

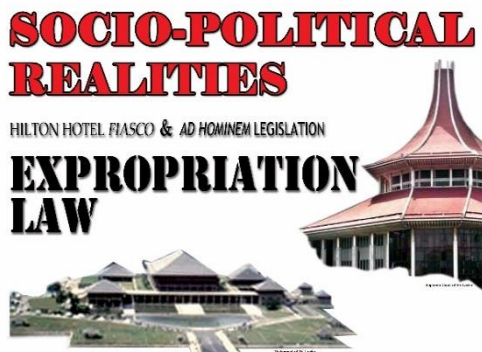
Synopsis of

Socio-Political Realities

1. Hilton Hotel Fiasco

Amazon Books – [‘Socio-Political Realities - Hilton Hotel Fiasco & Ad hominem Legislation - Expropriation Law’](#)

<http://www.consultants21.com/page-1-derivative-actions-in-law.php>



FRAUD ON THE STATE & THE PEOPLE !
LAME DUCK POLITICAL LEADERS ?
ABUSE OF LEGISLATIVE PROCESS !
JUDICIAL INDEPENDENCE & BIAS ?



Size - 8.25" X 11" – Pages 818

This Book under the same main topic ‘Socio-Political Realities’ consists of two Sections. The first of which is the ‘Hilton Hotel Fiasco’, a Synopsis of which is given below based on the facts and actions, disclosing the socio-political realities.

As a consequence of the barbaric ethnic riots in July 1983, named ‘Black July’, to rectify the resultant tarnished international image of Sri Lanka and to develop a good name and standing of Sri Lanka, the Government of President J.R. Jayawardene took immediate steps to have the Colombo Hilton Hotel Project implemented which was then in a planning stage. This Hilton Hotel Project had been implemented by the owning Company, Hotel Developers (Lanka) Ltd. (HDL).

The main motivation for this was the involvement of two large reputed Companies from Japan, namely, Mitsui & Co. Ltd., and Taisei Corporation and the Hilton International Hotel Chain of USA being involved in this project; and therefore with the involvement of USA and Japan collaborating and investing in this Project at that time, the foundation of international confidence in Sri Lanka was intended to be developed. The Architects for Hilton Hotel Colombo were reputed Architects in Japan, Kanko Kikaku Sekkeisha, Yozo Shibata & Associates.

Accordingly, with the intervention of President J.R. Jayawardene, to finance the Hilton Hotel construction with Loans from these Japanese Companies, Sri Lanka Government Guarantees were granted, and all imports for the construction and completion of the Hilton Hotel were exempted from Import Duties. Likewise, Prime Minister R. Premadasa had provided 7 Acres of Land from the Urban Development Authority, from the heart of the Colombo City, on a 99-year Lease, with the Lease payments being paid in installments over 30 years, free of any interest.

The first 3 Books by the Author has in detail described the attempt made to perpetrate a major colossal fraud on the Government of Sri Lanka, in the construction of this Hilton Hotel Project by these Japanese Companies, and how the Author had successfully prevented the consequences of such major colossal fraud through investigations and litigations by instituting for the first time in Sri Lanka a derivative actions in law, disclosing the details.

Hence to comprehend the contents of the first Section 'Hilton Hotel Fiasco' of this Book, it is imperative to read and understand the first 3 Books by the Author in relation to this major colossal fraud viz: 'Colombo Hilton Hotel Construction - Fraud on Sri Lanka Government - Vol. 1 - Sri Lanka's First Derivative Action in Law' - 'Colombo Hilton Hotel Construction - Fraud on Sri Lanka Government - Vol. 2 - Criminality Exposed, but Perversely Covered-up' - 'Colombo Hilton Hotel Construction - Fraud on Sri Lanka Government Vol. 3 - Settlement of a Fraud'

By perpetrating such major colossal fraud, these Japanese Companies had schemingly attempted to syphon out a large scale of foreign exchange from the country, from the Government of Sri Lanka, on the Government Guarantees, which had been given to them.

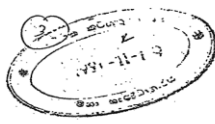
Promptly upon discovering the above, the Author had carried out investigations and resorted to litigation, whereby the District Court of Colombo had immediately restrained the payment of any monies to these Japanese Companies, by HDL and/or by the Government of Sri Lanka, under the Government Guarantees. Under such circumstances, the Sri Lanka Government Guarantees *became null and void which no force or avail in law.*

However due to diplomatic pressures exerted by Japanese Ambassador in Sri Lanka, Secretary Treasury R. Paskaralinga had minuted as follows in the Letter given below: 'Please study this. The Japanese Ambassador told me this may affect our aid'

DE SILVA & PERERA
SOLICITORS, ATTORNEYS AT LAW AND NOTARIES PUBLIC

60 01102

TPhone : 27707
Your Ref :
Our Ref :



Nos. 34/64, 65 & 1/49,
Howe Towers Complex,
San Sebastian Hill,
Colombo 12.
J. W. D. PERERA (Counsel)
Residence: 16, Saranga Hotel,
Colombo 6 Telephone: 683596

12th November 1991

REGISTERED POST

Hon. Sunil De Silva Esqr., P.C.,
Attorney General,
Attorney General's Department,
Hulftsdorp Street,
Colombo 12.

Hon. Sir,

D.C. Colombo Case No. 3155/Spl

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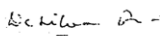
We write in pursuance of our earlier correspondence and forward copies of the Order made by the Learned District Judge on 28.10.91 in the abovementioned Action and the Interim Injunctions issued therein against the 1st, 2nd, 3rd & 4th Defendants.

We trust that you will take note of the contents of the Learned District Judge's Order, particularly, the matter of fraudulent collusion, and since, prima-facie, the premise of fraud has been taken cognisance of by Court, that you would accordingly, take steps in the interest of Public of Sri Lanka with regard to the State Guarantees that are in issue and notify the relevant parties, that under such circumstances of fraud, that such State Guarantees in law would be null and void.

You may also consider notifying accordingly the Exim. Bank in Japan and any other known co-financiers of the said Loan. We also draw your kind attention to our letter dated 26.09.90 and believe that you would have taken necessary action in this regard.

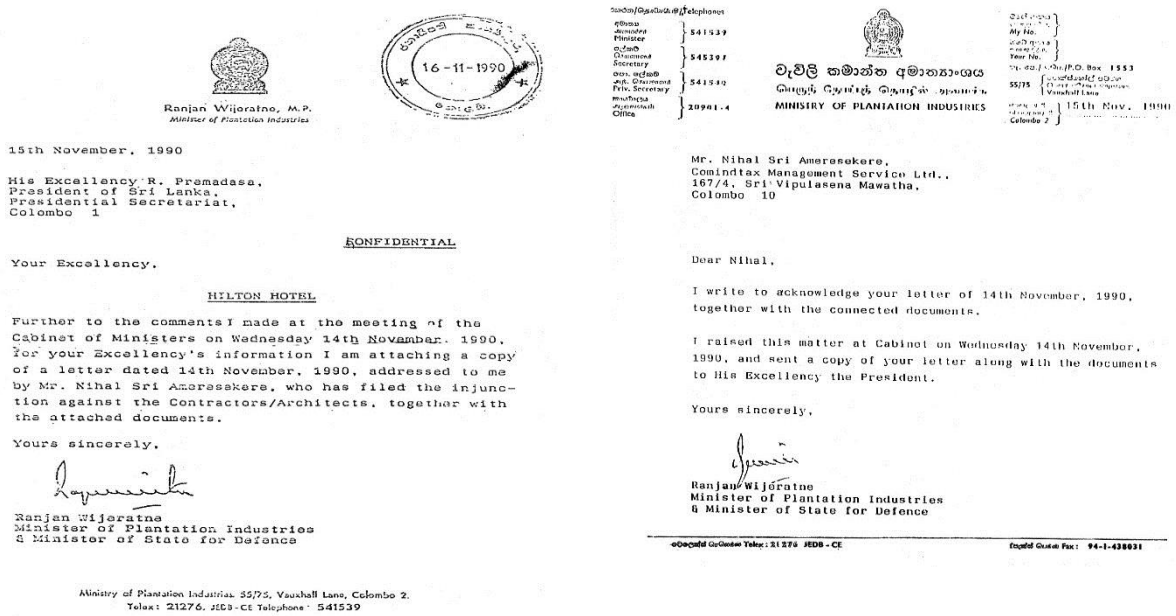
Please acknowledge safe receipt.

Yours faithfully,





Attorneys-at-law
cc: Secretary, Ministry of Finance & Secretary Treasury

A then very straightforward and strong Minister, the State Minister of Defence, Ranjan Wijeratne, who had successfully crushed the Sothern JVP terrorism, had been of immense strength to the Author in his such endeavours; and he had briefed President R. Premadasa and the Cabinet of Ministers promptly on the first legal action instituted by the Author, to prevent this major colossal fraud being perpetrated on the Sri Lanka Government and the public:



Accordingly, President R. Premadasa's Economic Advisor C. Gunasingham had called the Author for lengthy discussions regarding the litigation instituted by the Author in the District Court of Colombo to comprehend the truth of the facts disclosed and the Enjoining Orders, which had been issued by the District Court of Colombo preventing any payments to these Japanese Companies by HDL and/or by the Government of Sri Lanka, under the Government Guarantees.

As a consequence of President R. Premadasa having been apprised, he had directed K.H.J. Wijayadasa, Secretary to the President, to write the following Letter to the Secretary to the Treasury R. Paskaralingam, instructing that the *Government should intervene immediately* and take action against this major colossal fraud, and *not leave such responsibility only to a minority Shareholder*, since the questioned would arise, *as to why the Government did not take action in such regard ?*

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සекретариат Президента
THE PRESIDENTIAL SECRETARIAT

Mr. R. Paskaralingam
 Secretary/Finance
 Hilton Hotel
 Colombo 7.

I am forwarding a copy of a letter dated November 15, 1990, sent to His Excellency the President by the Hon. Ranjan Wijeratne, Minister of Plantation Industries, and Minister of State for Defence, on the above subject.

I am also forwarding copies of the enclosures sent by the Hon. Minister, including a letter dated November 14, 1990, sent by Mr. Nihal Sri Amersekere.

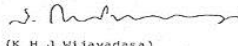
I should bring to your attention in this connection certain considerations that have been placed before His Excellency the President with regard to this matter.

One is that if public concern has not been openly expressed so far, it is because the subject has been sub judice from the outset. Another is that if the District Court action should lead to a determination that a fraud did take place, the question will be asked as to why the company in which the government has a majority stake did not take legal action itself. A further question would be why once Court action was taken, the company kept aloof although it carries primary responsibility to its shareholders and to the public to litigate the matter. Arising from this, it could be asked as to why it was left to a minority shareholder to take action to prevent public funds being utilised to pay for a fraudulent deal. This would have been the result if the Japanese companies had called in the government guarantee.

With regard to Japanese Government sensitiveness in the matter, it has been pointed out that there has been growing public concern in Japan over frauds involving Japanese companies and public personages. No Government in Japan, therefore, would like to be seen giving comfort to Japanese companies involved in frauds abroad.

In the light of these considerations, His Excellency has directed action by you to take up in Cabinet the question of the stand Government should take with regard to the Court action now proceeding.

I would appreciate if His Excellency's direction could have your attention please.


 (K. H. J. Wijayadasa)
 Secretary to the President

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 A.C. ...
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0-12-19
 of the Secretary
 and
 Minis. of Finance

1990-12-21
 1990-12-21

December 17, 1990.

On the same day 12.11.1991 Attorneys-at-law of the Plaintiff Author had put the Japanese Ambassador in Sri Lanka Isamu Nitta on notice by the following Letter.

DE SILVA & PERERA
 SOLICITORS, ATTORNEYS AT LAW AND NOTARIES PUBLIC

T/Phone : 27107
 Your Ref :
 Our Ref :

Nos. 24/04, 65 & 1749,
 New Lawyers Complex,
 San Sebastian Hill,
 Colombo 12. C.
 J. W. D. PERERA (Sole Prop)
 Residence : 10, Sempaka Road
 Colombo 6 Telephone : 583599

REGISTERED POST 12th November 1991

His Excellency Isamu Nitta,
 Ambassador for Japan in Sri Lanka,
 Japanese Embassy,
 29, Gregory's Road,
 Colombo 7.

Your Excellency,
 Hilton Hotel
 Hotel Developers (Lanka) Ltd.
 D.C. Colombo Case No. 3155/Spl

We write on behalf of our Client Mr. Nihal Sri Amersekere, F.C.A., F.C.M.A., Plaintiff in the abovementioned Action and wish to bring to your kind notice the following:

The said Action was instituted by our Client as a Derivative Action by a Shareholder, inter-alia, against Mitsui & Co. Ltd., Japan, Taisei Corporation, Japan and Kanko Kikaku Sekkeisha Yoza Shibata & Associates, Japan.

We enclose a copy of the Order made by the Learned District Judge on 28.10.91 in the said Action after inquiry into the Objections filed therein by the said Japanese Companies and copies of the Interim Injunctions issued therein against the said Japanese Companies.

Your Excellency is aware that Sri Lanka is a third world developing country which always enjoys the abnace of good-will from Japan. Accordingly we trust that Your Excellency will take cognisance of these serious matters of national economic significance to our country and take appropriate action and report the said matters to the relevant authorities in Japan for necessary action.

Your Excellency, no doubt would appreciate, such conduct and action by the said Companies, would not be in the interest of the good relation that is subsisting between our two Counties.

We also enclose a copy of the Complaint and the Written Submissions filed by the learned Counsel, on behalf of our Client, in the said Action which will afford you the salient facts pertaining to this matter.

Yours faithfully,


 Attorneys-at-law

cc: Hon. Harold Herath, Minister of Foreign Affairs, Ministry of Foreign Affairs, Sri Lanka
 Secretary, Ministry of Foreign Affairs, Sri Lanka
 Sri Lanka Ambassador in Japan

Nevertheless, shockingly contrary to the above stance taken by President R. Premadasa, the succeeding Hon. Attorney General T.J. Marapana P.C., appearing through Sibly Aziz P.C., without having participated in the District Court of Colombo inquiry into the issuance of Interim Injunctions, and without having filed any papers in the Court of Appeal in Sri Lanka appeared in the Court of Appeal to support the Leave to Appeal Applications made by these Japanese Companies against the District Court of Colombo Order.

In addition K.N. Choksy P.C., M.P., who was named as a wrong-doer Director-Defendant of HDL, appeared through Nihal Fernando, Attorney-at-Law, to mislead the Court of Appeal. However, subsequently the Supreme Court the highest judiciary had prevented both these parties from participating in the Supreme Court proceedings.

Subsequently on 28.11.1991 R. Paskaralingam, Secretary Ministry of Finance had addressed K.H.J. Wijayadasa, Secretary to the President, the following Letter, *inter-alia*, stating that the Ministry of Finance had requested retired Supreme Court Judge J.F.A. Sosa to examine and report on the Colombo Hilton Hotel major colossal fraud, but that J.F.A Sosa having examined all documents had reported that there were no irregularities in the construction of the Hilton Hotel. J.F.A. Sosa appallingly in gross violation of natural justice had not even afforded the opportunity to the Plaintiff Author to be heard on the facts, whereby this was a despicable report of a 'fix' to 'cover-up'.

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<p>කොට්ඨාශ/ලැප්ටොප්/Office : 433937, 435860, 421261</p>		
<p>දුරකථන - 21409CE දුරකථන - 21409CE Tele - 21409CE</p>		
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 நிதி அமைச்சகம்
 MINISTRY OF FINANCE

15

1991-12-05

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 Date } .Nov...28,1991..

Mr K H J Wijayadasa,
 Secretary to the President,

This is with reference to the letters received by
 HE The President dated 5.9.91 and 18.11.91 from Mr. Vasudeva
 Nanayakkara, M.P. regarding the Hilton Hotel Project.

This subject matter is pending decision by the Courts
 in 2 cases filed by Mr Nihal Sri Amarasekera, a former director
 of Hotel Developers (Lanka) Ltd.

The claim that the Court had adjudicated upon this
 matter is not accurate. In one of these two cases (DC Colombo
 3155/SPL) the District Judge has entered an Interim Injunction
 pending the trial of the action. I am advised that in relation
 to Mr Nihal Amarasekera's allegations made in court, the
 District Judge has observed as follows - "Actually, the said
 matters, could be considered at a full trial to be held on the
 evidence in respect of the relevant matters".

The Japanese collaborators of the Hilton Hotel Project
 who are the 2nd and 3rd Defendants in the said action have
 appealed against the said Order to the Court of Appeal in
 Application No.206/91.

In the circumstances, the matters are subjudice and
 the Government will necessarily have to await the final court
 decision before it can decide what action, if any, will require
 to be taken.

With regard to the criticism of the Ministry of Finance;
 I like to mention that when Mr. Amarasekera first brought
 to the notice of the Ministry certain alleged irregularities in
 the implementation of the Hilton Hotel Project, the Ministry
 had requested Mr J F A Soza, retired Supreme Court Judge,
 to examine and report on the same. Mr Soza having examined
 all documents executed in connection with the project had
 reported that there were no irregularities in the implementation
 of the project. Subsequently, the Additional Solicitor General
 informed the Ministry that having examined the matter the
 Attorney General's Department is unable to agree with the
 contentions of Mr. Amarasekera.

R. Paskaralingam
 (R Paskaralingam)
 Secretary,
 Ministry of Finance

D/EA
 Nihal Fernando

Ironically, on Letter dated 17.12.1991 after the issuance of the Interim Injunctions and the District Court Order on 28.10.1991, in which K.N. Choksy P.C. M.P., had been castigated without being named, with the District Court of Colombo stating that those who had gained influence in society had intervened to prevent a correct examination of the Hilton Hotel construction and of the Supplies made, before payments were to be made; whereas in this Letter dated 17.12.1991 it had been significantly minuted by Secretary Treasury R. Paskaralingam thus - "Please consult Attorney General and Mr. Choksy. HE (President) wants to answer this Letter".

1991-12-19
 REGISTERED
 COPY HAND
 1991-12-27
 VASUDEVA NANAYAKKARA
 MEMBER OF PARLIAMENT
 (RATNAPURA DISTRICT)
 1401, NEW ROAD,
 COLOMBO-2.

His Excellency Mr. President,
 Presidential Secretariat,
 Colombo 01.

Your Excellency,

HILTON HOTEL.

I acknowledge Your Excellency's letter dated 03.12.91 forwarding letter of 28.11.91 from Mr. R. Paskaralingam, Secretary, Ministry of Finance.

The points I have urged in my several letters addressed to Your Excellency have not been met by the answers of Mr. Paskaralingam.

The findings of the learned District Judge of Colombo, who issued Interim Injunctions following an earlier Enjoining Order, disclose incontrovertibly that a massive fraud had been perpetrated against the interests of the Government and the general public by the Japanese Companies and that certain local Directors of the owning Company of the Hilton Hotel had fraudulently colluded with them.

In the face of these findings of the learned District Judge the following matters arise for decision of Your Excellency as the Chief Executive of the Board, as an urgent priority:-

- Has there been in fact such a process at work to defraud the country of billions of Rupees and who are pointedly responsible?
- Are the Japanese Companies involved in the Hilton Hotel Project responsible for this and who among the local Directors have fraudulently and treacherously colluded?
- Should the local persons responsible be immediately stripped off any office held by them in the Company or in other office of Government?
- Should these findings of the learned District Judge be brought to the notice of the Japanese Government and the Japanese People and request that the Japanese Government initiate suitable action?
- Should not the local persons involved in the fraud be brought before Courts for the due process of law?

The above matters can be and must be investigated into without any further lapse of time and such an investigation does not seem contrary to any known cannons of law here or internationally. Otherwise the merit of men could plead any civil action as a shield of protection against their own crimes being investigated. Matters of subjudice are not taken up for discussion or

deliberation in other forums parallelly in so far as the merits of the issues involved are concerned. But to say that any issue is subjudice and hence investigations of crime involved could be shut out will be new and ridiculous law unacceptable to any civil society. Subjudice is not a magic formula to subvert justice by other means.

The last paragraph in the letter of Mr. R. Paskaralingam which refers to the action taken by the Finance Ministry when Mr. Amerasekera brought up these matters, files in the face of the order delivered by the learned District Judge on the identical issues and hence may rest as no longer relevant or valid, for the present.

The one sentence of the learned District Judge's Order cited by Mr. Paskaralingam in paragraph 3 of his letter taken together with the entire Order made by the learned District Judge is an affirmation that it merits further examination than any expansion of a caution regarding his own conclusion about the fraud.

The fact that the Japanese Collaborators have appealed against the Order of the learned District Judge and that the Attorney General's Department had failed to intervene in the cases in furtherance of the national interests and exposure of this fraud need not deter Your Excellency in taking the only honest course open in the circumstances, viz. initiating action against the criminals or suspects.

Yours faithfully,
 VASUDEVA NANAYAKKARA, M.P.

- C.C. to :
- Hon. A.C.S. Emeed, M.P.,
 Minister of Justice,
 Superior Courts Complex,
 Colombo 12.
 - Hon. Attorney General,
 Attorney General's Department,
 Colombo 12.
 - Mr. R. Paskaralingam,
 Secretary, Ministry of Finance,
 Secretariat,
 Colombo 1.

After the Supreme Court of Sri Lanka delivered on 2.12.1992 a landmark Judgment in the Plaintiff Author's first litigation, as a serious prima-facie case of fraud with real prospect of being successfully proven, and that Interim Injunctions had been issued prevent the devious syphoning of a large scale of foreign exchange from the country, the Board of Investment of Sri Lanka addressed by Letter dated 7.12.1992 the concerns expressed by a JETRO Delegation requiring a settlement of the Hilton Hotel 'issue' !

BOARD OF INVESTMENT OF SRI LANKA

1992-12-10

14, Sir Baron Jayatilake Mawatha,
 P. O. Box 1768,
 Colombo
 Sri Lanka.
 Our Ref:
 Your Ref:
 Date: 07th December, 1992.

Mr. K. Shanmugalingam
 Deputy Secretary to the Treasury
 General Treasury
 The Secretariat
 COLOMBO - 1.

Dear Sir,

Recently a Mission from JETRO was in Sri Lanka in relation to Expo '92. I had the opportunity of meeting this delegation and subsequently attending an exclusive function organised by the JETRO to the members of the delegation.

At this luncheon meeting we exchanged our ideas and the leader of the delegation, Mr. M. Sawaki informed us that until acceptable solution is reached on the Hilton Hotel issue, it is unlikely that major Japanese Investment will take place in Sri Lanka.

Since, this is a considered opinion of a Senior Adviser which has close relationship with Japanese Governmental Authority, we thought of keeping you informed of this matter.

Yours faithfully,

M.P.T. Cooray
 EXECUTIVE DIRECTOR (INVESTMENTS)
 BOARD OF INVESTMENT OF SRI LANKA

However, consequently after the first litigation was upheld by the Supreme Court of Sri Lanka, as a *prima-facie* colossal fraud, with the Author having every prospect of successfully proving, and with the Supreme Court having affirmed the Interim Injunctions which had been issued by the District Court of Colombo, a Member of Parliament, Vasudeva Nanayakkara, Attorney-at-Law, who was a close friend of the Plaintiff Author, had written to President R. Premadasa, questioning, *as to what action the Government has taken in this regard ?*

K.H.J. Wijayadasa, Secretary to the President, appallingly taking a *completely different stance* to what had been taken by his Letter of 17.12.1990 just after the Enjoining Orders had been issued by the District Court of Colombo, as per his Letter dated 5.2.1993 given below, raises the questions as to whether it was as a consequence of a powerful and influential politician being involved in this litigation and upon pressures by interested and affected parties ? Further raising the question, as to whether President R. Premadasa had been misled, or not correctly apprised ?



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ഇலහන්සේ
THE PRESIDENTIAL SECRETARIAT

මගේ අංකය
எனது இலக்கம்
My No. } EA/4/214
உமது இலக்கம்
Your No. }
කොට්ඨාස 1
இலங்கை 1.
Colombo 1.

5th February 1993

Dear Sir,

Hilton Hotel

I have been directed by His Excellency the President to acknowledge receipt of your letter dated 27th January 1993, on the above subject. His Excellency the President has instructed me to ascertain the facts of the case and keep you fully briefed.

You have stated that His Excellency the President has not responded to your earlier letters on this subject. I have checked up and find that this is not correct. I would like to draw your kind attention to His Excellency the President's replies dated 20th August 1991 and 3rd December 1991, enclosing letters addressed to me by the Secretary to the Ministry of Finance, on this subject. Your letter of 17th December 1991, was mainly a repetition of your previous letters, which had been replied to as aforesaid.

In your letter under reply, you have not referred to any specific pronouncements in the judgement of the Supreme Court in support of the far-reaching allegations made by you. Therefore, His Excellency the President caused the judgement to be fully examined. On this matter, His Excellency the President has been advised as follows:-

- (a). Regarding Mr K N Choksy, FC, MP; the judgement contains no finding or conclusion or even any observation whatever. In fact, there is no mention of him by name or description anywhere in the judgement. He does not figure in the judgement at all.
- (b). Regarding the Japanese Contractors and Architects; there is no finding or conclusion by the Court. On the contrary, the Court has observed as follows:-

" Whether the plaintiff would succeed in obtaining such a declaration, based as it is on contested facts and disputed questions of law ex hypothesi is uncertain and will remain uncertain until final judgement is given in the action."

(Page 7 of the Judgement).

" Whether the plaintiff will in fact establish the circumstances upon which he bases his derived rights to obtain the declarations of a permanent, as distinct from an interim nature is, of course, a matter that will depend on what the evidence will lead the learned District Judge to decide at the end of the trial."

(Page 10 of the Judgement).

" I want to make it as clear as I can that what I am saying in the matter before me should not in any way be construed at the trial as my concluded view on any matter of law or fact to be decided at the trial."

(Page 11 of the Judgement).

Therefore, His Excellency the President has directed me to inform you that your assertion that the Supreme Court has made findings of fraud and collusion etc., is not borne out by the judgement. In fact, the Supreme Court has clearly left open all the disputed questions of fact and law to be decided by the District Court at the trial, which has yet to be held.

If you need any further clarification on this matter, please do not hesitate to write to me.

Yours faithfully,

(K H J Wijayadasa),
Secretary to the President

Mr Vasudeva Nanayakkara, M.P.,
Member of Parliament for
Ratnapura District,
143/3, Kew Road,
Colombo 2.

What had been lost are the very significant words of the Supreme Court Judgment that *'the Government having been the Guarantor could not have been indifferent'*. Here was an instance of not only being indifferent, but fraudulently colluding desperately attempting to cover-up !

Revealingly at that very same time, Japanese Ambassador in Sri Lanka, Masaaki Kuniyasu, had addressed the following Letter on 18.2.1993 to Secretary, Ministry of Finance R. Paskaralingam, requiring a definite settlement of the Plaintiff Author's litigation, stating that - *'longer it takes for a settlement, the worse the situation gets !'*

THE EMBASSY OF JAPAN
IN THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA
20, Gregory's Road
Colombo 7.

18 February, 1993

D/EA

Please report regarding Hilton Case.

Mr. R. Paskaralingam
Secretary
Ministry of Finance
Colombo 1.

S/F

23/2

Spoke 15-2-93
th.

Dear Mr. Paskaralingam,

I write to thank you very much for the excellent lunch hosted by you yesterday. The discussions we had were both very interesting and fruitful. May I, however, mention that I hope such meetings in the future will be held much earlier for the coming years as it would be very useful to both Japan and Sri Lanka.


With regard to the pending case I spoke to you about yesterday, I would be most grateful if you could please see that there would be a definite settlement to this before you leave for Japan and USA, as I feel that with you being out of the island, nothing positive will be done. I would also like to mention that the longer it takes for a settlement, the worse the situation gets.

Thanking you for your understanding and cooperation at all times.

Yours sincerely,

Massaki Kuniyasu
Massaki Kuniyasu
Ambassador of Japan

It is thereafter that on 21.6.1993 that the Ministry of Finance has sent draft Settlement Agreements to the Plaintiff Author for his observations at the earliest – viz:

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	මහලේකම් MINISTER		431761	විද්‍යුත් තැපෑල No.
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	මහලේකම් PRIVATE SECRETARY		21409CE	විද්‍යුත් තැපෑල Fax
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මහලේකම්
MINISTRY OF FINANCE

21st June, 1993.

Mr. Nihal S. Amarasekera,
167/4, Sri Vipulasena Mawatha,
Colombo 10.

Dear Sir,

Hilton Project - Draft Agreement

I forward herewith copies of draft agreements Nos.1, 2 and 3 dated 17th June, 1993.

The said agreements incorporate certain changes from the draft dated 11/6/93. The said agreements have been underlined and highlighted in green.

The Secretary to the Treasury has directed me to obtain your observations on the amended agreement very early.

Yours faithfully,

V.M.Y. Casie Chetty
(Mrs) V.M.Y. Casie Chetty
Director General
Physical Policy and Economic Affairs
MINISTRY OF FINANCE.

Before such Settlement could be concluded President R. Premadasa was brutally assassinated by a LTTE terrorist bomb on 1.5.1993.

Thereafter endeavours were made by the Japanese Embassy in Sri Lanka, to persuade President D.B. Wijetunga, who had succeeded President R. Premadasa to have this Hilton Hotel matter settled.

In this context on 8.4. 1994, G. Wijayasiri, Director General, Economic Affairs, Ministry of Foreign Affairs of Sri Lanka, had addressed a Note under the subject 'Hilton Hotel' to the Secretary, Cabinet Sub-Committee on Investments, forwarding an 'extract' of the Note dated 24.3.1994, which had been prepared by the State Secretary, Ministry of Foreign Affairs, R.C.A. Vandergert, on the aforesaid discussion he had had with I. Hashimoto, *Chargé d' Affaires of the Japanese Embassy in Sri Lanka*, the contents of which are *appallingy shocking !*

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 Ministry of Foreign Affairs, Republic Building, Colombo 1, Sri Lanka

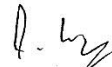
8 April 1994

Secretary
 Cabinet Sub-Committee on Investment
 BOI
 Colombo 1.

Hilton Hotel

Mr. I. Hashimoto, Charge de Affaires a.i. of the Japanese Embassy in Colombo, recently called on Mr. R.C.A. Vandergert, State Secretary, Ministry of Foreign Affairs. During their discussion the Charge de Affaires made reference to the Hilton Hotel dispute.

I am sending herewith an extract of a note prepared by Mr. Vandergert, on his meeting with the Japanese Charge de Affaires. I shall be glad if this is brought to the notice of the Cabinet Sub-Committee on Investment at its next meeting.



G. Wijayasiri
 Director-General/Economic Affairs

Secretary,

Last afternoon Mr I Hashimoto, C.d'A. of Japanese Embassy, called on me.

2. While it was predominantly a courtesy call, he referred to the following matters, which I think need a studied response from the appropriate agency of government:-

i. Referring to the ethnic conflict and the expressed intentions of the Government to negotiate with the LTTE, he said he was thinking aloud about what the reaction of the Government would be if Japan was to offer itself as a venue for talks between the representatives of the Government and the LTTE. He thought that such a meeting away from the public glare, might provide a conducive atmosphere for such talks. I replied that he should make this proposal to AIR since these matters were being handled by the Presidential Secretariat.

ii. Mr Hashimoto also brought to my notice the concern of the Government of Japan and Japanese investors in regard to the Hilton Hotel dispute. He said that in view of the importance which Sri Lankan Foreign Policy attaches to attracting foreign investment, the Government should look at the overall impact which disputes like the Hilton Hotel dispute would have on Sri Lanka-Japan bilateral economic relations and, more particularly, the adverse impact it may have on Japanese investors who might feel that in situations of this nature, the government was not doing enough to help resolve such issues. Since the overall loser would be the country itself, he thought that in matters like this the Government should become more involved, without leaving it to private arbitration or even negotiations conducted by BOI etc. I said I would convey his concerns to the appropriate authorities.

SS/FA
 24.3.94

copy to : DG/PA
 DG/EA

Indeed *quite shockingly*, the Japanese Government had offered to *negotiate* with the Liberation Tigers of Tamil Elam (LTTE), and had also offered Japan, as a *venue* for such talks between the Government of Sri Lanka and the LTTE, intimating that such a Meeting *away from the public glare*, might provide a *conducive atmosphere* for such talks !

What was even more *shocking* was that as a '*quid pro quo*' for the foregoing, the Japanese Government had earnestly urged the Government of Sri Lanka, to have the matter of the so called 'Hilton Hotel dispute', which was *causing concern* to the Government of Japan, and Japanese Investors, resolved; further intimating that if not, it would have an *adverse impact* on Sri Lanka–Japan bilateral economic relations, more particularly on Japanese investments into Sri Lanka, and that Sri Lanka would be the ultimate overall loser !

After the change of Government in August 1994, the new President Chandrika Kumaratunga appointed a Special Presidential Commission to investigate this major colossal fraud in the construction of the Hilton Hotel, which was a main issue on her Election platform.

With evidence being led before the Special Presidential Commission, with shocking details of this major colossal fraud perpetrated on the Government of Sri Lanka due to diplomatic pressures, President Chandrika Kumaratunga also directed that the above draft Settlement Agreements be further improved upon and concluded.

Accordingly consequent to discussions had with the Hon. Attorney General, Shibly Aziz P.C., and P.L.D. Premaratne P.C., the finalized Settlement Agreements were placed before the Special Presidential Commission, who upon examination thereof approved the same to be executed, and after approval from the Cabinet of Ministers they were executed in June 1995 by Secretary Treasury A.S. Jayawardene on behalf of the Government of Sri Lanka, together with Mitsui & Co. Ltd., and Taisei Corporation, Japan, HDL and Plaintiff Author.

It had been disclosed on the Plaintiff Author's insistence, that Mitsui & Co. Ltd., and Taisei Corporation had written-off on their Claims from the Sri Lanka Government 10 years' accrued interest and 30% of the Capital, with the unwritten-off balance being re-scheduled over a further period of 16 years, at a reduced rate of interest of 5.25% p.a. This write-off had amounted to 62% of the Claims made by these Japanese Companies on the Sri Lanka Government Guarantees, and had then amounted to Jap. Yen. 17,586 Mn., then US \$ 207 Mn., or SL Rs. 10,200 Mn.

As stated in the Settlement Agreements the Government of Sri Lanka had admitted that the above had *immensely* benefited HDL and the Government of Sri Lanka. This write-off at value as at 30.6.2016 at AWFDR amounts to Rs. 89,177.3 Mn., and the re-scheduled balance amounts to Rs. 51,451.8 Mn.

To announce the *execution* of the aforesaid settlement, a *Media Conference* was had just two days later on 30.6.1995 at the *Auditorium* of the Ministry of Finance, chaired by G.L. Peiris, Minister of Justice & Constitutional Affairs and Deputy Minister of Finance, and attended by Lakshman Kadirgamar, P.C., Minister of Foreign Affairs, Dharmasiri Senanayake, Minister of Tourism, and Masaaki Kuniyasu, Japanese Ambassador in Sri Lanka, A.S. Jayawardena, Secretary, Ministry of Finance & Secretary to the Treasury and the Plaintiff Author too was present at this *Media Conference*.

At this *Media Conference*, G.L. Peiris, Minister of Justice & Constitutional Affairs and Deputy Minister of Finance, *wrongfully* and *unduly* taking *kudos* for such settlement *elatedly* announced, as was reported in the *media* thus –

"Today marks a happy day for the government of Japan and Sri Lanka following the signing of the dispute settlement agreement which was a constant irritant, which may have marred the otherwise healthy and strong relations which Japan and Sri Lanka enjoyed over the years. We have also preserved the good names of the two Japanese Companies - Mitsui and Taisei. This settlement was also possible due to the unstinted co-operation of the Japanese Ambassador in Sri Lanka Yasuo Naguchi and his predecessor Masaki Kuniyasu."

"The settlement signed with the Japanese contractors also conforms to the major planks of the People's Alliance government's election manifesto of combating the pillage and plunder of national resources and the government's commitment, which has brought about the large scale saving. However, this settlement has nothing to do with the punitive action, which the legal machinery will take against the offenders, by the Special Presidential Commission on Bribery and Corruption."

Lakshman Kadirgamar, Minister of Foreign Affairs *appallingly* stated thus, as was reported in the media

"The finalisation of this settlement has removed irritants of an otherwise cordial relationship between our two countries. This is a very happy occasion for us, as we witness a closed chapter, which caused much concern for all of us"

Subsequently the then Japanese Ambassador, Yasuo Noguchi, had stated in an interview to *The Sunday Leader* of 27.4.1997, that the Hilton Case '*was a 'thorn' in the economic relationship and an example of trouble Japanese might face, after investing in Sri Lanka*'.

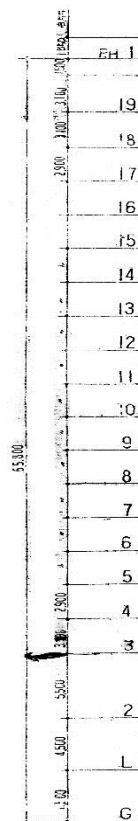
Appallingly to the foregoing Ministers and Diplomats, the matter of such major colossal fraud on a sovereign Government and its people was a mere '*irritant*' or '*thorn in the side*', whereas to the poor people of Sri Lanka it was worth, as much as US \$ 207 Mn. in June 1995. This is how the *trusteeship* of the people's resources are discharged and the rights of the poor people protected.

Thereafter, in May 1996 irrefutable evidence of criminality had been disclosed and established before the Special Presidential Commission. It had been proven beyond any reasonable doubt before the Special Presidential Commission, that the Cross-sectional Sheets of the original Architectural Plans had been replaced with new Cross-sectional sheets, giving new 'elevations' of the respective floors, and two of the Floor Sheets, and the Basement Sheets Nos. A -01 to A-07 of the original Architectural Plans of the Hilton Hotel had been removed, the available Plans only commencing with Sheet No. A-08.

The 'elevations' denoted on the Floor Plan Sheets did not match with the corresponding 'elevations' of the respective Floors depicted on the Cross-sectional Sheets, which was undisputed evidence of criminality of cannibalization of the original Architectural Plans, also with the height of floors being reduced from 3.0 meters to 2.9 meters.

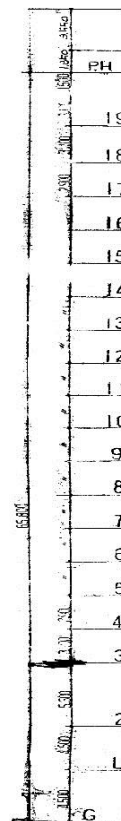
Original Plan Elevations

A-28



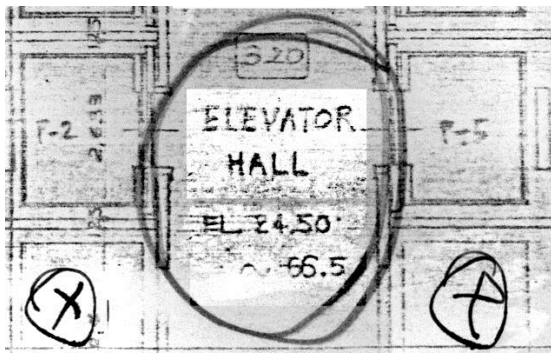
Fraudulent Plan Elevations

A-29

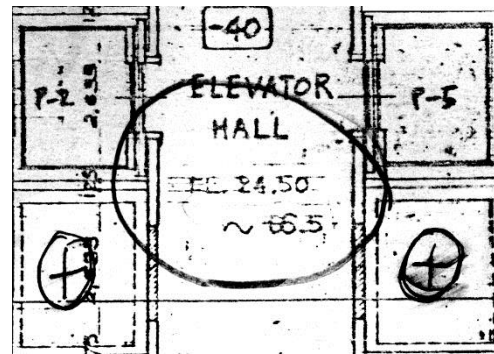


As a result of such cannibalization, the 3rd and 4th Floors were shown to be at the *same* 'elevation' of 24.5 meters, whilst the 19th Floor and the Roof of the 19th floor were shown to be at 'elevations' of 72.7 meters and 72.0/72.5 meters, respectively, *whereby the Roof was depicted to be below the 19th Floor !* This is well depicted by sections of the Architectural Plans scanned below.

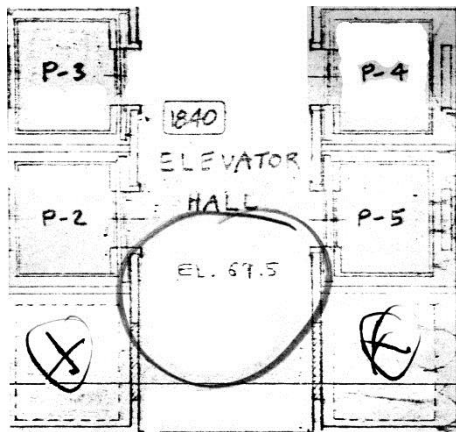
3rd Floor



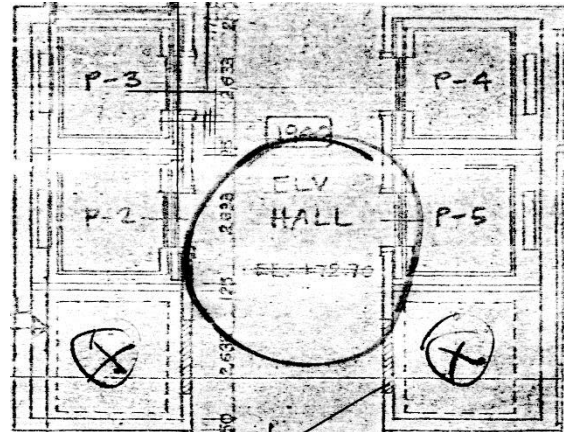
4th Floor



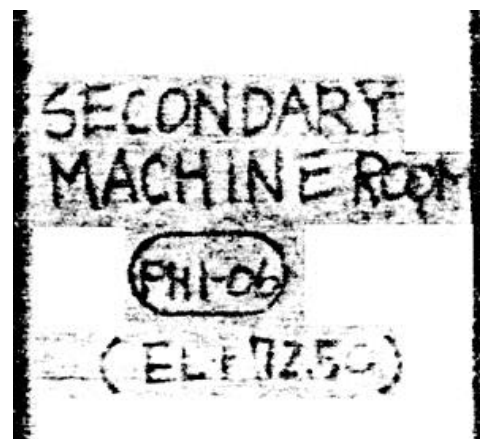
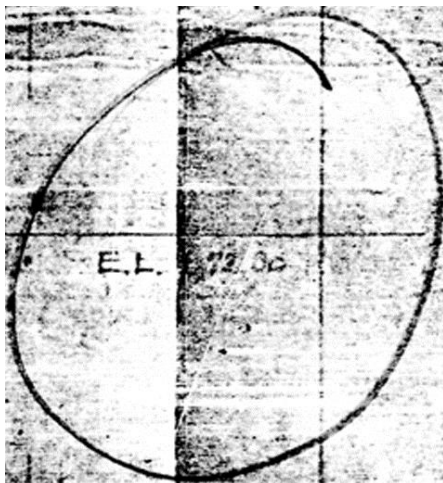
Fraudulent 18th Floor



Fraudulent 19th Floor Elevation Deleted

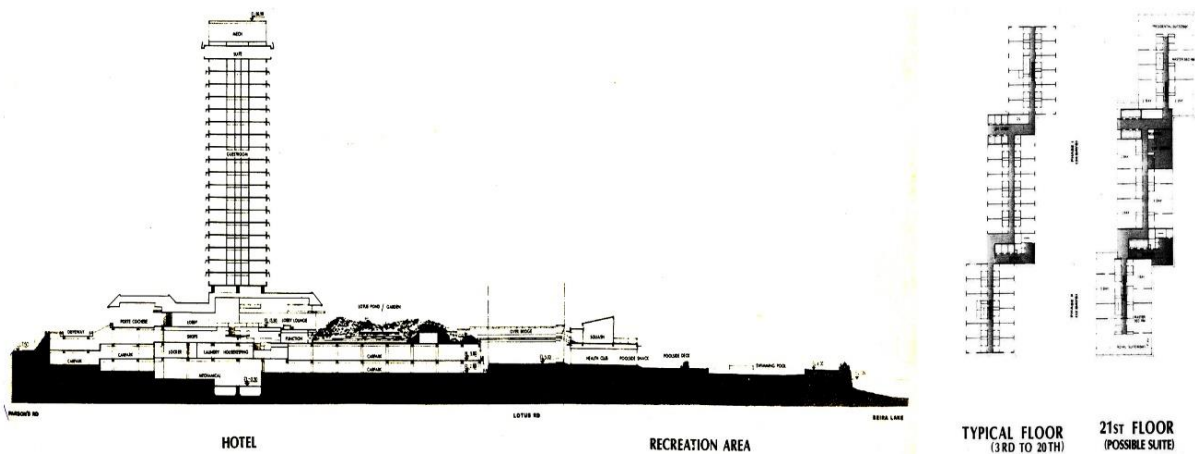


Some Elevation Levels of Roof Top – 72.0 Meters / 72.5 Meters

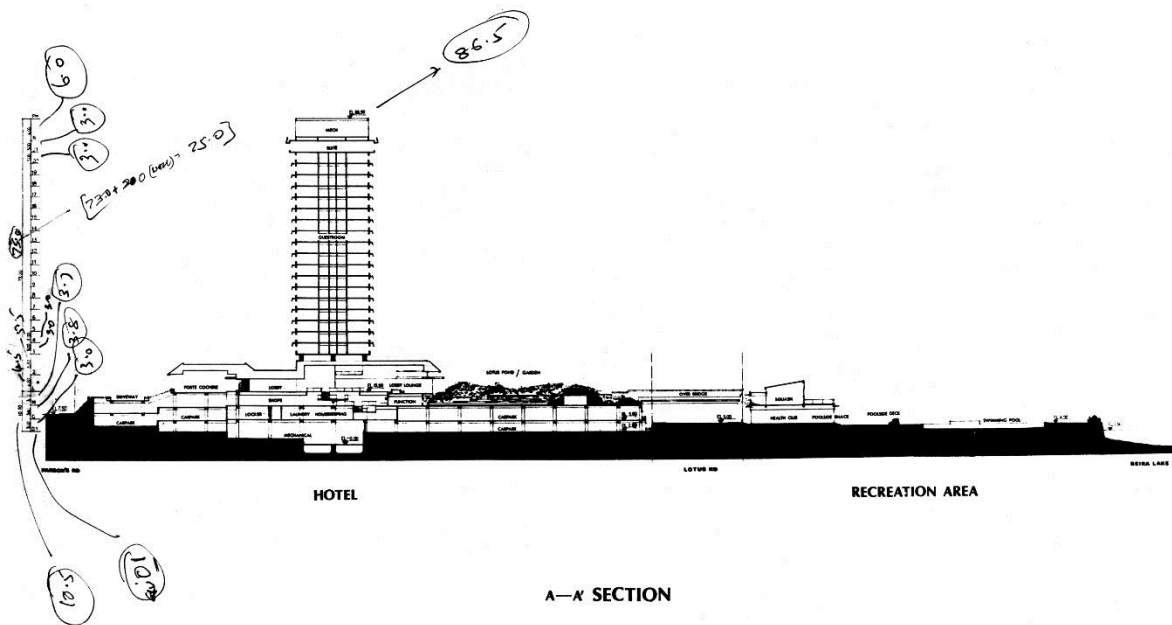


With the disclosure of the foregoing undisputed evidence of criminality, the Special Presidential Commission observed that such was an intrinsic, inherent, impossibility for the UDA even to have approved such an Architectural Plan !

The 'elevations' depicted on the Floor Plan Sheets were identical to the 'elevations' on the corresponding Floors shown in the Cross-Sectional Sheets in the original Project Plans of the Hilton Hotel, thereby well and truly establishing the criminality of cannibalization of the original Architectural Plans. The Basement Sheets had been removed. See Charts below:



Perspectives, Cross-sectional & Floor Layout Sheets as per Project Plans for Colombo Hilton Hotel



COLOMBO HILTON INTERNATIONAL

KANKO KIKARU SEKKESSHA
 Y. SHANU & ASSOCIATES ARCHITECTS COLCOVE
 JULY 1988

The above flagrant cannibalization and the consequent adverse effect on the Profitability Projections formulated by Hilton International based upon the original Architectural Plans are well exposed in this Book, with data and sections of the Plans reproduced.

Furthermore the investigative Report on these Architectural Plans done by Shelton Wijayarathne Williams & Associates, Chartered Architects, filed by the Plaintiff Author in the District Court of Colombo, also well and truly corroborated such evidence of criminality before the Special Presidential Commission.

This had shocked the conscious of the Special Presidential Commission to pose the question as to how the UDA had approved such cannibalized Plans in the very first instance, and observing that UDA could not have ever done so. Later the UDA accepting such serious fraud had prepared a set of Measured Drawings of the Hilton Hotel, as per correct areas, measurements and elevations, as per the actual Hilton Hotel construction.

With the foregoing facts of criminality being well and truly established before the Special Presidential Commission, and these Japanese Companies having been unable to explain the same, L.C. Seneviratne P.C., who appeared for the Japanese Architects, Kanko Kikaku Sekkeisha, Yozo Shibata & Associates had informed the Commission that he would not appear for them anymore.

In the foregoing circumstances, the Japanese Government had exercised pressures stating that the Aid component of US \$ 245 Mn., which was to be given to Sri Lanka at the Aid-Group Meeting in November 1996, would be withheld, until the Settlement Agreements are given effect to, and that if not, such committed Aid would not be granted.

In such context, on the intervention and pleading by President Chandrika Kumaratunga, then Secretary Treasury B.C. Perera and Hon. Attorney General Sarath N. Silva in October 1996 formulated an *Addendum* to the above Settlement Agreements, with the consent of the Plaintiff Author, to convert '*Conditions Precedent*' contained in the Settlement Agreements to be performed as '*Conditions Subsequent*', with the Sri Lanka Government solemnly undertaking and promising to do so *vide - recitals from the Addendum*

“AND WHEREAS the Government wishes to continue to maintain without any impediment the cordial relationships with Japan and the Government has been concerned about the delay in the implementation of the aforesaid Agreements

AND WHEREAS in these premises the Government, with the consent and concurrence of Mr. Ameresekere, has now agreed to proceed with the implementation of the said Agreements No.1 and 2 without the fulfilment of the conditions stipulated in Agreements No. 3 and 4 except as herein specifically provided. It is understood by and between the parties that the Government will take administrative action, as permitted under applicable law, to give effect to the contents of Agreements No.3 and 4.”

Accordingly, such *Addendum* had been signed by and between Secretary Treasury on behalf of the Government of Sri Lanka, Plaintiff Author, Mitsui & Co. Ltd., and Taisei Corporation. As per pleadings and urgings of the Government of Sri Lanka, before the November 1996 Aid-Group Meeting, the Plaintiff Author had settled and withdrawn his two Cases at the instance of the Government of Sri Lanka.

On the insistence of the Plaintiff Author, Mitsui & Co. Ltd., and Taisei Corporation had given *irrevocable* Powers of Attorney, giving the Voting power over their Shareholdings in HDL, to the Secretary to the Treasury, as had been made a part and parcel in the said *Addendum*.

The above *Addendum* had been signed 21.10.1996, and the Plaintiff Author's 2 Cases had been settled and withdrawn on 23.10.1996 and the HDL Board Meeting held on 25.10.1996, and payments to Mitsui & Co. Ltd. and Taisei Corporation made on 28.10.1996, from the funds accumulated in HDL of US \$ 30 Mn., due to interim injunctions obtained by Plaintiff Author; *demonstrating the expediency in which the Plaintiff Author had readily co-operated with the urgings of the Government.*

With such accumulated funds of US \$ 30 Mn., in HDL at that time, had the Plaintiff Author not withdrawn his 2 Cases, as urged by the Government, he could have easily continued his 2 Cases to be successfully proven, accumulating more funds in HDL; and upon winning the Cases, as had been affirmed by the Supreme Court, thereafter settling Mitsui & Co. Ltd., Taisei Corporation in a businesslike manner, thereby cancelling the State Guarantees.

Had he not acted as urged by the Government, the Plaintiff Author would have been a major stakeholder of HDL today, and not the Government, with the State Guarantees given to Mitsui & Co. Ltd., and Taisei Corporation having got annulled, and that this was the correct business decision, which was well within the Plaintiff Author's own sole power to have made, but he had heeded the pleadings of the Government, and acted as urged by the Government, due to the aforesaid pressures exerted by the Japanese Government.

The Plaintiff Author has set out in great detail, with evidential documentations, the conduct and actions of socio-politically powerful and influential personalities, and the obstacles and pressures faced by him in prosecuting this Case of a major colossal fraud perpetrated by these Japanese Companies on the Government of Sri Lanka and its people, particularly in the context of the Sri Lanka Government Guarantees which had been granted to them.

One such person who had played a despicable role had been K.N. Choksy P.C., M.P., Senior Counsel for President R. Premadasa in the Presidential Election Petition Case filed in the Supreme Court of Sri Lanka against him by former Prime Minister Sirima Bandaranaike, mother of President Chandrika Kumaratunga.

K.N. Choksy P.C., M.P., had been a Director of HDL and named as a 'wrong-doer' Director' with his wrong-doings castigated upon by the District Court of Colombo, and placed before the Supreme Court of Sri Lanka. Regardless, he was subsequently appointed Minister of Constitutional Affairs of Sri Lanka by the Government of President D.B. Wijetunga, who succeeded President R. Premadasa.

The Special Presidential Commission, after investigations, issued a Show Cause Notice, among others, against K.N. Choksy P.C., M.P., with charges on grounds of fraud against the Government of Sri Lanka. He was found to have stated untrue, erroneous and false statements to the Special Presidential Commission in his Written Submissions, and had

been castigated by the Commission in terms of Supreme Court (Conduct of and Etiquette for Attorneys-at-Laws) Rules.

Appallingly, Prime Minister Ranil Wickremesinghe after the General Election victory in December 2001, ironically appointed K.N. Choksy P.C., M.P., as the Minister of Finance of Sri Lanka. This led to the enactment of an all-encompassing perverse amnesty in the guise of a Tax Amnesty and the Author had carried out a crusade against it, resulting in the Government loosing at an early General Election called by President Chandrika Kumaratunga in the context of public opinion mobilized.

Upon the Author's urgings, President Chandrika Kumaratunga referring the above Amnesty Statute to the Supreme Court for an Opinion, a 5-Judge Bench of the Supreme Court, before whom the Author personally appeared and had made exhausted submissions, and had castigated this Law, with the Supreme Court observing – *“the Statute as inimical to the rule of law violative of the ‘Universal Declaration of Human Rights and International Covenant on Civil & Political Rights’, and that it had defrauded public revenue, causing extensive loss to the State”*.

Another person whose perverse conduct and actions had been well and truly exposed, has been Justice Minister G.L. Peiris, who had praised the Settlement Agreements endeavouring to take credit therefor, but upon discovering a Condition therein personally adversely affecting him, he had *summersaulted* and endeavoured to criticize the very Settlement, he had praised and thereby precipitating a perverse controversy and jeopardizing the further financial restructuring of HDL, and consequently causing great loss and detriment to HDL.

Justice Minister G.L. Peiris had not been able to answer Interrogatories and give discovery of documents under his power and possession, in two litigations which had been instituted against him by the Author, which matters had been left in abeyance by the Author after the Settlement.

Having announced to the public that the Special Presidential Commission would proceed against the offenders, notwithstanding the Settlement, he had intervened with President Chandrika Kumaratunga to prevent the Warrant of the Special Presidential Commission being extended, to protect K.N. Choksy P.C., M.P., who according to President Chandrika Kumaratunga had been brought, and who had assured that he would garner the then United National Party Opposition to support the draft Constitution of August 2000, which did not happen and was a disaster.

Consequently, President Chandrika Kumaratunga had directed the Inspector General of Police to take immediate criminal action through the Criminal Investigation Department, to prosecute this major colossal fraud in the construction of the Hilton Hotel. This too was stalled due to socio-political influences and pressures, disclosing socio-political realities !

Another prominent personality publicly pontificating, but acting otherwise, had been External Affairs Minister, Lakshman Kadirgamar P.C., who had belittled this major colossal fraud on the Government of Sri Lanka and the public, as a 'mere dispute' and an 'irritant', to placate the Japanese and betray the interests of the public of Sri Lanka. He had been unable to deny and/or refute the facts he had been confronted with by the Author, who had made extensive representations *dumbfounding* him.

President Mahinda Rajapakse assumed Office as the President in 2005 and turned a 'blind eye' to the criminal investigation, notwithstanding Lalith Weeratunga, Secretary to the President having expressly addressed a Letter in such regard to the Hon. Attorney General C.R. de Silva P.C.

President Mahinda Rajapakse ill-advisedly, through a hasty unconstitutional *Ad Hominem* Law took over HDL and the Hilton Hotel on the pretext of owings of Rs. 12,000 Mn., to the Government of Sri Lanka, with over Rs. 8,000 Mn., thereof having been compounded interest, far exceeding the Capital of Rs. 4000 Mn.

For such financial predicament of HDL, former Justice Minister G.L. Peiris and Court of Appeal Judge C.V. Vigneswaran stood accountable and responsible for a perverse questionable Order, amidst perverse controversy precipitated by Justice Minister G.L. Peiris.