



76th Session of the Main Part of the Administrative and Budgetary Questions (Fifth Committee)

138. Proposed programme budget 2022

Revised estimates resulting from resolutions and decisions adopted by the Human Rights Council at its forty-sixth, forty-seventh and forty-eighth regular sessions, and at its thirtieth, thirty-first and thirty-second special sessions

Statement by the Delegation of Sri Lanka

Mr. Chairman,
Distinguished Delegates,

I have the honour to refer to the Report of the Secretary General contained in document A/76/524 entitled 'Revised estimates resulting from resolutions and decisions adopted by the Human Rights Council at its forty-sixth, forty-seventh and forty-eighth regular sessions, and at its thirtieth, thirty-first and thirty-second special sessions' which has indicated the resource requirements relating to the Human Rights Council resolution 46/1 Promoting reconciliation, accountability and human rights in Sri Lanka, and the related report of the Advisory Committee on Administrative and Budgetary Questions.

Mr. Chairman,

At the outset, may I respectfully recall that the founding premise of any UN activity must be within the parameters of the UN Charter, which mandates the principle of sovereign equality of all its Members, and that the UN and its organs shall not intervene in matters which are essentially within the domestic jurisdiction of a Member State. It must be appreciated that since May 2009, Sri Lanka has enjoyed complete peace and therefore even the very thought of any interference with our domestic mechanisms would be repugnant to the spirit of the Charter.

Mr. Chairman,

It is regrettable that despite the spirit of cooperation of the Government of Sri Lanka with the Human Rights Council (HRC) and its mechanisms, Member States antagonistic to Sri Lanka have adopted this country-specific resolution, by a divided vote, based on an unsubstantiated OHCHR Report. The Government of Sri Lanka rejected the High Commissioner's Report which has unjustifiably widened its scope and mandate, incorporating many issues of governance and matters that are essentially within the domestic sphere of a sovereign State. It is of singular

importance to note, that for a period of five years from 2015-2019, the matters that formed the gravamen of the alleged human rights violations in Resolution 46/1 has been confined to the limbo of forgotten things, only to re-emerge as a ghost of the past reawakened by a change of Government in Sri Lanka in 2019 with which the sponsoring states of the resolution appear to be uncomfortable. It must be noted that the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC) followed by a Report titled 'The Paranagama Report' in 2015 had made certain recommendations addressing the entire canvass of issues to the Government of that time which paid scant regard to such recommendations. However, the Human Rights Council did not attach any seriousness in respect of such default and remained silent for five years. The reasons for such double standards are not difficult to guess.

Mr. Chair and distinguished delegates,

Allow me briefly to refer to the contemporary developments. There is presently a Presidential Commission of Inquiry in Sri Lanka which consists of four Commissioners including one female Commissioner, who is a former Mayor of Jaffna (the principal city of the Northern Province) and currently a Member of the Municipal Council of Jaffna. As of date, almost a hundred personnel, including of civil activists, several politicians, representatives of the minority communities, civil society organizations and non-governmental organizations and former combatants (released from custody after rehabilitation) have testified before the Commission which has taken steps to conduct the proceedings in the Northern Province; the former theatre of conflict. This domestic mechanism which is currently in progress has made several recommendations inclusive of the publication of an interim report which has inter-alia recommended that the Prevention of Terrorism Act (PTA) must be revisited, rehabilitated, and reviewed drawing in aid the expertise of the UN with regard to the prevention of terrorism, and that the mechanism of the Advisory Board should be immediately operationalized with a view to the release of detainees in appropriate cases. In operationalization of the interim report, the Government as of date, has released 20 detainees who were held in custody under the PTA.

The Commission's mandate was recently extended as several other stakeholders wished to testify before it. It is understood that the Commission has expressed the view that it would seek to draw in aid the expertise of the UN made available through Special Procedures Mandate Holders and the special rapporteurs in strengthening the role of the Office on Missing Persons (OMP) and the Office for Reparations.

Encouraged by the active response of the Government to the first interim report, the Commission is expected to publish its second interim report shortly. The Commission is assisted by a team of lawyers nominated by the Attorney-General to facilitate the execution of its mandate having regard to the principles laid down in international humanitarian law and the guidelines prescribed by the United Nations.

The Commission is fully supported by the necessary infrastructure and other logistics inclusive of human resources, which the OHCHR is endeavoring to replicate in its request for budgetary provision and other requirements.

Mr. Chair,

It may also be noted that, Mr. Khaled Khiari, UN Assistant-Secretary-General for the Middle East, Asia and the Pacific in the Department of Political and Peace-building Affairs and Peace Operations has undertaken a visit to Sri Lanka recently with a view to following up on the matters raised in the course of the recent visit of H.E. the President of Sri Lanka to the 76th session of the United Nations General Assembly at which these matters came into central focus.

It is therefore brought to the attention of the distinguished member states, that when an ongoing genuine national mechanism is in progress addressing post-conflict issues with a view to reconciliation, a new procedure replicating and supplanting on the mandate of a sovereign state in respect of its own matters would be an exercise in futility that would result in a misplaced appropriation of a substantial sum of money from the member states amounting to USD 2,856,300.

A reading of the plain language in the resolution 46/1 strongly suggests that the High Commissioner in monitoring and reporting of human rights must look to the country mechanism as its natural option, when such an option is available and is effectively in place. This mandate is not an open pass for the High Commissioner to misinterpret the language of the resolution as giving it the authority to request additional one-time requirements.

It cannot be seen or heard to engage in a procedure which seeks to super impose itself on the mechanism of a sovereign nation by a mobilization of a team of legal personnel and investigators who have no *locus-standi* to engage in such activity without the authority of the State which has now rejected the Resolution 46/1 on the basis that it has no constitutional authority to consent to any such procedure.

The Government of Sri Lanka therefore urges the distinguished members of the Fifth Committee to consider the request for allocation of these funds with great caution and care inter-alia for the reasons mentioned herein.

It is a matter of record that Sri Lanka has been actively engaged with many UN mechanisms transparently, has had its doors open to special rapporteurs, mandate holders and representatives of the UN, and is in regular interactions with the UN Resident Coordinator and the Resident Representative of the UNDP in Sri Lanka and other UN Agencies to name a few. The Government is also in active consultations with civil society members and religious groups with a view to sustaining the peace that the country has enjoyed since the end of the conflict in 2009.

Distinguished Delegates,

It is therefore submitted that approval of this revised estimate pro-forma be withheld, as it would be counter-productive and prejudicial to the ongoing Presidential Commission of Inquiry

which is presently hearing evidence with regard to promoting reconciliation, examining matters of accountability and human rights in Sri Lanka.

It may be noted that there is a request to strengthen OHCHR's capacity and to develop possible strategies for future accountability. This expression intrinsically suggests an absence of a definite strategy: a loose arrangement with unprescribed parameters. We are constrained to observe that it is this uncertain agenda that is sought to be pursued with one Senior Legal Advisor at P-5 level, two Legal Advisors at P-4 level, two Analysts at P-3 level, two Investigatory Human Rights Officers, two Investigators/Human Rights Officers, One Information and Evidence Officer and Two Juris-Linguists competent in Sinhala and Tamil.

We are compelled to go back in time and visit the dark old days of the Darusman Report (a private report called for by the Secretary General Ban-Ki Moon), and the recent report of the High Commissioner for Human Rights both of which contains a host of conjectural material upon which the High Commissioner has been had pains to structure the written and oral updates.

It is therefore possible to draw the conclusion that both Darusman and the Human Rights High Commissioner had all the material in their possession to conclusively point the finger at Sri Lanka, setting out a plethora of so-called human rights violations.

It is respectfully submitted that we cannot imagine anything new that the HRC would discover in the future that it ought not to have known at the time of the aforementioned reports were published (12 years after the conflict). It is posit to ask the question as to what greater purpose would be served by the request for the appropriation of USD 2.856 Mn for the setting up of a procedure which would be superfluous in the context that there can be nothing new that the High Commissioner can discover and which in any event is presently under consideration and investigation by the Presidential Commission of Inquiry as mentioned above, unless otherwise for a collateral purpose.

It would appear that the Human Rights Council is seeking to superimpose itself in the position of the Security Council in respect of a matter that is beyond its jurisdiction. It is important to appreciate that the conflict that raged over 30 years ended in 2009. To an enquiring mind, one must begin to ask the question as to what kind of investigation and prosecution that the legal advisors would be required to engage with Geneva as their seat, as to where and when they would hear evidence of witnesses which would be deposited in a central repository and be subject to legal analysis aimed to identify gaps and information and evidence necessary to meet the relevant legal thresholds.

In the absence of a specific, unambiguous, clear mandate, can all these activities viz, staff cost, other staff cost, travel cost, contractual services, analysis of satellite images, general operating expenses inclusive of the rental of the premises, supplies and material, furniture and equipment, grants and contributions to cover the cost of travel of witnesses and related meetings (13 (h)), and conference services (13(i)) be said to be authorized by this Resolution.

It is respectfully submitted that to engage in all these activities would be ultra-vires as being a request for expenditure which has no source of authority.

It might be pertinent to observe that Resolution 60/251 which established the Human Rights Council reaffirms the fact that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and that all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis.

It recognizes that the protection and promotion of human rights should be based on the principle of cooperation and genuine dialogue and aimed at strengthening the capacity of member states to comply with their rights, obligations for the benefits of all human beings. It also decided that the methods of the work of the Council shall be transparent, fair, and impartial and shall enable genuine dialogue and be results-oriented.

We are constrained to ask the question whether this mechanism which seeks to appropriate a substantial amount of money of Member States contributions is consonant with the ideals in the Resolution 60/251?

Mr. Chair,

Sri Lanka is of the expectation that the Fifth Committee will constructively engage with Sri Lanka in relation to this request for resources, which we believe is unwarranted, misplaced and misconceived.

I thank you!