Sri Lankan Government, providing proposals and technical assistance on ways to implement the resolution. [REDACTED]

6(a) In terms of follow-up, there would be an oral update to the Human Rights Council in June 2016, and a full report in March 2017.

Accountability

5 On the issue of greatest political sensitivity, foreign judges participating in an accountability mechanism/Sri Lankan judicial process. [REDACTED]

6(a) Impartiality was key, but many designs were possible. Creative options were currently being explored, [REDACTED]

6(a) [REDACTED]

Confidence and improved communication necessary

6

6(a) It was the commitments made by the Foreign Minister of Sri Lanka in his speech in Geneva in September 2015 that formed the basis of the Human Rights Council Resolution, and Sri Lanka's co-sponsorship of that resolution, backed up by the Government's mandate from the 2015 elections. [REDACTED]

[REDACTED] **6(a)**

Comment:

7 While still in the early stages of implementation, the resolution on accountability and reconciliation in Sri Lanka can reasonably be considered one of the **success stories of country-specific resolutions** in the Human Rights Council. There is, of course, much work to be done, and fulfilment of the commitments made by the Sri Lankan Government will continue to require a conducive political environment and international encouragement and support. [REDACTED]

6(a)

8 [REDACTED]

6(a), 6(b) They would do well to note the words of the High Commissioner in that regard: “the acceptance of the resolution was a moment of strength, not weakness, by Sri Lanka”.

ENDS//

From: NEW DELHI

Sent: Sunday, 14 February 2016 6:42 a.m.

To: SEA

Cc: GENEVA; DS AAG; FM.P/S MFA; RIYADH; CANBERRA; CEO; LONDON; AUCKLAND; BEIJING; ...EAS POSTS; LONDON; VIENNA; FM.DPMC (FPA); WASHINGTON; NEW YORK; DCE; FM.NAB (Seemail); IDG GLO; NAD; ...COMMONWEALTH POSTS; NEW DELHI

Subject: FORMAL MESSAGE: Sri Lanka: Visit by UN High Commissioner for Human Rights

SUMMARY

UN High Commissioner for Human Rights, Prince Zeid Ra’ad Zeid Al-Hussein, has concluded a four-day mission to Sri Lanka to assess progress on human rights accountability and post-conflict reconciliation. He describes Sri Lanka as being “still in the early stages of renewal”, but making credible progress. [REDACTED]

6(a) The Government, however, sees it has been given a decisive mandate through the 2015 elections and the September 2015 UNHRC Resolution on Sri Lanka’s human rights roadmap and that it must act quickly before the current window of popular tolerance for reconciliation politics closes. Sri Lanka now faces the hard slog of turning ideas into implementation, [REDACTED]

6(a) As described by Al-Hussein, it must “confront and defeat the demons of its past. It must create institutions that work, and ensure accountability. It must seize the great opportunity it currently has to provide all its people with truth, justice, security and prosperity.”

ACTION

For information.

REPORT

United Nations High Commissioner for Human Rights, Prince Zeid Ra'ad Zeid Al-Husseini, concluded a four-day mission to Sri Lanka over 6-9 February. During his visit, Al-Husseini met with President Sirisena, Prime Minister Wickremesinghe, Ministers, opposition leaders, community groups and members of the public. He also visited the Tamil-majority Northern Province, the Human Rights Commission of Sri Lanka and the Task Force that will lead the forthcoming National Consultations on transitional justice. We have discussed the visit with ministers [REDACTED]

[REDACTED] 6(a) [REDACTED] and officials in the Sri Lanka government [REDACTED]

6(a)

A positive tone set...

2 At a press conference in Colombo on 9 February, Al-Husseini described his visit as "much more friendly, cooperative and encouraging" than the hostile welcome received by his Tamil-origin predecessor, Navi Pillay, in August 2013. Then Pillay was heavily criticised by the Sri Lankan Government of Mahinda Rajapaksa for publicly highlighting human rights violations. "I am pleased that in the new environment in Sri Lanka, all voices, including the moderate voices of civil society, can at last be heard, even if sometimes the voices of hatred and bigotry are still shouting the loudest, and as a result are perhaps being listened to more than they deserve," he said. [Comment: Al-Husseini's full statement is copied below in blue text].

3 Al-Husseini's visit followed the adoption of the September 2015 UNHRC resolution (titled "Promoting reconciliation, accountability and human rights in Sri Lanka"). Co-sponsored by Sri Lanka and New Zealand, and agreed by a consensus of the 47 Council members, it sets a pathway for political, social and judicial reform in Sri Lanka and calls for the full accountability and restoration of for human rights abuses. The Office of the High Commissioner for Human Rights (OHCHR), which Al-Husseini heads, is charged with following up on its implementation.

and some good progress made.

4 Al-Husseini said he was reassured by the "firm conviction" shown by the leaders of Sri Lanka's Government to the human rights commitments it had made, the reduction in allegations of mistreatment and torture, and the steps being taken to build an inclusive and unified nation – most recently demonstrated by the Government's decision, for the first time in 60 years, to have the Sri Lankan national anthem sung in both Sinhala and Tamil on Independence Day in February. He was particularly effusive in his praise for the restoration of an independent Sri Lanka's Human Rights Commission, including the process used to deliver this [REDACTED]

[REDACTED] 6(a) [REDACTED] "I hope the Government will now swiftly provide it with the resources, and above all the institutional respect it needs, to enable it to fulfil its great potential" he said.

But it is a long way from over:

5 The High Commissioner made clear though that Sri Lanka still had a long road ahead. In his public statement and during a private briefing with resident Heads of Missions, Al-Husseini noted that many areas of Sri Lanka's reform and accountability agenda remain unfinished, [REDACTED]

[REDACTED]

6(a) Measures he suggested to stop a “trend of draining confidence” included accelerating the return of land from the military to the land owners, reducing the Military’s presence to a level that is “less intrusive and intimidating”, and making more progress on bringing to trial or releasing those who had been detained but not charged under extensive war time Prevention of Terror laws. This echoed views expressed by the UN Special Rapporteur on Truth, Justice, Reparation and Guarantees of Non-Recurrence, Pablo de Greiff, who visited Sri Lanka last month and urged it to make progress on developing a genuine programme of activities though not rushing through and box-ticking undeveloped aspects of the reconciliation process simply to comply with international commitments.

6 Al-Hussein also countered the locally promulgated view held by many that the UNHRC resolution undermined Sri Lanka’s sovereignty, and in particular a specific recommendation that foreign judges be part of the Sri Lankan reconciliation commission. Al-Hussein emphasised the criticality of ensuring Sri Lanka’s history “littered with judicial failures” was not repeated, and that Sri Lanka’s “nationalistic tendencies...not be allowed to undermine the country’s long term chances of recovery once again.” He took care to describe the resolution and its support by Sri Lanka as a “moment of strength, not weakness”.

7 As if by way of example of the pressures on the ground in Sri Lanka, former President Rajapaksa used a 11 February op-ed piece to describe the UNHRC resolution as a “great betrayal” that subordinated Sri Lankan mechanisms and institutions to foreign ones. He accused the Sri Lankan government of “agreeing to place Sri Lanka under the supervision of an institution that is facing criticism by the UNHRC itself for its Western bias,” and called on Sri Lankans to “unite and resist this attempt by the government to betray the country and our war heroes.”

[REDACTED]

[REDACTED] **6(a)**

8 [REDACTED]

[REDACTED] **6(a)**

9 [REDACTED]

[REDACTED]

6(a), 6(b)

10 [REDACTED]

6(a)

[REDACTED]

6(a), 6(b)

Comment:

12 [REDACTED]

6(a) ■ The differences in mood and conduct from the 2013 visit shows progress has been made. But there is still a great deal of work ahead in Sri Lanka to embed changes and to build trust and prospects for the difference communities.

13 [REDACTED]

6(a)

Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein at the end of his mission to Sri Lanka Colombo, 9 February 2016

Good afternoon, and thank you for coming.

I come to you shortly after wrapping up my visit here with meetings with President Maithripala Sirisena and Prime Minister Ranil Wickremesinghe and the Leader of the Opposition, in which we discussed a wide range of issues that will have an important bearing on the future of Sri Lanka. Since arriving here on Saturday, I have also met the Ministers of Foreign Affairs, Justice, National Dialogue, and Prison Reforms, Rehabilitation and Resettlement, as well as the Defence Secretary, Chief of Defence Staff, Army and Air Force Commanders and the Chief of Staff of the Navy.

In addition, here in Colombo, I visited the Human Rights Commission of Sri Lanka, and the Task Force that will lead the forthcoming National Consultations on transitional justice. I also met a number of Sri Lanka's finest thinkers and analysts, including members of its vibrant civil society organizations.

On Sunday, I visited the Northern and Eastern Provinces, where I met the Chief Ministers and members of the Provincial Councils as well as the Governors, and yesterday morning I was honoured to visit the revered Sri Dalada Maligawa, or Temple of the Sacred Tooth in Kandy, where I was graciously received by the Mahanayakas (Chief Monks) of the Malwatte and Asgiriya Chapters. I am very grateful to them for accorded me this great privilege, as well as to the members of the Hindu, Muslim and Christian communities I met in Colombo, Jaffna and Trincomalee.

This has been a much more friendly, cooperative and encouraging visit than the one my predecessor endured in August 2013, which as you may recall was marred by vituperative attacks on her integrity, simply because she addressed a number of burning human rights issues that any High Commissioner for Human Rights would have raised at that time.

I am aware that some of the same people have given me a similar welcome — I've seen the posters — but I am pleased that in the new environment in Sri Lanka, all voices, including the moderate voices of civil society, can at last be heard, even if sometimes the voices of hatred and bigotry are still shouting the loudest, and as a result are perhaps being listened to more than they deserve.

Sri Lanka has come a long way in the past year, as you, the media, are only too aware — given the much greater freedom you now have to write what you wish to write, and report what you feel you should report. The element of fear has considerably diminished, at least in Colombo and the South. In the North and the East, it has mutated but, sadly, still exists.

Virtually everyone agrees there has been progress, although opinions differ markedly about the extent of that progress. The 'white van' abductions that operated outside all norms of law and order, and — as intended — instilled fear in the hearts of journalists, human rights defenders and others who dared criticise the Government or State security institutions, are now very seldom reported. The number of torture complaints has been reduced but new cases continue to emerge — as two recent reports, detailing some disturbing alleged cases that occurred in 2015, have shown — and police all too often continue to resort to violence and excessive force.

Several recent highly symbolic steps have been taken that have had a positive impact on inter-communal relations, including the decision taken to sing the national anthem in both Sinhala and Tamil on Independence Day, for the first time since the early 1950s. The following day, in a reciprocal gesture, the Chief Minister of the Northern Province paid a respectful visit to a Buddhist temple in Jaffna. And in January, the President pardoned the convicted LTTE prisoner who once plotted to assassinate him. These are significant steps on the path of reconciliation between these two communities, both of which bear their own deep scars from the years of conflict. I was pleased to learn that some major inter communal events are planned in the North and East to bring together large numbers of young people from all across Sri Lanka. In both provinces, the Governors are now civilians, which is another key improvement.

One of the most important long-term achievements over the past year has been the restoration of the legitimacy and independence of Sri Lanka's Human Rights Commission. The appointment of new leadership of great integrity, through the proper constitutional process, offers a new start to revitalise this all-important national institution. I hope the Government will now swiftly provide it with the resources, and above all the institutional respect it needs, to enable it to fulfil its great potential, not only to provide human rights protection for all Sri Lankans, but also to offer expert advice on laws and policies from a human rights perspective.

Despite these advances — and others I have not mentioned — after nearly 30 years of conflict and acrimony, that not only cost tens of thousands of lives but also eroded so many vital components of the State, Sri Lanka is still in the early stages of renewal.

During this visit, I have met Sinhalese, Muslim and Tamil victims of the ruthless LTTE and other paramilitary groups. Family members of those who were assassinated. Mothers of children who were abducted or recruited. Muslims from the north who were forcibly evicted and expelled from their homes. Mothers of soldiers who never returned, and some of the many thousands of war widows from both sides. I am all too conscious of the suffering and fear that the years of bombings, killings and other abuses inflicted on this society.

I also met the mothers and wives of people who were apprehended, or surrendered to the security forces, and then disappeared. I have met relatives of people who have been in detention for years, without being charged with any crime, or who were charged solely on the basis of allegedly forced confessions. I met one woman carrying the emotional scars of her rape by security forces nearly 30 years ago during the JVP insurgency. Her pain, and that of all these victims and their families is terrible to behold, and it is cruel to prolong it if ways of alleviating it are available.

Distracted by this conflict, Sri Lanka has also failed to address critical issues facing women, people with disabilities, people with different sexual orientations, and other groups suffering discrimination such as the Plantation Tamils in Central Sri Lanka. I hope that these and other neglected or discriminated-against groups and minorities will now receive the attention they deserve, not least in the constitutional re-form process.

Repairing the damage done by a protracted conflict is a task of enormous complexity, and the early years are crucial. If mistakes are made, or significant problems are downplayed or ignored during the first few years, they become progressively harder to sort out as time goes on. While the glass is still molten, if you are quick and skilful, you can shape it into a fine object that will last for years. Once it starts to harden in misshapen form, it becomes more and more difficult to rectify. Likewise if any of the four key elements of post conflict resolution — truth-telling, accountability, reparations and institutional reform — are neglected or mishandled, unresolved resentments will fester, new strains will emerge, and a tremendous opportunity to establish long-term stability, which in turn should result in greater prosperity, will be lost.

In the case of Sri Lanka, large parts of the country have been physically, politically, socially and economically separated from each other to a greater or lesser degree for much of the past three decades, and the effort to rebuild trust in the State, and between communities, will take years of political courage, determination and skilled coordination and planning.

When you visit Colombo, you see a bustling city, a mass of construction sites, clean streets, and flourishing businesses. You see a thriving tourist industry.

When you visit the North and the East, you see, in patches at least, damaged and depressed areas, poverty and continued displacement. Signs of physical development, certainly. And positive vision and ambitions among the

elected representatives. But also more ominous signs of hopes that are not yet bearing fruit, and optimism that is already showing some signs of souring.

While there is much support for the very important proposed Constitutional reform, which should ensure that the rights of all Sri Lankans are fully recognised, there are also fears that at a later stage this may be achieved at the expense of other equally important processes such as truth-telling, justice and accountability.

While the Task Force appointed to lead the National Consultation process includes high quality representatives of civil society, there are concerns — including among the Task Force members themselves — that the process is too rushed and has not been properly planned or adequately resourced.

There are some measures that could be taken quickly which would reverse this trend of draining confidence. First of all, the military needs to accelerate the return of land it has seized and is still holding to its rightful owners. While some land has been returned in the Jaffna and Trincomalee areas, there are still large tracts which can and should be swiftly given back. Once the land has been given back, the remaining communities of displaced people can — if given the necessary assistance — return home, and a lingering sore will have been cured once and for all. In parallel, the size of the military force in the North and the East can be reduced to a level that is less intrusive and intimidating, as a first step in security sector reform.

The Government must also quickly find a formula to charge or re-lease the remaining security-related detainees. In addition, the Prime Minister's recent statement that nearly all the disappeared persons are dead has created great distress among their families, who until then still had hope. This statement must be followed by rapid action to identify precisely who is still alive and who has died or been killed, properly account for their deaths — including whether or not they were unlawful — identify the location of their remains, and provide redress.

High on the agenda in every meeting I have had here, of course, were issues relating to the implementation of the resolution adopted by the UN Human Rights Council on 1 October last year, a resolution that was co-sponsored by Sri Lanka and agreed with the consensus of all 47 Member States of the Council. The resolution laid out an eminently sensible pathway for the country to follow, and my Office was charged with following up on its implementation, including by reporting back to the Council on progress — or lack of it — next June, and again in March 2017.

The Human Rights Council resolution, and the comprehensive report on which it was based, and which it endorsed, aim to promote reconciliation, accountability and human rights. The release of the report, and the ensuing resolution, unleashed a great surge of hope that finally we were all turning a corner in terms of starting to fully recognise what happened during the final years of Sri Lanka's hugely corrosive and tragic conflict.

The Human Rights Council resolution was in many ways a reflection of the reform agenda that Sri Lankans had voted for in last year's Presidential and Parliamentary elections. It sets out some of the tough steps that must be taken to achieve reconciliation and accountability and, through them, lasting peace.

There are many myths and misconceptions about the resolution, and what it means for Sri Lanka. It is not a gratuitous attempt to interfere with or undermine the country's sovereignty or independence. It is not some quasi-colonial act by some nebulous foreign power. The acceptance of the resolution was a moment of strength, not weakness, by Sri Lanka. It was the country's commitment to both itself and to the world to confront the past honestly and, by doing that, take out comprehensive insurance against any future devastating outbreak of inter communal tensions and conflict.

The world wants Sri Lanka to be a success story. It has seen the opportunity for lasting success in Sri Lanka, and that is why it has invested so much time and energy into providing that pathway laid down in last October's Human Rights Council resolution. I urge all Sri Lankans to make an effort to understand what that resolution and the report underpinning it actually say, and I urge all those in a position to do so, to make a greater effort to explain why the recommendations are so important, and why the United Nations and all those individual States — Sri Lanka included — endorsed them. Then perhaps the siren voices, who wish to undermine all reforms, all attempts to provide justice, accountability and reconciliation, will get less traction. The people who are trying to undermine confidence in these crucial initiatives are playing a game that is endangering the future peace and stability of this country.

For a country to be stable, to be a success, it needs to have a strong, impartial and credible justice system. The security services and the judiciary must function in the interests of all its citizens. And it was in these areas, that the country's key institutions were seriously corroded and corrupted during three decades of conflict and human rights violations, including through its reliance on the draconian Prevention of Terrorism Act and other emergency powers. And it is the integrity of these institutions, which depends on having the trust of the population, that the international community is trying hard to help Sri Lanka restore through the implementation of the recommendations contained in the report and in the resolution.

Sri Lanka has many excellent judges, lawyers, and law enforcement officials. But over the years the system they depended on, and which depends on them, became highly politicised, unbalanced, unreliable. The country's history over the past few decades is littered with judicial failures. Virtually all Sri Lankans recognise this, and the Prime Minister commented on it at great length, and with admirable candour, during a 27 January debate in Parliament. Virtually every week provides a new story of a failed investigation, a mob storming a court-room, or another example of a crime going unpunished. Sexual violence and harassment against women and girls is particularly poorly handled by the relevant State institutions — especially when the alleged perpetrators are members of the military or security services — and, as a result it remains all too widespread.

It is for these reasons that the report and the Human Rights Council resolution suggest international participation in the accountability mechanisms set up to deal with international crimes and gross human rights violations committed by individuals on both sides. This is a practical proposal to solve the very real and practical problems I mentioned earlier. But it is only one aspect — albeit a very important one — of the broad range of measures outlined in the 2015 UN re-port and resolution, and the extent to which it has been allowed to dominate the debate in Sri Lanka in recent days is unfortunate. Extreme nationalistic tendencies lay at the heart of Sri Lanka's conflict, and they should not be allowed to undermine the country's long term chances of recovery once again.

Only a year ago, large numbers of Sri Lankans voted for change, for reconciliation, for truth, for justice. It would be a great shame if a minority of extreme voices — on both sides — who are bent on disruption, were allowed to prevail by creating fear where there should be hope. Sri Lanka needs a serious debate about these very serious issues, on which its future depends. This needs to start with a thorough, frank and honest discussion of the detailed findings of the September 2015 UN report, as it is important that all Sri Lankans rally behind the process and better understand the point of view of all the victims on all sides.

The Government has shown the will to make great changes. But from the victims in the North and in the East, and also from some of the wisest analysts here in Colombo, I have heard fears that the Government may be wavering on its human rights commitments. I was therefore reassured this morning to hear both the President and the Prime Minister state their firm conviction in this regard.

Let me make it as plain as I can: the international community wants to welcome Sri Lanka back into its fold without any lingering reservations. It wants to help Sri Lanka become an economic powerhouse. It wants Sri Lanka's armed forces to face up to the stain on their reputation, so that they can once again play a constructive role in international peace-keeping operations, and command the full respect that so many of their members deserve.

But for all that to come to fruition, Sri Lanka must confront and defeat the demons of its past. It must create institutions that work, and en-sure accountability. It must seize the great opportunity it currently has to provide all its people with truth, justice, security and prosperity. I, for my part, will do all in my power to help that come about, and will continue to offer the services of my Office to accompany Sri Lanka through this very difficult process.

Thank you

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

From: SEA
Sent: Friday, 12 February 2016 3:00 p.m.
To: GENEVA
Cc: NEW DELHI; SEA; UNHC
Subject: FW: Report on UN Commissioner for Human Rights mission to Sri Lanka

Categories: Red Category

Out of scope

In addition to our original message below, we add the following summary of the UN High Commissioner for Refugees' report for your reference and convenience. We would be most interested in UNHCR's assessment of the High Commissioner's understandings he feels he extracted from the visit and how these set up next steps for international – particularly UN-led – participation in the reconciliation and accountability process in Sri Lanka.

Stephen

The Commissioner's full statement is below. It is a rich account, with the theme encapsulated in his closing remark: "Sri Lanka must confront and defeat the demons of its past. It must create institutions that work, and ensure accountability. It must seize the great opportunity it currently has to provide all its people with truth, justice, security and prosperity." Among the key elements are:

- Zeid commended the new Govt for enabling a "more friendly, cooperative and encouraging " visit than his predecessor's in Aug 2013;
- He noted a marked change in atmosphere in SL: "The element of fear has considerably diminished" – though it lingers in the north and east;
- The Govt has taken many symbolic and important steps to demonstrate its commitment to reconciliation. Among them is the restoration of legitimacy of the SL Human Rights Commission, though other key civil institutions are "still in an early state of renewal";
- "Distracted by this conflict, Sri Lanka has also failed to address critical issues facing women, people with disabilities, people with different sexual orientations, and other groups suffering discrimination such as the Plantation Tamils in Central Sri Lanka." Another priority will be restoring land confiscated or occupied by the military to its rightful owners. This would help offset the waning confidence in the National Consultation process as being too rushed and too superficial;
- The PM's statement that all missing persons are dead has caused great distress for their families and must be followed by a rigorous process of finding and identifying remains, and bringing to account those who killed them;
- The world wants Sri Lanka to be a success story. It has seen the opportunity for lasting success in Sri Lanka, and that is why it has in-vested so much time and energy into providing that pathway laid down in last October's Human Rights Council resolution. "The acceptance of the resolution [by SL; the resolution was passed by consensus] was a moment of strength, not weak-ness, by Sri Lanka. It was the country's commitment to both itself and to the world to confront the past honestly and, by doing that, take out comprehensive insurance against any future devastating outbreak of inter communal tensions and conflict."
- Zeid urges SL to engage on the findings and recommendations of the Sept 2015 UN report, which the HRC will review in June, then March 2017;
- SL'ds justice system has atrophied during the years of conflict and their immediate aftermath, and need to be restored as a central pillar of public confidence and international credibility. "It is for these reasons that the report and the Human Rights Council resolution suggest international participation in the accountability mechanisms set up to deal with international crimes and gross hu-man rights violations committed by individuals on both sides."

- The SL armed forces need to “face up to the stain on their reputation” and resume a role in peace-keeping operations.

From: [REDACTED] **9(2)(a)**
Sent: Thursday, 11 February 2016 5:08 p.m.
To: NEW DELHI
Cc: GENEVA; GENEVA; SEA; UNHC
Subject: Report on UN Commissioner for Human Rights mission to Sri Lanka

In advance of the PM’s visit we would welcome a summary and analysis of the following statement, delivered yesterday. This statement, and the Commissioner’s four-day fact-finding visit to Sri Lanka, arose in discussion between Minister McCully and the new Sri Lankan High Commissioner to NZ, Skandakumar, today.

As you are aware, even without a pending PM visit there is high political interest in human rights developments in Sri Lanka. We would be grateful for your sense of how the UN-led and internal processes are developing and prospects for elements within them to converge.

Many thanks

[REDACTED] **9(2)(a)**

Statement by UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein at the end of his mission to Sri Lanka

Colombo, 9 February 2016

Good afternoon, and thank you for coming.

I come to you shortly after wrapping up my visit here with meetings with President Maithripala Sirisena and Prime Minister Ranil Wickre-mesinghe and the Leader of the Opposition, in which we discussed a wide range of issues that will have an important bearing on the future of Sri Lanka. Since arriving here on Saturday, I have also met the Ministers of Foreign Affairs, Justice, National Dialogue, and Prison Reforms, Rehabilitation and Resettlement, as well as the Defence Secretary, Chief of Defence Staff, Army and Air Force Commanders and the Chief of Staff of the Navy.

In addition, here in Colombo, I visited the Human Rights Commission of Sri Lanka, and the Task Force that will lead the forthcoming National Consultations on transitional justice. I also met a number of Sri Lanka’s finest thinkers and analysts, including members of its vibrant civil society organizations.

On Sunday, I visited the Northern and Eastern Provinces, where I met the Chief Ministers and members of the Provincial Councils as well as the Governors, and yesterday morning I was honoured to visit the revered Sri Dalada Maligawa, or Temple of the Sacred Tooth in Kandy, where I was graciously received by the Mahanayakas (Chief Monks) of the Malwatte

and Asgiriya Chapters. I am very grateful to them for according me this great privilege, as well as to the members of the Hindu, Muslim and Christian communities I met in Colombo, Jaffna and Trincomalee.

This has been a much more friendly, cooperative and encouraging visit than the one my predecessor endured in August 2013, which as you may recall was marred by vituperative attacks on her integrity, simply because she addressed a number of burning human rights issues that any High Commissioner for Human Rights would have raised at that time.

I am aware that some of the same people have given me a similar welcome — I've seen the posters — but I am pleased that in the new environment in Sri Lanka, all voices, including the moderate voices of civil society, can at last be heard, even if sometimes the voices of hatred and bigotry are still shouting the loudest, and as a result are perhaps being listened to more than they deserve.

Sri Lanka has come a long way in the past year, as you, the media, are only too aware — given the much greater freedom you now have to write what you wish to write, and report what you feel you should report. The element of fear has considerably diminished, at least in Colombo and the South. In the North and the East, it has mutated but, sadly, still exists. Virtually everyone agrees there has been progress, although opinions differ markedly about the extent of that progress. The 'white van' abductions that operated outside all norms of law and order, and — as intended — instilled fear in the hearts of journalists, human rights defenders and others who dared criticise the Government or State security institutions, are now very seldom reported. The number of torture complaints has been reduced but new cases continue to emerge — as two recent reports, detailing some disturbing alleged cases that occurred in 2015, have shown — and police all too often continue to resort to violence and excessive force.

Several recent highly symbolic steps have been taken that have had a positive impact on inter-communal relations, including the decision taken to sing the national anthem in both Sinhala and Tamil on Independence Day, for the first time since the early 1950s. The following day, in a reciprocal gesture, the Chief Minister of the Northern Province paid a respectful visit to a Buddhist temple in Jaffna. And in January, the President pardoned the convicted LTTE prisoner who once plotted to assassinate him. These are significant steps on the path of reconciliation between these two communities, both of which bear their own deep scars from the years of conflict. I was pleased to learn that some major inter-communal events are planned in the North and East to bring together

large numbers of young people from all across Sri Lanka. In both provinces, the Governors are now civilians, which is another key improvement.

One of the most important long-term achievements over the past year has been the restoration of the legitimacy and independence of Sri Lanka's Human Rights Commission. The appointment of new leadership of great integrity, through the proper constitutional process, offers a new start to revitalise this all-important national institution. I hope the Government will now swiftly provide it with the resources, and above all the institutional respect it needs, to enable it to fulfil its great potential, not only to provide human rights protection for all Sri Lankans, but also to offer expert advice on laws and policies from a human rights perspective.

Despite these advances — and others I have not mentioned — after nearly 30 years of conflict and acrimony, that not only cost tens of thousands of lives but also eroded so many vital components of the State, Sri Lanka is still in the early stages of renewal.

During this visit, I have met Sinhalese, Muslim and Tamil victims of the ruthless LTTE and other paramilitary groups. Family members of those who were assassinated. Mothers of children who were abducted or recruited. Muslims from the north who were forcibly evicted and expelled from their homes. Mothers of soldiers who never returned, and some of the many thousands of war widows from both sides. I am all too conscious of the suffering and fear that the years of bombings, killings and other abuses inflicted on this society.

I also met the mothers and wives of people who were apprehended, or surrendered to the security forces, and then disappeared. I have met relatives of people who have been in detention for years, without being charged with any crime, or who were charged solely on the basis of allegedly forced confessions. I met one woman carrying the emotional scars of her rape by security forces nearly 30 years ago during the JVP insurgency. Her pain, and that of all these victims and their families is terrible to behold, and it is cruel to prolong it if ways of alleviating it are available.

Distracted by this conflict, Sri Lanka has also failed to address critical issues facing women, people with disabilities, people with different sexual orientations, and other groups suffering discrimination such as the Plantation Tamils in Central Sri Lanka. I hope that these and other neglected or discriminated-against groups and minorities will now receive the attention they deserve, not least in the constitutional reform process.

Repairing the damage done by a protracted conflict is a task of enormous complexity, and the early years are crucial. If mistakes are made, or significant problems are downplayed or ignored during the first few years, they become progressively harder to sort out as time goes on. While the glass is still molten, if you are quick and skilful, you can shape it into a fine object that will last for years. Once it starts to harden in misshapen form, it becomes more and more difficult to rectify. Likewise if any of the four key elements of post conflict resolution — truth-telling, accountability, reparations and institutional reform — are neglected or mishandled, unresolved resentments will fester, new strains will emerge, and a tremendous opportunity to establish long-term stability, which in turn should result in greater prosperity, will be lost.

In the case of Sri Lanka, large parts of the country have been physically, politically, socially and economically separated from each other to a greater or lesser degree for much of the past three decades, and the effort to rebuild trust in the State, and between communities, will take years of political courage, determination and skilled coordination and planning.

When you visit Colombo, you see a bustling city, a mass of construction sites, clean streets, and flourishing businesses. You see a thriving tourist industry.

When you visit the North and the East, you see, in patches at least, damaged and depressed areas, poverty and continued displacement. Signs of physical development, certainly. And positive vision and ambitions among the elected representatives. But also more ominous signs of hopes that are not yet bearing fruit, and optimism that is already showing some signs of souring.

While there is much support for the very important proposed Constitutional reform, which should ensure that the rights of all Sri Lankans are fully recognised, there are also fears that at a later stage this may be achieved at the expense of other equally important processes such as truth-telling, justice and accountability.

While the Task Force appointed to lead the National Consultation process includes high quality representatives of civil society, there are concerns — including among the Task Force members themselves — that the process is too rushed and has not been properly planned or adequately resourced.

There are some measures that could be taken quickly which would reverse this trend of draining confidence. First of all, the military needs to accelerate the return of land it has seized and is still holding to its rightful owners. While some land has been returned in the Jaffna and

Trincomalee areas, there are still large tracts which can and should be swiftly given back. Once the land has been given back, the remaining communities of displaced people can — if given the necessary assistance — return home, and a lingering sore will have been cured once and for all. In parallel, the size of the military force in the North and the East can be reduced to a level that is less intrusive and intimidating, as a first step in security sector reform.

The Government must also quickly find a formula to charge or re-lease the remaining security-related detainees. In addition, the Prime Minister's recent statement that nearly all the disappeared persons are dead has created great distress among their families, who until then still had hope. This statement must be followed by rapid action to identify precisely who is still alive and who has died or been killed, properly account for their deaths — including whether or not they were unlawful — identify the location of their remains, and provide redress.

High on the agenda in every meeting I have had here, of course, were issues relating to the implementation of the resolution adopted by the UN Human Rights Council on 1 October last year, a resolution that was co-sponsored by Sri Lanka and agreed with the consensus of all 47 Member States of the Council. The resolution laid out an eminently sensible pathway for the country to follow, and my Office was charged with following up on its implementation, including by reporting back to the Council on progress — or lack of it — next June, and again in March 2017.

The Human Rights Council resolution, and the comprehensive report on which it was based, and which it endorsed, aim to promote reconciliation, accountability and human rights. The release of the report, and the ensuing resolution, unleashed a great surge of hope that finally we were all turning a corner in terms of starting to fully recognise what happened during the final years of Sri Lanka's hugely corrosive and tragic conflict.

The Human Rights Council resolution was in many ways a reflection of the reform agenda that Sri Lankans had voted for in last year's Presidential and Parliamentary elections. It sets out some of the tough steps that must be taken to achieve reconciliation and accountability and, through them, lasting peace.

There are many myths and misconceptions about the resolution, and what it means for Sri Lanka. It is not a gratuitous attempt to interfere with or undermine the country's sovereignty or independence. It is not some quasi-colonial act by some nebulous foreign power. The acceptance of the resolution was a moment of strength, not weakness, by Sri Lanka. It

was the country's commitment to both itself and to the world to confront the past honestly and, by doing that, take out comprehensive insurance against any future devastating outbreak of inter communal tensions and conflict.

The world wants Sri Lanka to be a success story. It has seen the opportunity for lasting success in Sri Lanka, and that is why it has invested so much time and energy into providing that pathway laid down in last October's Human Rights Council resolution. I urge all Sri Lankans to make an effort to understand what that resolution and the report underpinning it actually say, and I urge all those in a position to do so, to make a greater effort to explain why the recommendations are so important, and why the United Nations and all those individual States — Sri Lanka included — endorsed them. Then perhaps the siren voices, who wish to undermine all reforms, all attempts to provide justice, accountability and reconciliation, will get less traction. The people who are trying to undermine confidence in these crucial initiatives are playing a game that is endangering the future peace and stability of this country. For a country to be stable, to be a success, it needs to have a strong, impartial and credible justice system. The security services and the judiciary must function in the interests of all its citizens. And it was in these areas, that the country's key institutions were seriously corroded and corrupted during three decades of conflict and human rights violations, including through its reliance on the draconian Prevention of Terrorism Act and other emergency powers. And it is the integrity of these institutions, which depends on having the trust of the population, that the international community is trying hard to help Sri Lanka restore through the implementation of the recommendations contained in the report and in the resolution.

Sri Lanka has many excellent judges, lawyers, and law enforcement officials. But over the years the system they depended on, and which depends on them, became highly politicised, unbalanced, unreliable. The country's history over the past few decades is littered with judicial failures. Virtually all Sri Lankans recognise this, and the Prime Minister commented on it at great length, and with admirable candour, during a 27 January debate in Parliament. Virtually every week provides a new story of a failed investigation, a mob storming a court-room, or another example of a crime going unpunished. Sexual violence and harassment against women and girls is particularly poorly handled by the relevant State institutions — especially when the alleged perpetrators are members of the military or security services — and, as a result it remains all too widespread.

it is for these reasons that the report and the Human Rights Council resolution suggest international participation in the accountability mechanisms set up to deal with international crimes and gross human rights violations committed by individuals on both sides. This is a practical proposal to solve the very real and practical problems I mentioned earlier. But it is only one aspect — albeit a very important one — of the broad range of measures outlined in the 2015 UN report and resolution, and the extent to which it has been allowed to dominate the debate in Sri Lanka in recent days is unfortunate. Extreme nationalistic tendencies lay at the heart of Sri Lanka's conflict, and they should not be allowed to undermine the country's long term chances of recovery once again. Only a year ago, large numbers of Sri Lankans voted for change, for reconciliation, for truth, for justice. It would be a great shame if a minority of extreme voices — on both sides — who are bent on disruption, were allowed to prevail by creating fear where there should be hope. Sri Lanka needs a serious debate about these very serious issues, on which its future depends. This needs to start with a thorough, frank and honest discussion of the detailed findings of the September 2015 UN report, as it is important that all Sri Lankans rally behind the process and better understand the point of view of all the victims on all sides.

The Government has shown the will to make great changes. But from the victims in the North and in the East, and also from some of the wisest analysts here in Colombo, I have heard fears that the Government may be wavering on its human rights commitments. I was therefore reassured this morning to hear both the President and the Prime Minister state their firm conviction in this regard.

Let me make it as plain as I can: the international community wants to welcome Sri Lanka back into its fold without any lingering reservations. It wants to help Sri Lanka become an economic powerhouse. It wants Sri Lanka's armed forces to face up to the stain on their reputation, so that they can once again play a constructive role in international peace-keeping operations, and command the full respect that so many of their members deserve.

But for all that to come to fruition, Sri Lanka must confront and defeat the demons of its past. It must create institutions that work, and ensure accountability. It must seize the great opportunity it currently has to provide all its people with truth, justice, security and prosperity. I, for my part, will do all in my power to help that come about, and will continue to offer the services of my Office to accompany Sri Lanka through this very difficult process.

Thank you

9(2)(a)

From: SEA
Sent: Monday, 1 February 2016 9:25 a.m.
To: NEW DELHI
Cc: SEA
Subject: RE: FORMAL MESSAGE: Sri Lanka: Constitutional Review Underway

Categories: Red Category

Out of scope

From: NEW DELHI
Sent: Friday, 29 January 2016 9:53 p.m.
To: SEA
Cc: DS AAG; FM.P/S MFA; RIYADH; CANBERRA; CEO; LONDON; NEW DELHI; AUCKLAND; BEIJING; ...EAS POSTS; LONDON; VIENNA; GENEVA; FM.DPMC (FPA); WASHINGTON; NEW YORK; DCE; NEW DELHI; FM.NAB (Seemail); IDG GLO; NAD; ...COMMONWEALTH POSTS
Subject: FORMAL MESSAGE: Sri Lanka: Constitutional Review Underway

Summary

Consistent with President Sirisena's election pledge, the Sri Lankan Government has proposed the drafting of a new national constitution, replacing its current constitution of 1978. If enacted as envisaged, the constitution will devolve power from the centre and put in place mechanisms designed to help prevent a re-emergence of the ethnic tensions that led to Sri Lanka's 30-year civil war. The announcement occurs at the end of the Sirisena-led Government's first year in office and is in keeping with the latest UNHRC Resolution on Sri Lanka, which Sri Lanka and New Zealand co-sponsored.

Action

For Information.

Report

Constitutional reform underway:

On 9 January, Sri Lankan Prime Minister Ranil Wickremesinghe presented to Parliament a resolution calling for the drafting of a new national constitution, replacing the current constitution of 1978. The resolution calls for the establishment of a Constitutional Assembly consisting of all 225 Members of Parliament and the formation of a steering committee tasked with driving the constitutional drafting process.

2 Consistent with election pledges by President Sirisena in 2014/15 and the Government's co-sponsorship of the 1 October 2015 UNHRC resolution on Sri Lanka, the Executive Presidency and its executive powers are to be diluted, with greater future emphasis on parliamentary governance. On presenting the Resolution, Prime Minister Wickremesinghe said the Government wished to establish a "political culture that respects the rule of law." The resolution was timed to coincide with the anniversary of President Sirisena's first year in office, as a further marker of reforms underway.

Early signs promising:

3 The process so far has been encouraging. Unlike past constitutional reform, when Governments have typically imposed their vision of the future on Parliament and used super majorities to push through changes, the Sirisena/Wickremesinghe Government has consciously avoided using its two thirds majority in favour of a public and political consultation process. This has built up a degree of genuine, and in Sri Lankan terms rare, bipartisan support. The willingness of the Opposition to engage in presenting amendments to the resolution before it was presented to Parliament was a welcome sign of their buy-in to the broader constitutional reform process.

Some opposition, nevertheless...

4 There are still naysayers. Critics of the constitutional reform process, led by former President Rajapaksa, have accused the Government of attempting to undermine the unitary nature of Sri Lankan government in favour of a populist "federalist" system that undermines the primacy of Buddhism and Sri Lanka's 'Buddhist identity'. The Government has rejected these claims as alarmist and argued that greater inclusiveness is a fundamental ingredient of Sri Lanka's post-war reconciliation.

...but a historic 'win' too.

5 Strengthening democracy, by way of drawing in the minorities and allowing for some form of ethnic pluralism, is an open aim of the Government's reform agenda. At this point in the process, Tamil minorities remain on board, as shown by their absence from public criticism or challenge. In fact, the tacit participation of Tamil parties in reform is a historic first as they boycotted the last two major constitutional reforms in 1972 and 1978.

Next steps:

6 The process establishing the new steering committee charged with drafting the Constitutional Amendment Bill is now underway. The Bill will need to achieve a two-thirds majority of Parliament (i.e. 150 votes in favour) to be passed. It will then require final approval through a public referendum before being enacted. The Government has set an ambitious target of having the new constitution drafted and approved within six months of having presented the resolution (i.e. by July 2016). Local body elections have been postponed by six months to clear the way for the national consultation process

6(a)

7 Both President Sirisena and Prime Minister Wickremesinghe have stated publicly that drafting of the new constitution is to be a domestic-led process, without external (foreign) involvement. While some in opposition have argued this is to protect the Government from criticism, the Government's counterclaim is that it will help ensure the reform agenda and its outcomes are locally-derived and owned.

Comment:

8 Sri Lanka clearly still has challenges ahead as it contends with the long process of community and political reconciliation following a civil conflict in which approximately 100,000 were killed and sections of its community exiled. Among the drivers of the constitutional reform process is the need to create political, social and symbolic breaks from the past.

9 Drafting will be challenging, with the requirement to reconcile the interests of Sri Lanka's various ethnic and religious communities and to strike a new and acceptable balance between central and provincial-level decision-making. But, there are now encouraging and tangible signs of a bipartisan movement, led by President Sirisena and Prime Minister Wickremesinghe (who are themselves from opposing parties), behind delivering genuine political reform.

10 The New Zealand Prime Minister's visit to Sri Lanka next month will provide an opportunity for us to seek a first-hand a read-out on the pathway ahead and the Government's level of confidence in achieving a substantive and lasting outcome. It will also enable New Zealand to continue to show our active encouragement and support for Sri Lanka in developing a more open, accountable and transparent democracy that recognises the rights and aspirations of all Sri Lankan communities.

ENDs

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

9(2)(a)

From: GENEVA
Sent: Thursday, 15 October 2015 10:50 a.m.
To: UNHC
Cc: DS MLG; FM.P/S MFA; FM.DPMC (FPA) (contact); ...UNSC DIVISIONS; ...UNSC POSTS; DS APE; BANGKOK; GENEVA
Subject: FORMAL MESSAGE: HUMAN RIGHTS COUNCIL: WRAP-UP OF 30TH SESSION (HRC30)

From: GENEVA
Sent: Monday, 12 October 2015 10:33 a.m.
To: UNHC
Cc: DS MLG; FM.P/S MFA; FM.DPMC (FPA) (contact); ...UNSC DIVISIONS; ...UNSC POSTS; DS APE; BANGKOK; GENEVA
Subject: RE: FORMAL MESSAGE: HUMAN RIGHTS COUNCIL: PREVIEW OF 30TH SESSION

Summary

We report on the key issues addressed at the September session of the Human Rights Council (HRC30). [REDACTED]

[REDACTED] **Out of scope** Reconciliation and accountability in Sri Lanka was a major focus of the session, with Sri Lankan Foreign Minister Samaraweera setting a positive tone with his statement announcing a range of potentially far-reaching domestic reform measures, and Sri Lanka cosponsoring the resolution for follow-up to the OHCHR investigation. [REDACTED]

[REDACTED] **Out of scope**

Action

For information.

Report

1 The 30th Session of the Human Rights Council (HRC30) took place in Geneva from 14 September – 2 October. Below we summarise key points of the session, with statements made during the interactive dialogues and panels attached. New Zealand maintained a strong profile during HRC30 through constructive engagement in a wide range of thematic and country-specific resolutions and by hosting side-events on disabilities and maternal mortality. Final versions of adopted resolutions can be found at:

<https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/30thSession/Pages/Resolutions.aspx> [REDACTED]

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[REDACTED]

Out of scope

[REDACTED]

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Presentation of OHCHR report on Sri Lanka followed by discussion

26 As detailed in our FM of 1 October, the High Commissioner for Human Rights formally presented the OHCHR report on Sri Lanka, delivering a statement that both recognised recent progress made by the Sri Lankan government while highlighting the significant challenges that remain for the accountability and reconciliation process. On 1 October the resolution promoting reconciliation, accountability and human rights in Sri Lanka was adopted by the Human Rights Council by consensus. Sri Lanka endorsed the resolution as a way of “encouraging and inspiring the Government and people of Sri Lanka”, and noted its eagerness to work with OHCHR in follow-up work.

[REDACTED]

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