

SPECIAL PRESIDENTIAL COMMISSION OF INQUIRY

Inquiry No.1/95

Written submissions in reply to the submissions made by Mr. K.N.Choksy

1. At the very outset on the question of jurisdiction raised, it is interesting to note that when Mr.Choksy and others were noticed to appear before the Commission on 1.8.95 under section 16 of the Special Presidential Commission of Inquiry Law No.7 of 1978, he voluntarily agreed to cooperate with the Commission and supported the appointment of an Independent Panel of Architects to investigate the construction of the Colombo Hilton Hotel.

Quite apart from raising any objection to the jurisdiction of the Commission he acquiesced in the Commission's investigation into the construction of the Hotel by providing various documents that the Panel of Architects could take into consideration in coming to a finding.

It is, therefore, submitted that Mr. Choksy is now estopped from raising any objection to the jurisdiction of the Commission at this stage.

2. (a) With regard to the procedure adopted by the Commission, it is respectfully submitted that, placing of evidence at the preliminary stage is of investigative nature. This is necessary for the Commission to determine whether there is any person who is in anyway implicated or concerned in the matter under inquiry in terms of section 16 of the Law. This procedure is similar to the provisions of Criminal Procedure Code where the Magistrate is required to record evidence to satisfy himself before issuing a warrant on any person.
- (b) The allegation that ex-parte evidence has been led is totally incorrect as there are no parties before the Commission against whom ex-parte evidence could be led. The term ex-parte envisage a party or parties before Court or Tribunal. In this instance evidence has been placed to

ascertain the parties who are implicated or concerned in the matter. It is only after placing of evidence that Commission can decide whether to notice any party under section 16. The ex-parte procedure will apply only if the party noticed does not appear in response to the notice.

- (c) It is totally incorrect to say that the evidence that had been placed before the Commission has been selective and one-sided and not placed whole facts fairly before the Commission. In addition to Mr. Nihal Sri Amarasekera's evidence, all other evidence that was available were placed before the Commission. This include the officials of the U.D.A., Municipality, Tourist Board, Fire Department and that of Mr. A.B.Seneratne who had spoken to a payment of Japanese Yen 340,000,000 in Hongkong which money is to be used "for payments to influential people" who helped Mr. Cornel Perera to get the approval of the Hilton Project.

It is also interesting to note that entirety of Mr. Nihal Sri Amerasekera's evidence is based on documentary proof. He has placed before the Commission correspondence and Board Minutes to substantiate his evidence.

- (d) According to Mr. Choksy the correct procedure that should have been adopted is to record the evidence in camera and thereafter issue notice under section 9. The practice has always been that Commissions of Inquiry appointed under this Law has always recorded evidence in public. This was so even when Commissions were appointed by the previous governments.

Section 7(1)(e) of the Law gives the power to the Commission to adopt and exclude the public to and from the inquiry. Section 8 of the Law specifically states that every inquiry under this Law shall be deemed to be a judicial proceeding. In a Democratic country all judicial proceedings have to be held in public unless for very special reason it is held in camera. Article 106 of the Constitution specifically states that the sitting of every Court, Tribunal or other institution established under the Constitution ordained and established by Parliament shall .... be held in public. Accordingly, it would be unconstitutional to hold sittings in camera. The exceptions are given in Article 106(2) of the Constitution. The matters before the Commission do not come under these exceptions.

- (e) In any event, the power of the Commission is limited. It has no power to punish persons found guilty of any misuse or abuse of power. It could only report to the President of its findings. Further, in the best interest of parties concerned all the evidence and documents marked in these proceedings were made available to the parties noticed. They are given the opportunity to cross-examine the witnesses and also present fresh evidence when the inquiry proper commences.
3. It is very surprising that a person of the standing of Mr. Choksy has referred to what H.E. the President Chandrika Bandaranayake Kumaratunge has stated about Hilton Hotel Project. There is no doubt that one has to restrict to the evidence led before the Commission. I am yet to discover any evidence led on this point. Further, it would be improper even to imply that the Commission consisting of members of superior Courts, would take into consideration extraneous matters as this mentioned outside the Commission.
4. Mr. Choksy has stated that he was not a Director of the Company at the time Plans were prepared, the building contract entered into and the construction work executed.
- (a) It is submitted that Mr. Choksy was elected to the Board of Directors of Hotel Developers (Lanka) Ltd. On 19.12.86. Not only the public shareholders, but also Mitsui and Taisei had voted to ensure Mr. Choksy's election to replace Mr. M. Radhakrishnan, Attorney-at-Law, who was a Director, since incorporation of Hotel Developers (Lanka) Ltd. upto that point of time.
- (b) At the time Mr. Choksy became a Director in December '86, the Hotel construction was nearing completion and 6 months thereafter, the Hotel opened for operations in July 1987. If Mr. Choksy, as he himself admits now, having not been a Director previously, accordingly had not been familiar with the construction, then how is it, that, he without taking up such position, subsequently, forwarded Letters dated 08.08.'88 and 28.02.'90 on the matter of the very Hotel construction, notwithstanding and disregarding the discrepancies that had been raised previously?

- (c) Contrary to what has been stated by Mr. Choksy, Mr. Amersekere had pointed out major discrepancies in the number of Hotel Rooms available, no sooner the Hotel had opened for operations. Contrary to what Mr. Choksy states, this material discrepancy had been raised by Mr. Amersekere prior to Mr. Choksy's Letter dated 08.08.'88, which stated, inter-alia, that an independent Engineer's examination was not necessary.
- (d) Mr. Choksy's subsequent Letter dated 28.02.'90 was given as admitted therein, on the Memorandum to the Board that had been previously submitted by Mr. Amersekere on 13.12.'89. Mr. Amersekere in the said Memorandum, inter-alia, had stated:

"From the attached copy of the Completion Certificate I am unable to satisfy myself whether the Hotel construction is in conformity with the stipulations I have cited above, particularly in relation to the numbers/quantities specified therein. Normally one would have expected a comprehensively documented Completion Certificate with all final quantities and measurements in accordance with conventional practice.

I wish to have satisfactory clarifications and confirmation in this regard from the Architects, Until as such time I receive such satisfactory clarifications and confirmation in categorical terms, I regret I cannot agree to make any payment to the Construction Consortium on account of any balance Construction Dues and/or Retention."

- (e) Notwithstanding and disregarding the aforesaid, Mr. Choksy in his Letter of 28.02.'90 had stated :

"The two Certificates are adequate coverage that the Hotel construction work is in conformity with all the stipulations of the Contract, and the owner will be justified in making the balance payment to the contractor in pursuance of these Certificates."

- (f) Mr. Choksy had no professional architectural or engineering competence to so certify. In the absence of Bills of Quantities and Final Measurements even a Chartered Architect or Engineer could not have given such a certification.

- (g) Mr. Choksy has complained that while he is being charged the contractors are not although they appeared before the Commission on summons. This statement is totally incorrect. The contractors were never summoned and they never appeared before the Commission. In any event the Commission could not have summoned them.

## 5. Jurisdiction.

Subject to the submissions made in paragraph 1 above it is respectfully submitted that :

- (a) The Government is the absolute owner of the 29,388,470 Shares of Rs. 293,884,700/- of Hotel Developers (Lanka) Ltd. registered in the name of the Secretary Treasury. This is a 65% Shareholding of Hotel Developers(Lanka) Ltd., by the Government. The Government is entitled to all rights and benefits of ownership, including the receipt of dividends. It is under the circumstances of absolute ownership by Government, thus Hotel Developers (Lanka) Ltd., being a public enterprise, that State Guarantees had been issued by the Government on behalf of Hotel Developers (Lanka) Ltd. under the Foreign Loans Act No. 29 of 1957 - Vide definition of "public enterprise" in the said Act.
- (b) In 1984, the then Government had leased to Cornel & Co. Ltd. for the development of the Hilton Hotel, 1170.5 perches of Land at Echelon Square on a 99 year lease for a consideration of Rs. 136.8 Million on a down payment of only Rs. 27.3 Million and the balance of Rs. 109.5 Million was to have been paid over 33 years, with a 3 year grace and was free of any interest. Having paid the down payment of Rs. 27.3 Million however thereafter, notwithstanding such absurdly concessionary terms, Cornel & Co. Ltd. had defaulted all balance payments to the UDA and the UDA has subsequently having instituted legal action had accepted Cornel & Co. Ltd.'s repudiation of the said Leases. It is this very land that Cornel & Co. Ltd. had underleased to Hotel Developers (Lanka) Ltd., receiving Shares to the value of Rs. 250,897,500/- and which Shares had immediately been transferred absolutely to the Government as consideration for the issuance of the State Guarantees. The documents produced by Mr. Choksy bears this fact.

- (c) The undertaking by the Government to retransfer the Shares at a future date, after the payment of all monies under the State Guarantees, by no means alters the status that the Government is the absolute owner of the Shares that have been held by the Government. Accordingly, Hotel Developers (Lanka) Ltd. is a public body, on whose behalf the Government had also issued State Guarantees under the Foreign Loans Act; Hotel Developers (Lanka) Ltd. being a public enterprise, as per the provisions of such Act, enabled the issuance of such State Guarantees. Hotel Developers (Lanka) Ltd. and its Directors had accepted such position.
- (d) Furthermore, in conformity with decisions made by the former Government, in view of the foregoing defaults, Cornel & Co. Ltd., had agreed with the Attorney General/the Government to cancel/amend such Share transfer commitment by the Government. Cornel & Co. Ltd., having so agreed to in writing, had subsequently deliberately avoided formalising same.
- (e) Consequent to the examination of several issues, the Settlement Agreements entered into by the Government, wherein Mitsui & Taisei have written-off 10 years accrued interests and 30% of the Capital, rescheduling the balance after deducting monies accumulated in the Company, over a further 15 year period at a reduced rate of interest of 5.25% p.a., it has been stipulated, that there would be no commitment by the Government to retransfer any of its Shareholdings.
- (d) The Minutes of the Annual General Meeting of 21.12.90 (Annexure "X") given under the very hand of Mr. Cornel Perera, Chairman & Managing Director Hotel Developers (Lanka) Ltd. and also the Chairman & Managing Director, Cornel & Co. Ltd., confirms that the Government is the owner of 65% of the Shareholdings of Hotel Developers (Lanka) Ltd. and that the Government had the right to nominate 6 out of 11 Director to the Board of Directors of Hotel, Developers (Lanka) Ltd. Mr. Choksy was present at the meeting and accepted position.
- (e) At the Board Meeting No. 9/90 of 16.10.'90 Mr. Choksy, himself had suggested that on the legal action that had been instituted by the then Director Mr. Nihal Sri

Ameresekere, that the Attorney General should be retained for the Company, Hotel Developers (Lanka) Ltd. since 51% Share Capital of the Company was owned by the State. Accordingly, the Attorney General appeared on behalf of the Company in D.C. Colombo Action No. 3155/Spl and subsequently, also in D.C. Colombo Action No. 3231/Spl, the Actions that had been instituted by Mr. Ameresekere.

## 6. Objections to counts 1 and 2

- (a) Mr. Choksy has stated that Count No.1 refers to "original architectural plans" and these plans have not been made available to him. Mr. Choksy who had been following the

proceedings before the Commission carefully and also who had access to the entire evidence led before the Commission and the documents produced, is fully aware that the original plans are missing or surreptitiously replaced by amended plans.

- (b) Thus, his asking for the original Architectural (missing) plans for his defence is only to say the least is like a child asking for the moon.

He also states that there is no allegation against him that he was a party to the alleged loss of plans. Firstly he knows that the plans are not available. Secondly he states that there is no allegation that he did not take adequate steps to ensure their safe custody. To this Mr. Choksy's own argument would suffice. How can one give missing plans. He became a Director on 19.12.1986. The substitution as alleged had taken place in 1985. Hence how could an allegation be made against him for not ensuring safe custody of the plans.

- (c) Mr. Choksy's assertion that the rules of the natural justice and procedural fairness demand that the requisite documentation and particulars be furnished to him seems amusing as on his own application, and in any event the Commission in all fairness, directed that certified copies of all proceedings and documents marked, be made available to all the Respondents. Mr. Choksy did have access to all the documentation and obtained all what was required by him.

- (d) It is stated that counts 4 and 5 are allegations of "attempts" made by him and these charges are bad in law as neither the law nor the warrant permit the commission to inquire into "attempts" to commit an act.

Firstly, Mr.Choksy is not charged with an offence committed under the Penal Code, where attempt to commit an offence is also considered an offence. Secondly, the Commission does not have any punitive powers to punish the persons noticed under section 9. In any event, the powers given to the Commission are very broad and wide. The Commission can inquire into and report to the President, any act of political victimisation, misuse or abuse of power, corruption or any fraudulent act. The terms misuse or abuse of power can encompass acts of attempt or even abetment. If a person attempts to commit an act of misuse or abuse of power and by the intervention of some other person it is prevented, is it wrong to say that there was misuse or abuse of power by that person.

- (e) It is not necessary to qualify the nature of the loss or damage or detriment. In any event, how can one qualify the nature of detriment except to say that 22 storeys from the lobby 1st floor have been reduced to 19 storeys from the 1st floor, 450 parking bays have been reduced to 192 parking bays and 456 room modules have been reduced to 400 room modules constituting 386 rooms and suites.

7. Mr.Choksy's statement that Mr. Amarasekera did not place any further materials or documents before him after he tendered his advise in writing on 28.2.1990 on the Architects Final Certificate in relation to the construction agreement is incorrect.

- (a) On 07.03.1990 Mr. Ameresekere had reported to the Board of the discovery of the surreptitiously substituted unauthorised "Amended Plans" at the UDA, which Mr. K. Shanmugalingam, Government Nominee Director had observed as very serious.

- (b) On 24.04.1990 Mr. Ameresekere had pointed out the gravity and seriousness of this malpractice and had submitted a Memorandum also dated 24.04.1990 thereon urging that action be taken.



- (c) At the Board Meeting on 26.07.1990 Mr. Ameresekere had informed the Board that Hotel Developers (Lanka) Ltd.'s General Manager had confirmed that the original Architectural Plans that had been approved by the UDA was not available.
- (d) Furthermore, Mr. Ameresekere had forwarded written Memoranda dated 02.03.1990, 06.03.1990, 12.04.1990 (2), 24.04.1990, 31.05.1990, 29.06.1990, 04.07.1990 to the Directors of Hotel Developers (Lanka) Ltd., including to Mr. Choksy, urging that action be taken.
- (e) Contrary to what Mr. Choksy states, Mr. Ameresekere had proceeded to engage the services of the Architect, Mr. Shelton Wijayaratne, to assist Mr. Ameresekere, on the suggestion that had been made by Mr. Shanmugalingam. The other Directors, including Mr. Choksy, had been silent on such matter at the Board.
- (f) Mr. Choksy received a copy of Mr. Shelton Wijayaratne's Report, together with the Notice served on him in D.C. Colombo Action No. 3155/Spl and he had ample opportunity to file objections and or Answer thereon in the District Court. For reasons best known to him, he did not do so.
- (g) In the face of the evidence placed before the Board, Mr. Choksy had failed to act in a responsible manner as a Director of the Company, inasmuch as he had previously issued Letters dated 08.08.1988 and 28.02.1990 as aforesaid, endorsing that the full payment be made to the Japanese contractors, even though, as admitted himself, he was not a Director during the period of construction.
- (h) Mr. Choksy had every opportunity to file objections and Answer as a Director Defendant noticed in the district Court Case No. 3155/Spl instituted by Mr. Ameresekere as a Derivative Action in law on behalf of Hotel Developers (Lanka) Ltd., setting out the conduct of the Directors, more so particularly, the conduct and actions of Mr. Choksy, particularly those referred to hereinbefore. Mr. Ameresekere had forwarded a Letter dated 20.12.1990 to Mr. Choksy and other Directors urging them to specifically do so.

- (i) On the other hand, Mr. Choksy appearing through Counsel before the Court of Appeal, opposed the Interim Injunctions that had been obtained by Mr. Ameresekere. Mr. Choksy supported the Leave to Appeal Applications of the Japanese Contractors and the Japanese Architects and submitted to Court, as recorded in the Order made by Their Lordships of Court of Appeal, as follows:

"The Counsel for the Seventh Defendant-Respondent (Mr. K.N. Choksy) submitted that a right to bring a Derivative Action does not exist under Sri Lankan law. He submitted that the Companies Act of Sri Lanka is comprehensive on the rights of the shareholders. He further argued that the only rights available to a shareholder are those specified in Sec 210 and 211 of the Companies Act, in this regard. Those rights he pointed out could the only be exercised by a shareholder having a minimum of five percent of shares of the Company."

#### 8. Count No. 3

- (a) Having stated that he had not played any part, whatsoever, with the Treasury as regards the US \$ 2 Mn. payment, Mr. Choksy, however, admits that he together with the representatives of Mitsui and Taisei was present at the Meeting at the Treasury on 26.01.1990, whereat decision had been made to make such payment.
- (b) Mr. Paskaralingam's Letter dated 02.02.1990 in this regard has erroneously indicated the date of such Meeting as 27.01.1990, whereas in Mr. Paskaralingam's Written Submissions filed before this Commission it has been admitted that the said Meeting had been held on 26.01.1990 and not 27.01.1990, as has been claimed by Mr. Choksy in his Written Submissions.
- (c) Mr. Choksy has deliberately omitted an important fact, that at the Board Meeting held previously on 13.12.1989, Mr. Ameresekere had specifically objected to making any payment to the Japanese Contractors and had presented a Memorandum dated 13.12.1989 thereon as

referred to earlier. Even at the previous Board Meeting on 27.11.1990 Mr. Ameresekere had urged that the public shareholders be refunded their monies, rather than make any payment to the Japanese contractors, if a total resolution could not be reached.

- (d) In view of the Treasury requirement to make a US \$ 2 Mn. payment, at the Board Meet on 28.02.1990, Mr. Ameresekere had pointed out that there was no formal Board Resolution to do so. At the very same Board Meeting Mr. Ameresekere had stated that the payment of US \$ 2 Mn. should be made only in the context of a fully agreed final rescheduling with the Japanese Consortium, for which purpose the Treasury had subsequently drafted and forwarded a Letter to be sent to the Japanese Consortium by Hotel Developers (Lanka) Ltd. In view of Mr. Ameresekere's subsequent actions the US \$ 2.0 Mn. has not been appropriated by the Japanese, but has been held in suspense to the credit of Hotel Developers (Lanka) Ltd.

#### 9. Count No.4

- (a) Though Mr. Choksy was not present at the Board Meeting on 27.11.1990, which had been held with 24-hour notice to adopt the Annual Accounts of March 1990, Mr. Choksy had attended and participated previously in Board Meetings pertaining to the Annual Accounts and on 30.10.1990 vide Board Minutes No. 10/90, it is Mr. Choksy, who had pointed out that the Accounts should be considered in terms of Article 129 of the Articles of Association of the Company. Subsequently on 22.11.1990 Mitsui had issued a Letter under such Article 129 to have the Note to the Accounts amended in the manner they had required.
- (b) Notwithstanding, Mr. Ameresekere's written objections, Mr. Choksy was one of the Directors, who had endeavored to have the said Annual Accounts adopted at the Annual General Meeting of the Shareholders, without full and proper disclosure in the said Accounts, contrary to advice of the Auditor General that had been communicated by the Treasury.

- (c) In his Written Submissions, Mr. Choksy has made a number of incorrect statements and false allegations against Mr. Ameresekere, who had amply demonstrated by the evidence placed before the Commission, that he had persistently and consistently acted to protect the interest of Hotel Developers (Lanka) Ltd. and that of the Government, whilst the other Directors, including Mr. Choksy had failed to act on disclosures unraveled before the Board.

10. Count No.5

- (a) It is clear from Mr. Choksy's Letter dated 28.02.90 that he had issued such letter addressed to Mr. H. Ogami, who was the Mitsui and Taisei representative on the Board of Directors of Hotel Developers (Lanka) Ltd. and who was also functioning as the Executive Director of Hotel Developers (Lanka) Ltd., specifically in relation to the aforesaid Memorandum dated 13.12.89 that had been submitted by Mr. Ameresekera, inter-alia, stating:

"From the attached copy of the Completion Certificate, I am unable to satisfy myself whether the Hotel construction is in conformity with the stipulations I have cited above, particularly in relation to the numbers/quantities specified therein.

Until as such time I receive such satisfactory clarifications and confirmation in categorical terms, I regret I cannot agree to make any payment to the Construction Consortium on account of any balance Construction Dues and/or Retention."

- (b) Disregarding the aforesaid, Mr. Choksy had entertained Mr.H. Ogami's representations in such regard, notwithstanding that Mr. H. Ogami was the representative of Mitsui and Taisei, who were making alleged claims that

had been disputed by Mr. Ameresekere as aforesaid. Mr. Choksy had endorsed that Hotel Developers (Lanka) Ltd. the owner will be justified in making the balance payment to Mitsui and Taisei, the Contractor, which is very clearly the full payment of to Mitsui and Taisei, the Contractor, which is very clearly the full payment of the total balance claims made by Mitsui/Taisei from Hotel Developers (Lanka) Ltd. and the Government, as the Guarantor.

- (c) It is significant to note that Mr. Chokey had endorsed such full balance payment by his said letter of 28.02.90, shortly after the Meeting he had attended on 26.01.90 the Ministry of Finance accompanying the representatives of Mitsui and Taisei, at which meeting the payment of US \$ 2.0 Mn. to Mitsui and Taisei had been agreed upon with Mr. Paskaralingam, even though Hotel Developers (Lanka) Ltd. itself did not have its own funds to make such payment resulting in the Government having had to advance a sum of US\$ 1.0 Mn.

11 (a). Mr. Choksy very significantly and conveniently has avoided to explain the discrepancy in the number of Hotel Rooms and the revision of the profitability Forecasts by Mitsui after the Hotel opened for operations, adversely affecting the Cashflow of the Company, Hotel Developers (Lanka) Ltd. The independent panel of Architects appointed by the Commission had confirmed the shortfall in the number of hotel rooms and the floors.

- (b) There is not much purpose in Mr. Choksy endeavouring to cast aspersions on Mr. Ameresekere, whereas Mr. Choksy's prime responsibility is to answer the charges made against him and what he, as a Director, did to protect the interests of Hotel Developers (Lanka) Ltd. and the Government in the light of disclosures that had been made before the Board.

12. The Commission had made available all the evidence, documents and records to Mr. Choksy, for him to know what the "discrepancies, shortcomings and irregularities" that have been referred to in the Charges are. In any event the discrepancies, shortages and irregularities are given below for Mr. Choksy's better understanding.

Discrepancies, shortcomings, irregularities, omissions and queries referred to are :

- (A) In Letters dated 30.12.87 (P28), 27.11.89 (P89), 13.12.89 (P47), 24.04.90 (P54), 24.04.90 (P93), 31.05.90 (P95), 29.06.90 (P96), 04.07.90 (P97), 20.12.90 (P131)

(Re-Accounts - more particularly referred to in charge No: 4)

11.10.90 (P108), 30.10.90 (P110), 22.11.90 (P114), 17.11.90 (P125), 17.11.90 (P126), 19.11.90 (P127), 27.11.90 (P115), 18.12.90 (P129).

Written by Mr. Nihal Amarasekera, Chartered Accountant & Director of HEL Ltd., to the Board of Directors of HEL Ltd.,

- (B) Minutes of the Board of Director of H.D.L. Limited held on 30.12.87 (P27), 13.12.89 (P52), 07.03.90 (P25), 24.04.90 (P55).

Minutes of Discussions at the Ministry of Finance dated 09.03.90 (P87) and subsequently tabled at HDL Board.

(Re - Accounts - more particularly referred to in Charge No: 4)

16.10.90 (P109), 30.10.90 (P111), 22.11.90 (113) and HDL's Letters 19.11.90 (P126A), 20.11.90 (P126B).

The aforesaid phrases in particular and more specifically refer to the following :

Hotel which ought to have been constructed according to the construction Agreement marked P31. The original architectural Plan of 1983 and according to the Schematic Design Plan of 1980 - which depict the following :

What has been actually constructed at the site at Hilton premises at Echelon Square.

Storeys

(a) From the lobby 1st floor :- 22 storeys	From the 1st Floor - 19 storeys.
(b) Below the 1st Floor 2 other storeys, viz., Mezzanine & Basement.	Below the 1st Floor - Storeys Nil.
(c) Floors with rooms - 19	Floors with rooms - 16
Parking Bays	Parking Bays
450	192

Room Bays or Modules

456 in all 456 room modules for rent 452 + 4 for Managers' apartments.

400 rooms bays or modules constituting 386 rooms and suits.

Square Area of the Hotel constructed inclusive of covered parking 42.586 M<sup>2</sup>

Total floor area of Hotel constructed inclusive of covered parking 39.245 M<sup>2</sup>

Under the construction Agreement marked P1, floor area of the Hotel to be constructed exclusive of covered parking is 39.042.3 M<sup>2</sup>.

When the charge or Allegation sets out the Hotel building and premises were not constructed in terms of Architectural Plan approved by U.D.A. dated 1983 and in terms of the Schematic Design Plan of 1980, the graveman of the allegation is that Construction Agreement dated 31.01.1984 marked P31 adopted and incorporates the data and specifications depicted in the aforesaid Plans and therefore the Hotel Construction is not in accordance and in terms of the construction Agreement P31, the Architectural Plan dated 1983 approved by the U.D.A., and Schematic Plan dated 1980.

The Absence of Exhibit 'A' to the supplies contract with the contractor to verify the correctness of the supplies of furnishings, fixtures and equipment to the Hotel is certainly a shortcoming or irregularity.

13. Much has been said about the floor area of the Hotel. Wide publicity has been given through media that the Panel of Architects appointed by the Commission has found that there is no shortage of the floor area of the building as constructed and the construction Agreement P31 but there is an excess of 203 Sq. metres.

It is only suffice to submit at this stage that the floor are of the Hotel to be constructed under the construction agreement does not include parking area, whereas in the report of the Panel of Architects, the total floor area of 39.245 Sq. metres is inclusive of covered parking area. Under the construction agreement P1 the floor area of the Hotel to be constructed exclusive of covered parking area is 39.042.3 Sq metres the floor area inclusive of covered parking area should be 42.586 Sq. Metres.

I hope this will lay to rest the much talked of square area of the Hotel.

A.R.C. Perera  
Deputy Solicitor General

Douglas Premaratne P.C.  
Solicitor General