

Financial adviser to ministry testifies at SPC

By M. J. M. Zarook

The Board of Directors of Hotel Developers (Lanka) Limited, owners of the Hilton Hotel were informed of the discrepancies in the building project but the directors did not show any interest. The government nominee, Mr. K. Shanmugalingam, then deputy secretary to the Treasury was the only person who showed some interest, Mr. Nihal Sri Amerasekera, Chartered Accountant and currently financial advisor to the Ministry of Finance, said yesterday, before the special Presidential Commission inquiry into malpractices and irregularities in certain public institutions.

The Commission comprises Justice Priyantha Perera, Judge of the Supreme Court (chairman), Justice Hector Yapa, Judge of the Court of Appeal and Mr. F. N. D. Jayasuriya, High Court Judge.

When sittings commenced at the BMICH, Mr. Douglas Premaratne acting Solicitor General presented for inquiry matters relating to Hilton Hotel project.

Mr. Premaratne in opening the inquiry said Hotel Developers (Lanka) Limited was formed for the construction and equipment of the Hilton Hotel.

Sixty four per cent of the shares belonged to the government while Mitsui company and Taisei Corporation, Japan, who were responsible for the construction had 27.5 per cent.

According to the original plans and the prospectus the hotel was to have 22 floors with 452 rooms and basement car parking for 400 vehicles. However after the building was completed it was discovered by a member of the Board that the hotel had only 20 floors with 387 rooms and the basement car parking was brought down to 200 vehicles.

Mr. Premaratne said though this fact was brought to the notice of the board by this member every effort was made to suppress it.

Acting Solicitor General pointed out that the government's interest in this was because it has given a guarantee for the loans obtained for the construction of the hotel and on the basis of this payment planned for 452 rooms. With the reduction of the rooms, the debt cannot be serviced and the government would have to pay the contractors in view of the guarantee.

The first witness Mr. Nihal Sri Amarasekera, Chartered Accountant and Chartered Management Accountant, examined by Mr. Premaratne said he was at present advisor to the Minister of Finance.

He was one of the original directors of Hotel Developers (Lanka) Ltd and was a subscriber to the memorandum and Articles of Association of the company.

According to the share capital 64 per cent belonged to the government while the contractors Mitsui and Company and Taisei Corporation had 27.5 per cent along with another Japanese company. The balance sheets were owned by the public.

The company was incorporated in 1983 and according to the prospectus showing features of the Hilton International Colombo the hotel was to have 22 floors with 452 guest rooms.

The government nominees on the Board of Directors were Dr. Rajalingam and Mr. M. G. L. Fernando who were later replaced in December 1990 by Mr. K. Shanmugalingam, Dr. H. Randeni and Mr. Peter Perera.

The chairman of the board from its inception was Mr. Cornel Perera. The property on which the Hilton Hotel was built had been leased to Cornel Perera by the Urban Development Authority on a 99 year lease and this was leased to Hotel Developers Ltd.

Mr. Amarasekera said according to the articles of association it was mandatory that one of the directors representing the foreign collaborators should be present at every board meeting. No resolution could be adopted without the foreign collaborator voting in favour of the resolution.

Chairman: Would you say this is an extraordinary provision? - Yes. This is what the foreign collaborators wanted to protect them financially.

Witness said the first profitability forecast made by Hilton International took into consideration 456 rooms in three towers of which 452 were the guestrooms while four rooms were allocated to the management. At present there were only two towers.

In international five star class hotels the buildings were planned on a standard sized rooms called room modules and if a suite such as a presidential suite had to be formed, two or three or more rooms were amalgamated into a suite.

While Mitsui-Taisei were the contractors the architect of the hotel project was a Japanese company K.K.S. Associates which was said to be a separate company but their information was that K.K.S. was a part of Mitsui-Taisei.

The project was handed over to the contractors Mitsui-Taisei on a turnkey basis.

Chairman: What is a turnkey package? - The contractor handles the construction, equipment, furniture etc. and hands over a complete product to the owner that was operatable as soon as the owner takes charge.

Mitsui-Taisei were the supervisors of the project. They had a separate executive director at the site.

Construction started in March 1984. In August 1983 the architectural plan was submitted to the Urban Development Authority and approval was received in March 1984.

The original plan was called the project plan. But for actual construction a detailed plan was made which was called the construction drawings.

Mr. Amerasekera said that when he discovered the discrepancies in the number of floors and rooms he sent a memorandum to the Board refusing to make payment to the Japanese contractors. When he raised these matters Mr. P. Paskaralingam, Secretary to the Treasury and Chairman of the UDA appointed a committee to go into his complaint. The committee comprised Mr. K. Shanmugalingam, D.S.T., Mrs. Casichetty, Director of Economic Affairs and witness.

Witness said that after the construction of the hotel project commenced a fire was reported in October 1985. The fire was reported in the newspapers but he did not visit the site.

All drawings and documents got burnt. The construction was completed in June 1987 and the soft opening was held in July 1987.

Q: Did you notice any discrepancy between the original plans and the plans which replaced them after the fire? - I did not at that time. But somewhere in October or November 1987 while carrying out my accounting work on the profitability forecast I discovered that the number of rooms was lesser than the number of rooms referred to in the report.

Further questioned by the acting SG, Mr. Amerasekera produced a letter which had been addressed to the Assistant Secretary, Finance by C. Weerakoon, Engineer, Hotel Developers seeking advice as to how to get the amended plan approved by the Urban Development Authority. The letter speaks of minor architectural alterations to the original plan. Attached to the letter was a list of the proposed alterations.

Justice Priyantha Perera: It makes no reference to the reduction of floors? - **Witness:** No.

Mr. Amerasekera said that when the amended plan was submitted in 1985, it was never reported to the Board which knew nothing about it. According to the Invest-

ment Agreement, with the government of Sri Lanka, no amendments or modifications could be carried out without the approval of all the parties. It was around this time that the fire took place. Subsequently in December '85 without having any suspicion witness called for reports from the architects and the construction people merely as a routine matter and discovered the discrepancies.

Justice Perera: This amended or substituted plan, was it before or after the fire? - There was no amended plan. An inquiry had been made in August 1985, about amendment.

Mr. Amerasekera said in August there was no formal application to the UDA. The August 8 letter was to seek advice as to the procedure to be followed to file an amended plan.

Nobody has been able to produce the original plan yet and the fact that the plan was being amended was not suppressed and I felt it was a deliberate....

High Court Judge Jayasuriya: You must state the facts and we will draw the conclusions.

Mr. Premaratne next questioned the witness on letters he had written to Mrs. Casichetty, Director, Economic Affairs of the Ministry of Finance in which he had pointed out that the original plan had 27 sheets, but the plan submitted had only 20 sheets.

Justice Perera: When the plan was later found to be amended or substituted did the Board try to locate the original plan? - No.

Justice Perera: What you say is that apart from your initiative the Board was indifferent? - Yes.

High Court Judge Jayasuriya: You said Mr. Shanmugalingam also took an interest? - In the early stages Shanmugalingam supported me but subsequently, after I instituted action in the district court Mr. Shanmugalingam remained a silent party.

Mr. Amerasekera said the Board wanted this matter to be referred to Mr. Choksy.

Mr. Premaratne: When did Mr. Choksy come into the Board as a Director? - Mr. Choksy came on to the Board in December 1986. If I may explain at that time there was provision in the Board for a director to be elected. Mr. Choksy was to be proposed as a director. Mr. Radakrishnan contested and Mr. Choksy won.

The commission meets again at 9.30 a.m. today.

Mr. Douglas Premaratne PC, Solicitor General with Mr. A. S. M. Perera, Deputy Solicitor General, Mr. Asoka de Silva, DSG, Mr. Salim Marsoof, DSG and Mr. Parakrama Karunaratne, Senior State Counsel is assisting the commission.

Mr. Godfrey Gunasekera SSP is the chief Investigator.

Mr. N. A. Obadage is the secretary to the commission while Mr. S. K. P. Bambaranda is the Asst. Secretary.

Hilton Hotel project original plan missing—witness tells Commission

By V. K. Wijeratne

"The original plan pertaining to the Hilton Hotel Project submitted for approval to the Urban Development Authority is not available. Although the plan now available is referred to as an amended plan, I would rather call it a 'substituted plan,'" said Mr. Nihal Sri Amarasekara, a Director of Hotel Developers (Lanka) Ltd., testifying before the Special Presidential Commission of Inquiry probing into matters relating to the Hilton Hotel Project among others.

The Commission of Inquiry consists of a Judge of the Supreme Court P. R. P. Perera (Chairman), Judge of the Court of Appeal H. S. Yapa and Judge of the High Court F. N. D. Jayasuriya. The Commission resumed sittings at the BMICH in Colombo.

Mr. Amarasekara said that an amended plan should have the amendments noted in red ink and should be filed along with a copy of the original plan. "Such is not the one now referred to as an amended plan," observed Mr. Amarasekara.

At the outset, Acting

Solicitor General Douglas Premaratne PC described the main features of Hotel Developers (Lanka) Ltd., as a public quoted company. He explained that 64% of the share capital of the company was government's, 27.5% in the hands of the constructing company and 8.5% with the public. He said that the hotel was to consist of 22 floors, 452 rooms and basement car park to hold 400 vehicles.

He said that during the latter part of 1985 certain discrepancies in regard to the number of rooms and the basement car park were noted. "When one Director made such observations none took serious note of it," said Mr. Premaratne.

Mr. Amarasekara in his evidence said that there were at the outset 2 Directors on behalf of the government shareholding and this number was increased to 6 later. He admitted that there was a provision in the Articles of Association whereby the assent of the foreign collaborator was a must in all matters.

He mentioned that the hotel was to consist of two towers and each of them was to contain 228 rooms. Four rooms

were to be set apart as Manager's rooms, he observed.

When Mr. Amarasekara described the Hilton project as a turn-key project, the Commission wished to know what exactly was meant by a turn-key project. Mr. Amarasekara explained that at a fixed price, it was undertaken to construct, equip, furnish and handover a operable project, with the turn of the key.

"Plans had been submitted to the UDA for approval in October 83 and had been approved by the UDA in March 84. After construction work commenced there was a fire at the construction site, reportedly due to an electrical short circuit. The fire had occurred on 18.10.85 and reported on 30.10.85", observed Mr. Amarasekara.

"In 89 December when I brought to the notice of the Board certain discrepancies that I came across in my routine duties, a Board was appointed consisting of Mr. K. Shanmugalingam, Ms. Casiechetty and me to go into them," Mr. Amarasekara observed.

"As a result of this committee, I had to obtain files and records from the UDA where I saw the discrepancies pointed out by me. It is then that I found the original plan missing. The amended plan now in file does not have a title or heading. A Bill of Quantities is not available," said Mr. Amarasekara.

Mr. Amarasekara also said that written approval of all parties was necessary for all changes, but that the Board knew nothing about them and that the Board took no effort to locate the original plan.

Answering a question by the Commission, the witness admitted that the Board was indifferent to all this.

The Commission resumes today.

Special Presidential Commission probes Hilton Hotel

By V. K. Wijeratna

Cornel Perera, Chairman of Hotel Developers, K. N. Choksy, a director and the Japanese director went to the Ministry of Finance without any authority from the Board of Directors and obtained Ministry Secretary R. Paskaralingam's authority to agree to a payment of two million US dollars, in spite of my having opposed this payment in the absence of vital documentation, a prerequisite for all such payments", Nihal Sri Amarasekara, a director of Hotel Developers (Lanka) Ltd., continuing the previous day's evidence before the Special Presidential Commission of Inquiry probing into matters relating to the Hilton Hotel Project, among others, made the above observations, when the Commission resumed sittings yesterday (28) at the BMICH in Colombo.

The Commission of Inquiry consists of Judge of the Supreme Court P. R. P. Perera (chairman), Judge of the Court of Appeal H. S. Yapa and Judge of the High Court F. N. D. Jayasuriya.

Douglas Premaratne acting Solicitor General was leading evidence.

Mr. Amarasekara said that the completion certificate which said that the building was practically completed, did not refer to any amended plan. "This also did not refer to any bill of quantities and final measurements, which I should have normally seen", said Mr. Amarasekara.

He said that in the absence of necessary documentation, he was not sure whether quality had been adhered to.

Though a 40,000 sq. feet. of floor area has been referred to in the Design and Supervision Contract a physical measurement had been resented. The Ministry of Finance also refused this request. Even in the courts this was opposed" Mr. Amarasekara said.

He said all his attempts including even in writing to obtain a copy of the Bill of Quantities and the final measurements were of no avail.

"The furniture and fittings now cannot be verified as the original schedule giving such lists is also missing" the witness said.

Mr. Amarasekara also said that when he was probing the matter in the course of his duties, he came across a file maintained in the office of the Hotel Developers, wherein there was an undated minute to say that the original of the plan given by the UDA got burnt in the fire of 1985.

He said that more light could be shed on this, if the file could be obtained.

He maintained that no amendment to any plan was possible without the written unanimous agreement of all parties concerned.

In another correspondence on the subject "Outline of the Project" although the number of storeys was referred to as 20, no one did query and it went unnoticed, said Mr. Amarasekara. "The shortage of storeys was discovered only in 1990. A floor area of 39,647 sq. ft. was also mentioned" observed the witness.

"In board meetings

when these discrepancies were talked about, a government nominee, Mr. M. T. L. Fernando suggested that an independent engineer be consulted on the matter. The board decided to get the advice of Mr. K. N. Choksy in regard to the proposal of Mr. M. T. L. Fernando. Mr. Choksy's opinion was that such was not necessary for which he gave his reasons. One among them was the extra cost to the shareholders. Subsequently at a board meeting the chairman had praised the clear manner in which Mr. Choksy tendered his opinion", said Mr. Amarasekara.

Answering the Commission

Mr. Amarasekara said that both he and Mr. M. T. L. Fernando though did not agree with the opinion of Mr. Choksy were not able to oppose it. He explained that professionally Mr. M. T. L. Fernando was his superior and he himself was silent and also that at that time Mr. Choksy wielded a lot of influence and power.

"I remember the mock presentation of a room made by the architects to give the directors a feel of what and how the completed hotel would look like. I vividly remember the smoked mirrored glass shown in "Blue Elephant" which now has only mere padded covering. Whether there was the gold plated finishes or the quality of marble cannot now be verified in the absence of adequate documentation" revealed Mr. Amarasekara.

The Commission will resume on March 30.

Accountant continues evidence at Hilton inquiry

by Norton Weerasinghe and M. J. M. Zarook

Whether the construction work was done according to schedule or not, the Japanese contractors took payment regularly in Japan. There was no certification of the work done on the materials supplied before such payments were made, Mr. Nihal Sri Amerasekera, Chartered Accountant and Advisor to the Ministry of Finance said before the Special Presidential Commission of inquiry at the BMICH yesterday.

The Commission which comprises Justice Priyantha Perera (Chairman) Justice Hector Yapa and Mr. F. N. D. Jayasuriya High Court Judge is inquiring into malpractices and irregularities in certain public institutions.

Mr. Nihal Sri Amerasekera, Chartered Accountant and Financial advisor to the Ministry of Finance, the overnight witness, examined by Mr. Douglas Premaratne, acting Solicitor General said that the two documents (P 29 and P 30) were the certificate of completion and the final certificate issued by the architects.

The certificate of completion stated that the construction was practically completed on April 30 1984 the defect verification period was one year, after which the final certificate was issued.

The completion certificates did not disclose any amended plan or substituted plan.

Mr. Premaratne: Do you think that these certificates conformed to the usual final certificate issued after completion of a project? - I am not a professional expert but I think the certificate should contain final measurements

Chairman: This witness is not competent to answer that question.

Mr. Premaratne: I will withdraw the question.

Witness said he would have expected to see the final specified bills of quantities and final measurements in the certificate of completion.

Because these final documents were not produced he refused to be a party to paying the contractor. It is on the final bill of quantities and final measurements that we will know that the project has been completed according to specifications.

Mr. Amerasekera produced the contract agreement signed in January 1984 relating to equipment and supplies.

Questioned whether there was a big difference between the 40,000 sq meters envisaged in the original agreement and the completed building witness said.

That is not known, My Lord and physical inspection of the building has been resisted. I asked for permission and that was refused. I filed an application in the District Court and that was opposed.

All the documents relating to construction agreement etc referred to a building with 452 guest rooms. Government was not a party to the construction agreements, etc but it was a party to the investment agreement.

Mr. Amerasekera referred to the architects agreement (Article 601) where the responsibilities of the architect was set out.

The agreement would require the architect to keep accurate records of the building project among other things and make them available to the employer (the owning company) when requested.

Chairman: Were those records made available to the company? - I do not know but when I requested for them it was refused.

In the absence of the original scheduled it was not possible to verify whether the contractual agreements had been adhered to.

Chairman: Is it your position that no one has a copy of the original plan? - Yes. I tried to obtain a copy of the original plan from the hotel office and I examined the file in respect of the UDA. There was a handwritten note in the file which stated that the original plans had got burnt in the fire that occurred in August 1984. But the fire actually took place in 1985.

Q: What is the date of this minute? - There is no record of the date. But I took the precaution of numbering the pages in the file.

Chairman: How are you in a position to say that the note was made in 1984? - I cannot say that. I am only saying that the note refers to the fire having taken place in 1984.

Witness said he did not look into the pages which were before and after the handwritten note but he did number the pages.

The investment agreement had a clause which stated that no amendments could be made without the consent of all parties to the agreement which included the Government of Sri Lanka.

The Japanese company did not obtain consent from the owning company or the Government in respect of any amendment of the plan or substitution of the plan.

None of the copies of the plans was available now.

In July 1985, Mr. Amerasekera said he wrote to the Board of the Hotel Developers Ltd requesting progress reports.

Q: What was the response? - The Japanese executive director started tabling reports on and off. In a report captioned outline of the project the architect referred to the number of storeys as 20 when the contract was for 22 storeys.

Chairman: When this report was presented didn't the Board make a query? - No, my Lord. It went un-noticed. I discovered it only later when I started probing. These are matters for the executive director who was in charge of construction and perhaps the managing director.

No one at that moment would have thought there was a difference between the original plan and what was being constructed. We thought we were dealing with a reputed company.

Witness was referred to the loan agreement.

He said there were no interim payments made while the building was being put up. The Japanese wanted monies remitted as payment of loans in six monthly instalments.

At no stage did the Board certify that work had been done for the payment made.

Q: In other words whether the work was done or not, whether the material was supplied or not payment went on? - Actually the Japanese paid themselves from the money available in Japan. It was when the payment of the retention money came up that I asked for certification of the work done.

Hilton International submitted its profitability report in March 1983 based on 452 guest rooms.

Witness was referred to the preliminary agreement. It gave the price of construction as 11,952 million yen. The supplies contract was for 16,080 million yen. The design contract was for 400 million yen.

Witness said it was discovered that the project had only 387 guest rooms and not 452 when Hilton International submitted its monthly profitability reports.

Witness said when Mr. M.T.L. Fernando, the Government nominee on the Board, a chartered accountant and precedent partners of Tourquand Young made a query about obtaining the services of an engineer to make an

Mr. Choksy was consulted and he gave a letter on 8 August 1988 stating that it was not necessary to obtain an independent examination as the architect was required by the contract to give a report at the completion of the construction. He also said it was only if the Board questioned the architect's competence and integrity that an independent opinion would be required.

Chairman: He has qualified by saying that it was detrimental to the shareholders to get any independent examination? - Yes. He also said that the contractors would not be obliged by such an independent opinion. Mr. M. T. L. Fernando in his query had stated that the architect and the contractors were more or less connected and that in the circumstance it would be prudent to get an independent engineer to examine and report on the construction.

The Board decided, on Mr. Choksy's letter not to retain an independent engineer and thanked Mr. Choksy for his clear opinion.

Chairman: Personally, Mr. Amerasekera, were you satisfied with Mr. Choksy's opinion? - No. I was not - Nor was Mr. M.T.L. Fernando. At that time Mr. Choksy's standing and reputation were such that I did not want to question. I was silent. Mr.M.T.L. Fernando also did not proceed further.

At this stage Mr. Amerasekera was referred to the minutes of the Board meeting of 18/11/87 and he said that Mr. Koguto, a representative of Mitsui and Co. had been present at that meeting. He was in Colombo at that time.

Mr. Amerasekera said that after the hotel opening in July 1987 and consequent to his pointing out the discrepancy in the number of rooms, Mr. Koguto produced a profitability report on the basis of 387 rooms.

Witness at this stage produced the profitability report of forecasting income and expenditure at the end of December, 1987 which he said was forwarded by Mr. Koguto and presented to the Board.

In February 1988 too witness received from the Japanese company - a profitability report forecasting income and expenditure.

Both documents refer to a capacity of 141,255 room nights. That was covered at the rate of 387 rooms into 365 days.

Mr. Amerasekera said Mr. Choksy's letter stating that an independent examination was not necessary was sent in August, 1988.

The final certificate by the architect was issued on August 26, 1988. This was issued after Mr. Choksy's letter. The significance of this was that the final inspection by the Japanese was carried out on March 24 and 25, 1988 but the certificate was given only in August, 1988.

Witness was next referred to a memorandum which he had addressed to the Board of Directors in which he had pointed out that he could not make any payments until he had a satisfactory clarification on the bill of quantities and list of measurements. In that memorandum he referred to the 22 floors. **Chairman:** At that time were you aware there was a shortage of floors? - I was only quoting from the construction agreement. I felt that the completed construction had every detail but as a Chartered Accountant I had to restrain myself.

Justice Yapa: When there was a discrepancy in the number of rooms you did not think of finding out the number of floors? No.

Mr. Amerasekera said that his memo was forwarded to Mr. Choksy by Mr. Ogabi, who was the Japanese executive and Mr. Choksy had replied to Mr. Ogabi stating that the owner will be justified in making the balance payment to the contractor in pursuance of the certificate issued by the architect.

Mr. Choksy in his reply had also stated:

In regard to the necessity I advisability of obtaining a completion certificate from a third party architect, I have already advised by letter dated 8th August 1988 that this is not necessary.

Chairman: He says that the certificates are conclusive and recommends payment? - Yes.

Chairman: Does he express any legal opinion? - No, as a Director.

Mr. Amerasekera further examined by the acting Solicitor General said that the letter was tabled at a subsequent Board meeting and he (witness) told Mr. Choksy that he could not accept his opinion. It was his (witness's) view as a Chartered Accountant that Mr. Choksy did not have any engineering or architectural expertise to give such an opinion. Nor did he have the competence.

Mr. Amerasekera said that before the hotel was constructed the architects and engineering designers made a mock room to show what the hotel would look like once it was completed. He could vividly remember the Blue Elephant night club - was to have smoke mirrored glass right round, with elephants etched. Subsequently the etched elephants were not there.

Mr. Amerasekera said that as an accountant he felt it his duty to call for proper specifications. Any accountant has to be that.

Chairman: Although it might hurt some? & Yes. I took great exception that I being an accountant was asking for documents. Mr. Choksy being another professional should not have abstracted me.

Mr. Amerasekera said he had the courage to stand up and refute Mr. Choksy's opinion. I would have liked Mr. Choksy to reconsider his opinion.

Mr. Amerasekera went on to say that on January 25, 1990, Mr. Cornel Perera, Mr. Ogabi and Mr. Choksy had met Mr. R. Paskaralingam, secretary to the Ministry of Finance to obtain approval to pay 2 million dollars to the Japanese company. They did not have Board approval to do this. But they subsequently informed the Board at the meeting held on the same day.

Chairman: The Board minutes do not bear out the fact that the meeting with Mr. Paskaralingam was to get approval for payment of 2 million dollars? But Mr. Paskaralingam had issued a letter to pay this sum. It was subsequently placed before the Board.

Justice Yapa: If there was no unanimity in the Board to make payment was it a sound thing to go to the Secretary/Finance and get the payment approved?

Witness: It is not proper. At this particular time Mr. Choksy was an MP and he exercised a fair degree of influence and authority. This company was owned by the Government. The Government had given a guarantee on behalf of the company and Mr. Choksy had an interest. There was evidence to show that Mr. Choksy had met the

Secretary to the Ministry of Finance. In my opinion this was a violation of the Constitution.

Chairman: Mr. Amarasekera, I don't think you should express your opinion on these matters.

Mr. Premaratne: What was the necessity for Mr. Choksy and Mr. Cornel Perera to go and meet the Secretary to the Ministry of Finance? - I don't know.

Q: As directors of the Board did they have an obligation to meet Secretary/Finance? - Government being the guarantee they would have met him.

Chairman: Would Mr. Paskaralingam as Secretary/Finance have authority to give directions to the Board? - He could act through the government nominees. But being a government concern the Secretary Finance called for a meeting of the Board.

The Commission will meet again at 9.30 a.m. on Thursday.

Mr. Douglas Premaratne, PC, Solicitor General with Mr. Asoka de Silva, Deputy Solicitor General, Mr. Saleem Marsoof, DSG, Mr. Parakrama Karunaratne, Senior State Counsel and Mr. Mayadunne Corea, State Counsel is assisting the Commission.

THE ISLAND - THURSDAY 30TH MARCH, 1995

Hilton Hotel probe

I went to DC to seek an injunction — Witness

By V. K. Wijeratna

"I went to the District Court, Colombo seeking an injunction in regard to the payments due to the construction company, citing the construction company, Hotel Developers and the Directors at the time, as defendants. After filing action I sent a copy of the plaint to the Ministry of Finance. Thereafter I received a telephone call from Ms. Casichetty to say that Mr. Paskaralingam wanted her to inform me that President Premadasa was disturbed and that he wanted me to consider withdrawing my court action, as it was embarrassing to the government. Mr. Paskaralingam was on his way to a World Bank meeting. Someone was reported to have told the President that I am making others believe that the Government was behind

my action," said Mr. Nihal Sri Amarasekera, a director of Hotel Developers testifying before the Special Presidential Commission of Inquiry probing into the Hilton Hotel Project, among others when the commission resumed sittings yesterday (30) at the BMICH in Colombo.

Judge of the Supreme Court P. R. P. Perera is the Chairman of the Commission of Inquiry while Judge of the Court of Appeal H. S. Yapa and Judge of High Court F. N. D. Jayasuriya are its other members.

Mr. Amarasekera continuing said that he sent a fax to Mr. Paskaralingam at the IMF office, Washington explaining his action.

"Thereafter I went to Singapore and later to London. On my way back home, at the London Airport I met the Sri

Lankan team in transit on their way to an Aid Group meeting. Mr. Paskaralingam and Mr. Shanmugalingam were there. The latter told me that I left after filing action and that, he had to bear the brunt of it. Mr. Paskaralingam also spoke to me. I told him, I never made the statement attributed to have been made by me. He told me that if this was a fraud to stand firm. Mr. Paskaralingam told me that it was Mr. Choksy who had upset the President. On my way back I met Mr. Ranil Wickremesinghe who said that my action had been a great help to the government and the country. Upto now no payment had been made as a result of my action. The sum involved is fourteen thousand million rupees" Mr. Amarasekera said:

Mr. Amarasekera further said that at one time Mr. Shanmugalingam also expressed dissatisfaction over the state of affairs and supported him. He asked what was the difficulty in complying with the requirements insisted upon by me.

"While I was pressing for the documentation that I considered necessary prior to making any payment, action was contemplated to remove me from the directorate. That was to amend the Articles and to remove the directors nominated by Cornell and Co. which included me, Mr. Amarasekera added.

When the Commission asked why he thought he was sought to be removed, he said he did not know.

Acting Solicitor General Mr. Douglas Premaratne was leading evidence.

Felt payment shouldn't be made to contractors until discrepancies in Hilton building were resolved - Witness

(By M J. M. Zarook and Norton Weerasinghe)

When he discovered the discrepancies in the Hilton Hotel building he felt that payment should not be made to the Japanese contractors until those matters were resolved, Mr. Nihal Sri Ameresekera, Chartered Accountant and Advisor to the Ministry of Finance said at the BMICH yesterday.

He was continuing his evidence under examination by Mr. Douglas Premaratne PC, acting Solicitor General before the Special Presidential Commission of Inquiry into malpractices and irregularities alleged to have taken place in certain public institutions.

The Commission comprises Justice Piyantha Perera (Chairman) Justice Hector Yapa and Mr. F. N. D. Jayasuriya.

Mr. Nihal Sri Ameresekere, Chartered Accountant examined by Mr. Douglas Premaratne, acting Solicitor General was referred to the memorandum he submitted to the Board in December 1989.

In January 1990 there was a meeting at the Treasury with Mr. R. Paskaralingam Secretary, Ministry of Finance.

In his memorandum he had taken objection to making payment to the Japanese consortium until the bill of quantity of final measurements etc were submitted to certify that the contract had been done according to schedule.

At the meeting at the Treasury Mr. Choksy Director, Mr. Cornel Perera M. D. and Mr. Ogami Executive Director along with Japanese delegation representatives of Mitsui-Taisei met Mr. Paskaralingam.

Chairman: Were you present at the Treasury meeting? - No.

Chairman: Then you will not be able to speak to what happened at the meeting? - Subsequently at a Board meeting in February, 1990 there was a minute referring to the Treasury meeting.

In consequence to that meeting Mr. Paskaralingam wrote to the Board stating that the government would invest Rs 40,000,000 (1 million US dollars) in the company (for which shares would be allotted to govt.) and that the company should pay 2 million US dollars to Mitsui Taisei.

Chairman: So this was what was discussed at the meeting with Mr. Paskaralingam? - Yes. I believe so.

Mr. Ameresekera referred to the letter sent by Mr. Choksy dated 28 February 1990 giving a second opinion.

Mr. Choksy had said: I have considered the letter sent relating to the memorandum submitted by Mr. Nihal Ameresekera (Director). I have considered the certificates of practical completion and the final certificate dated 25-8-88 issued by the architects.

These certificates are in accordance with the general conditions of the contract. The completion certificate final certificate expressly states that all necessary defective works have been executed during the defects liability period. 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 regard to the necessity of obtaining a completion certificate from a third party architect I have already advised that this is not necessary.

Mr. Ameresekere said the original plan was for 452 guest rooms, but what was built was 408 rooms (though given as 387 rooms which included suites). The car parking for 400 vehicles in four basement levels was reduced to 190 vehicles in two basement levels.

Witness referred to Mr. M. T. L. Fernando's request for an independent engineer to inspect the project. Mr. Fernando had said that the architect doing the project was more or less connected with the contractors Mitsui Taisei and therefore for the benefit of the shareholders on independent report should be obtained.

Mr. Choksy joined the Board of Hotel Developers Ltd as a director in December 1986.

Mr. K. Shanmugalingam DST too had suggested that the services of a local engineer he obtained to look into the construction in view of the allegations made as to shortage of rooms and parking space and work not being done according to the contract.

Chairman: Did Mr. Choksy express any view after Mr. Shanmugalingam made his suggestions on March 7? - No. My Lord Mr. Choksy was not present.

Mr. Ameresekere said in view of the serious discrepancies in the construction he had suggested that the matter be referred to arbitration. He had said in his memorandum that the final certificate only confirmed the work according to an amended plan which had not been authorised by the Board. Mr. Shanmugalingam agreed with his view.

The UDA told him that they did not have a copy of the original plan. Till the discrepancies were discovered no one had disclosed that work had been done on a substituted or amended plan.

To a question by the chairman, Mr. Ameresekere said that after comparing the project plan with the other documents available he found that there were these discrepancies and he felt that payment should not be paid until these matters were resolved.

Witness said on August 30, 1990 Mr. Paskaralingam forwarded a requisition to remove the directors nominated by Cornel and company, Mr. Cornel Perera, Mr. F. G. N. Mendis and himself from the Board. For this special resolution to be passed the government would have needed the votes of Mitsui-Taisei.

Chairman: What was the reason for wanting to remove these directors? - I don't know. But I am aware that there were some discussions between the government and Mitsui Taisei.

Chairman: Was the resolution passed? - No, My Lord. It was withdrawn. Witness said he instituted action in the District Court.

Mr. Ameresekere was referred to his plaint in the District Court. He cited as defendants Mitsui and Company Ltd, Taisei Corporation K. K. S. Associates (Architects), Hotel Developers (Lanka) Ltd and Cornel Perera. F. G. N.

Mendis, K. N. Choksy, Peter S. Perera, K. Shanmugalingam and K. Ito.

He asked for a declaration from Court that the 1st and 2nd defendants, Mitsue and Taisei were not entitled to any payment whatsoever on the construction agreement on the supplies contract and that the 3rd defendant K. K. S. was not entitled to any payment under the design contract. He also asked for a declaration that the 1st and 2nd defendants were not entitled to enforce the loan agreement.

He asked for a declaration that the 4th defendant Hotel Developers Ltd were not obliged to pay the 1st, 2nd, 3rd defendants and for a declaration that Hotel Developers Ltd were entitled to a reimbursement of what they had already paid. He also asked for an interim injunction restraining the 1st, 2nd and 3rd defendant from demanding any monies from the 4th defendant and restraining the 4th defendant from entertaining any demands on paying any monies to the 1st, 2nd and 3rd defendants.

In this action he had not sought any relief for himself.

Justice Yapa: What is the relief you could have claimed? - Primarily I was asking for relief for the company and the government which was the major shareholder.

Chairman: Public interest litigation? - Yes, My Lord. At tremendous cost and strain. My Lords I have not gone to court before. I am not a litigant. This was the first time I had gone to courts.

Witness said the District Court issued an enjoining order preventing Mitsui and Taisei from claiming any monies.

Mr. Amerasekera said that he sent copies of his plaint and enjoining order to the Secretary, Ministry of Finance.

Mr. Paskaralingam was at that time on his way to the World Bank, Mrs. Casiechetty of the Ministry of Finance telephoned him and said that Mr. Paskaralingam told her that President Premadasa was disturbed about the court action. It was alleged by the government to file this action that he (Mr. Amerasekera) had held out that he had been instigated and financed by the government to file this action. The President had wanted him to consider withdrawing the action.

Mr. Amerasekera said this allegation that the action was at the government's instance was not correct. He filed this action on his own. He faxed Mr. Paskaralingam at the IMF office in Washington stating facts.

He had stated in the fax: I have clarified and explained to her. I have not made any such alleged statements. I have acted independently and strictly in a very professional manner and obtained enjoining order. It is not very difficult for me to understand as to who would have rushed to make such desperate implorations. I am not surprised I believe I have acted correctly and properly.

Mr. Amerasekera explained that President Premadasa did not want the government to be embarrassed as at that time the country's financial reserves were not very high and the state guarantees were in default and Mitsui and Taisei had given letters threatening to invoke the state guarantees, witness did not file the action at anybody's instance but on his own in the interests of the public.

Mr. Amerasekera said that on September 24, 1990 he wrote to Mrs. Casiechetty referring to her telephone conversation and also to the fax he had sent to Mr. Paskaralingam in Washington.

Thereafter Mrs. Casiechetty telephoned witness and stated that Mr. Paskaralingam had informed her that "it is alright" and that the case could stand.

Mr. Premaratne: In other words that there was no need to withdraw the case? Yes.

Mr. Amerasekera said that thereafter he went abroad. He went first to Singapore in mid September. He came back and then went to London. When witness was on his way back in mid October he met Mr. Paskaralingam at the London airport. He was with the Sri Lankan delegation to the Aid Group conference in Paris. Prime Minister D. B. Wijetunga who was also the Finance Minister, Mr. Paskaralingam, Mr. Shanmugalingam and other officials and General Sepala Attygalle who was High Commissioner in London. Witness had come to take the flight to Colombo.

Mr. Premaratne: Did you happen to speak to Mr. Paskaralingam? Mr. Shanmugalingam called me and told me that I had filed the action and left the country and that he had supported me and that there was apprehension that the Japanese might raise this at the Aid meeting. He wanted me to speak to Mr. Paskaralingam.

Mr. Shanmugalingam's concern and anxiety was that the Japanese was an aid giver to Sri Lanka and this might affect the relationship. So, when Mr. Shanmugalingam wanted witness to speak to Mr. Paskaralingam, witness got up and wanted to drink some water before speaking to him. But Mr. Paskaralingam walked up to witness and spoke about the case.

Witness told him that as a Chartered Accountant he had acted independently and that he would never have made the statement attributed to him because the court issued an exparte order. Mr. Paskaralingam wanted witness to speak to him when he got back to Colombo. Witness pointed out that the state guarantees were involved.

Mr. Paskaralingam then told him to stand firm and that he would speak to Mr. Shanmugalingam and that he (Mr. Paskaralingam) would know how to deal with the Japanese at the aid meeting.

At this discussion Mr. Paskaralingam told him that it was Mr. K. N. Choksy who had gone and complained to Mr. Premadasa.

Mr. Amerasekera also said that on the way back to Sri Lanka he met Mr. Ranil Wickremasinghe who was returning from the United States and he told witness that what he had done was a great help to the country.

Mr. Premaratne: There was a moratorium on that payment as a result of that action?

Witness: No payment was made.

Justice Yapa: What is the payment due now?

Witness: Approximately 280 million dollars which will amount at current rates of exchange to about Rs. 14,000 million. The food stamp scheme would cost Rs. 2,000 m, each garment factory Rs. 30 million, making a total of Rs. 6,000 m for 200 garment factories, Janasaviya-Rs. 5,000 to 6,000 m. But for this it was Rs. 14,000 million or Rs. 14 billion.

Mr. Amerasekera said on his return he wrote to Mr. Ranjan Wijeratne, Minister of Plantation Industries and Deputy Minister of Defence about the action he had filed in court. He attached a copy of the plaint he had filed in court. He wrote to Mr. Wijeratne because they knew each other well and as he was General Secretary of the UNP and Mr. Choksy was a member of the party.

Proceeding

Amerasekera continues evidence

Mr. Nihal Sri Amerasekera, Chartered Accountant and Financial Advisor to the Ministry of Finance continued his evidence before the special Presidential Commission of Inquiry at the BMICH on Thursday.

The Commission comprising Justices Priyantha Perera (Chairman) Justice Hector Yapa and Mr. F. N. D. Jayasuriya, High Court Judge is inquiring into malpractices and irregularities in certain public institutions.

Witness wrote to Mr. Wijeratne because they knew each other well and as he was General Secretary of the UNP and Mr. Choksy was a member of the party

Chairman: Because a member of the UNP was involved in the plaint? - Yes.

Mr. Premaratne: He was also a MP at that time? - Yes.

Mr. Amerasekera said that Mr. Wijeratne replied his letter endorsing the action he took and asking him to stand firm.

Witness subsequently met Mr. Wijeratne in parliament and explained to him why he took action - it was for the sake of the company, the country and the public.

The following day he wrote to Mr. Wijeratne and he replied back stating that he had raised the matter in the Cabinet and also sent a copy of witness' letter to him to Mr. Premadasa.

Following Mr. C. Gunasingham, Economic Advisor to the late President wanted witness to come for a discussion.

Witness said another reason why he wrote to Mr. Ranjan Wijeratne was because during the UNP government, he (witness) also held public office. He was a Director of the State Pharmaceuticals Corporation and Director, Finance of the Sri Lanka Transport Board. He was also appointed to the Sri Jaywardenepura Council. He was acting Chairman of the State Pharmaceuticals Corporation when Mrs. Gladys Jayewardene was away and acting Chairman of the SLTB when the late Dr. Gamini Wijesekera was away. Mr. Harsha Abeywardene, former UNP General Secretary was a Director of witness' company. Witness also knew Mr. Panditharatne former UNP Chairman.

On October 22, 1990, Mr. Paskaralingam as Secretary, Finance, wrote to Hotel Developers Ltd. withdrawing the requisition he had forwarded earlier to remove three members of the Board.

Mr. Premaratne: What was the reason for withdrawing the requisition? - I don't know.

Q: Was it after your meeting with Mr. Paskaralingam? - Yes. But I don't know why it was withdrawn.

On December 1990, he wrote to President Premadasa enclosing two letters he had sent to Mr. Paskaralingam. In that letter he had stated:

"In view of the nonchalance and inaction at the Board of Directors of the Company, and due to certain attitudes and circumstances, I was compelled to initiate legal action regarding the Hilton Hotel, acting according to my conscience on what I considered was right and proper. I firmly believed that I was acting in full conformity with the policies enunciated by your Excellency for the redevelopment of this country without fear or favour.

Even though a fractional Shareholder, I have initiated this action, in the nature of a "derivative action" on behalf of the Company, the only beneficiary being the Company, and in this instance, also the Government as the Guarantor. I have not claimed any relief for myself, although I have incurred much effort, time and costs.

It is in the context of certain circumstances, and perhaps by divine providence, being encouraged by Your Excellency's excellent address yesterday, to the Executive Committee of the Party, that I decided to submit this letter to Your Excellency.

I have been very much encouraged and impressed by Your Excellency's Address to the last Opening Sessions of Parliament and the herculean efforts that Your Excellency is dedicatedly and sincerely endeavouring to pursue, for the greater good and the uplift of this country, amidst numerous obstacles.

I assure Your Excellency, that I have acted according to my natural instincts to abhor fraud, and with sincerity and honesty of purpose; acting according to my conscience in the interest of the Company and its Shareholders i.e. the Public and again no doubt the Public; I have also acted in the interest of my name and reputation, which I zealously value.

Whilst, I regret I had to impose on Your Excellency's valuable time, economic dimensions, foreign policy implications and the need to effectively resolve this matter in the best interest of the country and in conformity with Your Excellency's policies for fraud and good government, devoid of influence peddling, greed and corruption, further prompted me to write this letter.

In the context of inaction, having initiated this action in accordance with my conscience, on what I considered was right and proper, having much earlier brought the said matter to light, I'm at a loss as to understand why and how the state authorities are yet to take an initiative in this regard notwithstanding the seriousness, gravity and the magnitude.

In my opinion this requires an immediate and a thorough investigation and those found responsible held accountable; after all public funds are involved and no one is above the law."

Witness received a reply to that letter from the Secretary to the President stating that his letter had been forwarded to the secretary, Ministry of Finance for necessary action.

Questioned on the court case, witness produced copy of the plaint and interim injunction issued and said he met the Attorney-General Mr. Sunil de Silva who told him he was not filing objections and requested him to proceed in the interests of the country.

Mr. Amerasekera was also questioned by acting Solicitor General on a note which Mr. Shanmugalingam had addressed to Mr. Paskaralingam, just after the Court issued an injunction. It read:

S/T 1. I am informed that Mr. Amerasekera is trying to get the company delisted from the stock exchange. This has to be stopped.

2. We may reassure the Japanese that our guarantee of the loan will be handled in terms of the rescheduling we have agreed.

3. Request the Attorney-General to take a fair view of the situation and support the Japanese firms to the extent possible in their appeals. I think that we should take a positive stand on this.

To this Mr. Paskaralingam had replied: Please discuss with Mr. Choksy and map out strategy. The UDA Director tells me that the building is in conformity with the plan and thus should be settled.

Mr. Premaratne: In spite of the interim injunction Mr. Shanmugalingam is saying that we should pay the Japanese company? - Yes.

Chairman: This is virtually contempt of court that they should do this in the teeth of the court's judgment.

High Court Judge: Trying means to evade implementing the order of the court.

Mr. Amerasekera said Mr. Choksy was the 7th defendant in the case. Everyone was keen on supporting the appeals of the Japanese companies.

Chairman: A complete change of face. Mr. Amerasekera said that he has now discovered what has happened after the files in relation to this case were handed over to him in his capacity as Financial Advisor.

After the injunction was issued witness wrote to Mr. Paskaralingam through his Attorneys-at-law to arrange for a physical examination of the building. Mr. Paskaralingam replied stating that he had no authority to permit such an examination.

Witness said he expected Mr. Paskaralingam to support him. This action compared with his authorisation of the Rs. 2 million dollars.

Mr. Amerasekera said he had acted in the best interests of the company and the public. He had done his best and he was sorry if he had said anything to embarrass the Commission. He was under stress and when discovering new facts in the files which have been entrusted to him, he got shocked.

The Commission meets again on Monday April 3.

Hilton Hotel probe

THE ISLAND - MONDAY 3RD APRIL, 1995

I am now an adviser in the Finance Ministry — Witness

"I am now an adviser in the Ministry of Finance. I have since seen some office minutes in the Finance Ministry file pertaining to the Hilton Hotel project. After the interim injunction was issued, Mr. Shanmugalingam had minutes to Mr. Paskaralingam on 22.11.91 that I was trying to get the company (Hotel Developers) deleted from the Stock Exchange and to request the Attorney General to take a fair view of the situation. Mr. Paskaralingam's minute back to Mr. Shanmugalingam dated 23. 11. 91 read as follows. 'Please discuss with Mr. Choksy and map out our strategy'.

Testifying before the Special Presidential Commission of Inquiry, probing into the Hilton Hotel Project, Mr. Nihal Sri Amarasekera, continuing his evidence on 30. 3. 95 made the above observation.

At this stage Justice F. N. D. Jayasuriya observed, whether it was not amounting to

contempt of court.

"Mr. Choksy was a defendant in the case" said Mr. Amarasekera.

Referring to Mr. Shanmugalingam's minute the Chairman observed, "complete change of face."

"On 20. 1. 92, I wrote to Mr. Paskaralingam through my attorneys seeking to have a physical inspection of the hotel. On 31. 1. 92 Mr. Paskaralingam replied me stating that he had no authority to carry out such an inspection.

He who agreed to make a two million dollar payment at one stage, now says, has no authority to grant an inspection of the hotel" Mr. Amarasekera said.

Mr. Amarasekera in his evidence earlier stated that after he returned from abroad, he met Mr. Ranjan Wijeratne the then Minister of Plantation Industries and the Secretary General of the UNP to keep him informed of these developments.

Answering the Commission the witness said, he did so because

of the involvement of Mr. Choksy in the matter. "On 12. 11. 90, when I met Mr. Wijeratna in Parliament with the relevant documents, he endorsed my action and said that I had done the correct thing. On a letter that I had written to Mr. Wijeratna, which had been the subject of a Cabinet discussion, I was called by Mr. C. Gunasingham, Economic Adviser to the then President, for a discussion. Even ten days before Mr. Wijeratna died, I wrote to him keeping him informed of the progress. He even offered me security" said Mr. Amarasekera.

The Chairman of the Commission of Inquiry wished to know as to who was the Director of the UDA who was responsible for approving the plans. He wished more light be thrown on this aspect.

At this stage it transpired that Mr. Paskaralingam was Chairman of the UDA at one time.

At the end of the day's proceedings with the permission of the

Commission, Mr. Amarasekera stated that he acted in the interests of the public and the company. He said that he was shocked to see some of the contents in the ministry files pertaining to the hotel project. He expressed regret if he had stated anything irrelevant or caused any embarrassment to the Commission.

The Commission consists of Judge of the Supreme Court P. R. P. Perera (Chairman), Judge of the Court of Appeal H. S. Yapa and Judge of the High Court F. N. D. Jayasuriya.

Mr. P. L. D. Premaratne, acting Solicitor General was leading evidence and was assisted by the Deputy Solicitor General.

Mr. M. A. Obadage, Secretary and Mr. S. K. P. Bambarende assisted the commission, Mr. Godfrey Gunasekara SSP heads the investigation.

The Commission will resume on 3. 4.95 at 9.30 a.m.

Hilton hotel probe

We objected to inclusion of mortgage clause in agreement — Witness

By

V. K. Wijeratna

"In July 1985 the Board of Directors met to decide on a debt postponement agreement as there was difficulty in meeting payments on due dates. In these agreements there was going to be a commitment to mortgage the hotel building to the Mitsui Company. Both I and Dr. A. C. Randeniya who was a government nominee objected to this mortgage Clause in the proposed agreement on the count that Mitsui cannot have a mortgage while there was a state guarantee".

Mr. Nihal Sri Amarasekera a Director of Hotel Developers (Lanka) Ltd testifying before the Special Presidential Commission of Inquiry probing the Hilton Hotel Project made the above observations, when the Commission resumed sittings yesterday (3) at the BMICH in Colombo.

The Commission of Inquiry consists of Judge of the Supreme Court P. R. P. Perera (Chairman) Judge of the Court of Appeal H. S. Yapa and Judge of the High Court F. N. D. Jayasuriya. Acting Solicitor General Douglas Premaratne was leading evidence.

Continuing his evidence Mr. Amarasekera answering the Commission of Inquiry said that it was the con-

sensus at the Board meeting that the mortgage clause could not be included in the proposed agreement in view of the objections raised by him and Dr. Randeniya.

"I was unable to attend the subsequent Board meeting on 9.8.89, but observed that our objections had not been recorded" said Mr. Amarasekera.

The Chairman observed that it was a crucial matter.

Mr. Amarasekera then said that he was informed that agreement was prepared without the mortgage clause and that it would be tabled. "But this too was not recorded as it was taken for granted. There was no suspicion or anxiety at that stage" added Mr. Amarasekera.

Continuing his evidence Mr. Amarasekera said that he followed this up but observed that the agreements were not tabled at the Board Meetings held on 12.9.89, 20.10.89 and 30.10.89. Shortly before the Board Meeting on 6.11.89, copies of the agreement were delivered to him and Dr. Randeniya.

"It is at this meeting that we saw that the mortgage clause had not been deleted. Though agreed it had not been done. At this meeting Dr. Randeniya

even threatened to resign if this obnoxious clause was not removed from the agreement, Mr. Amarasekera said.

Mr. Amarasekera further said that at that stage Mr. Paskaralingam sent a letter to Mr. Cornel Perera on 20.11.89 requesting that action be taken to delete the mortgage clause and confirms. "Finally this was done on 17.5.90", said Mr. Amarasekera.

It is on the heels of this incident that I asked for documentation to satisfy myself, before making payment. "At the Board Meeting held on 13.12.89, I took objection to making any payment without the requisite documentation. Though it was recorded that this meeting was terminated, the meeting was continued on 18.12.89 as well. At this meeting Mr. Paskaralingam and Mr. Shanmugalingam were present on invitation. At this meeting Mr. Paskaralingam sought clarification on room rates", said Mr. Amarasekera.

Mr. Amarasekera said that at that meeting Mr. Paskaralingam wanted a few people to sit down and discuss the issues involved, rather than summoning a whole lot of people. He said that Mr. Paskaralingam appointed Mr. Shanmugalingam,

Ms. Casichelly and me for this smaller group that he suggested.

"It is when this group began working that I called for the plan from the UDA. It was then that we found the original plan was not available at the UDA" Mr. Amarasekera said.

At this stage Mr. Amarasekera said that Mr. Shanmugalingam informed him that a committee was appointed by the Cabinet to go into the matter. Mr. Amarasekera said that, "that committee was chaired by Mr. Akeel Mohamed and other members were Messers. A. R. M. Jayawardane, D. Wijesinghe and K. Shanmugalingam. He said that the first three were Secretaries of Ministries while the last named was Additional D.S.T.

"I made representations to this committee but I was not summoned for any discussion" said Mr. Amarasekera.

Earlier Mr. Cornel Perera, and representatives from the UDA, Municipality and Fire Brigade were asked to hand over the documents brought by them to the Secretary of the Commission. The Chairman instructed S. S. P. Godfrey Gunasekara to get the statements of the officials recorded.

Commission resumes sittings today (4).

“Complainant not called to make representations before committee”

Former Supreme Court Judge Mr. J. F. A. Soza was appointed, on the direction of President R. Premadasa as the one-man committee to inquire into the alleged irregularities in the Hilton Hotel project but he (the complainant) was not called to make representations before the committee.

His report on the subject too was not forwarded to the committee, Mr. Nihal Sri Ameresekere, Chartered Accountant and Advisor to the Ministry of Finance said yesterday before the Special Presidential Commission of inquiry into malpractices and Irregularities in certain government institutions.

The commission which is sitting at the BMICH comprises Justice Priyantha Perera, judge of the Supreme Court (chairman) Justice Hector Yapa, Judge of the Court of Appeal and High Court Judge Mr. F. N. D. Jayasuriya.

Mr. Ameresekere said that Mr. Soza in his report had held that there had been no irregularities in the implementation of the Hilton Hotel Project and recommended that the monies lent and advanced by Mitsui and Taisei should be repaid.

Mr. Ameresekere said in his opinion Justice Soza's report was unreasonable even though he did not have the benefit of all the papers and reports connected with the subject.

Mr. Ameresekere said when he heard about Justice Soza's finding from a Finance Ministry official, Mrs. Casiechetty he had exclaimed: I can understand if he had said there has been no fraud but I cannot understand how he has concluded there were no irregularities.

Mr. Ameresekere said all those misgivings would not have occurred if he had been called before the one-man committee. **(See also page 17)**

DAILY NEWS - WEDNESDAY APRIL 05, 1995

Choksy's statement contradicts position - Witness

(By M. J. M. Zarook and Norton Weerasinghe)

Former Supreme Court Judge Mr. J. F. A. Soza who was appointed as the one man committee to inquire into allegations about the Hotel Hilton project had held that there had been no irregularities in the implementation of the project. He (witness) felt that was an unreasonable conclusion, Mr. Nihal Sri Ameresekere, Chartered Accountant and Advisor to the Ministry of Finance said before the Special Presidential Commission at the BMICH yesterday.

He was continuing his evidence examined by Mr. Douglas Premaratne PC, acting Solicitor General before the Commission which comprises Justice Priyantha Perera (chairman), Justice Hector Yapa and High Court Judge Mr. F. N. D. Jayasuriya.

The Commission is inquiring into malpractices and irregularities alleged to have taken place in certain public institutions and at present has taken up matters relating to the Hotel Hilton Project of Hotel Developers (Lanka) Ltd.

Mr. Nihal Sri Ameresekere, said that on April 24, 1990 he submitted a memorandum to the Board asking that an arbitration be appointed in the light of the discovery of the substituted plans. As no action was taken he sent another letter dated May 31, 1990 addressed to Mr. Cornel Perera Managing Director of the Company.

There was no response to this also. He then sent another memorandum to the Board dated June 7 on which he had raised the question inter-alia that the original plan was not available.

Q: Was there a response to this? - No.

Q: Were these memoranda and letters discussed at the board meetings? - No.

Chairman: Did these matters come up for discussion at board meeting? I believe the local directors discussed it, but nothing came of it.

Chairman: Did any of the directors oppose the idea of appointing an arbitrator? - No. Except that there was silence. Only Mr. Shanmugalingam supported me at that time.

No particular action was taken by the Board with regard to the matters he had raised. By letter dated February 8, 1990 Mr. Choksy gave an opinion and he said he would revise his opinion if document pertaining to the allegations were submitted.

Chairman: Apart from the new substituted plans being disclosed was there any fresh material that could have formed on the subject of consideration by Mr. Choksy? - No.

Chairman: What you are saying is that the discovery of the new plans was sufficient for Mr. Choksy to revise his opinion? - Yes.

Justice Yapa: Did you at any stage point out that the original plan had 22 floors while the completed building had only 20 floors? - it was Mr. Shelton Wijeyaratne architect who pointed that out. There was a shortfall in the number of rooms.

When the substituted plans were discovered was it clear that there was a shortage of floors? - One could infer that.

Witness said he wrote to Mr. R. Paskaralingam, Secretary Ministry of Finance regarding these discrepancies. Mr. Paskaralingam told him that he had discussed the matter with President Premadasa and the President was quite disturbed about it and had decided to appoint a one man committee to look into the matter. Mr. J. F. A. Soza retired Supreme Court Judge was appointed as the one man committee to inquire into any irregularities that might have come up in the Hilton Hotel project.

Chairman: Did you have any discussions with Mr. Soza on this? - No. A discussion was fixed and later cancelled. I sent my memoranda to the Ministry of Finance and Mr. Soza had referred to some of my memoranda.

Chairman: What you are trying to say is that of the memoranda that you submitted Mr. Soza only refers to some of the documents? - Yes.

Judge Jayasuriya: By his appointment Mr. Soza was directed to look into the matters raised by you and you forwarded all documents to Mr. Soza? - I forwarded them to the Ministry of Finance and Mr. Soza refers to some of the documents.

Chairman: You cannot say whether all the documents you forwarded to the Ministry of Finance were handed over to Mr. Soza or not? - I cannot say.

Witness said he was not sure whether the report submitted by him had been forwarded to Mr. Soza. Mr. Soza in his report had referred to the contractual agreements, loan agreements, authorised plan, amended authorised plan etc.

Judge Jayasuriya: The project plan and the prospectus had not been submitted to Mr. Soza? - Yes. I believe so.

Witness said Mr. Soza had not referred to his report.

Mr. Soza had referred to all the documents that he had received.

Chairman: Has he received the report made by Mr. Ameresekere?

Mr. Premaratne: The report of Mr. Ameresekere had not been received by Mr. Soza.

Witness said the plan given by the UDA had 21 sheets while the original plan had 27 sheets. He (witness) pointed out that the plan with the UDA could not be the authorised original plan.

In June 1990 the UDA gave a letter stating that they did not have a copy of the original plan having given a letter themselves earlier that the plan they had in their possession was the original plan.

Justice Yapa: Is there a difference between this "original" plan and the substituted plan? - I have not gone into that.

Mr. Shelton Wijeyaratne Chartered architect made a comparison between the two plans the substituted plan had 28 sheets. The plan forwarded to Mr. Soza was not the original plan.

Chairman: As far as Mr. Soza was concerned he would not have had any material to conclude that this was not the original plan? - Yes.

Chairman: So his report would have been on the basis of what he thought was the original plan? - Yes.

Chairman: Mr. Soza may not have gone into the aspect whether the plan itself refers to 22 floors? - Yes. only an engineer could have gone into the aspect.

Witness said Mr. Soza had referred in his report to changes effected in the plans in April 86 by the UDA but the company had not authorised the changes. The inquiry before Mr. Soza was to be kept a secret.

Chairman: Why was it kept a secret from the Board? - I don't know.

Justice Yapa: Who wanted this inquiry before Mr. Soza to be kept a secret from the Board? - Either Mr. Paskaralingam or Mrs. Casiechetty mentioned it to me.

Mr. Soza in his report had stated that there were no irregularities in the implementation of the Hotel Hilton project. When Mrs. Casiechetty told him about that conclusion he had remarked: I can understand if he had said there has been no fraud, but I cannot understand how he has concluded there were no irregularities.

Chairman: Do you think a meeting with Mr. Soza would have been useful? - Yes. I could have told him what I knew.

Chairman: Having regard to the documents that had been forwarded to Mr. Soza in your view do you think his findings were unreasonable? - Yes. My Lord, he is an experienced Judge. He should have initiated a discussion with me to find out.

Mr. Premaratne: And Mr. Soza was appointed on your complaint? - Yes.

Judge Jayasuriya: We find that the project plan was not put before him, the prospectus was not before him, the original plan was not put before him, your report was not before him. In that situation even if his conclusions were not correct would it have been unreasonable in view of the documents before him? - I don't think this misadventure would have happened if he had called me.

Mr. Soza in his report had said: "No ground therefore exists for Hotel Developers Ltd to suspend its repayment of the money lent and advanced by Mitsui and Taisei. The loan agreement stands and cannot be resiled from. Repayment must be made in accordance with its terms.

It would be illegal not to mention immoral for HDL to pocket the advantage of the money lent and advanced by Mitsui and Taisei and look for what seems to me to be no more than specious pretexts to repudiate its obligations on the loan agreement. It would amount to unjust enrichment on the part of HDL to claim that the money lent and advanced by Mitsui and Taisei is not repayable.

In this situation the government is bound to honour its letters of guarantee.

I would therefore advise that there has been no irregularities in the implementation of the Hilton Hotel Project".

At this stage acting solicitor General Douglas Premaratne forwarded to the Commission what he described as the "supposed to be original plans which the chairman of Hotel Developers Ltd. had submitted on Monday in response to the summons issued by the Commission.

Chairman: He has represented that this was the original plan?

Mr. Premaratne: Yes.

HC Judge Jayasuriya: Does it indicate that it has been prepared by a particular architect? - Witness: Yes.

Witness said that this could not be the original plan. There was a deal by the architects dated 30-9-85 and another deal also by the architects on 24/8/86. A handwritten note makes a reference to August 15, 1983.

Mr. Premaratne: Apparently designed on August 15, 1983.

Mr. Ameresekere said the original plan should bear a deal dated 24- 3-84.

Chairman: Mr. Soza's findings are in conformity with this plan.

Witness: Yes. There is no dispute about that.

Chairman: The dispute is whether this is the original plan? - Yes.

Mr. Ameresekere said the plan was a parallel plan.

Witness was shown a letter dated 24/12/87 addressed to the Municipal Assessor by the project director of Hotel Developers Ltd. relating to the assessment of premises of Hilton Hotel. In this letter Hotel Developers Ltd. draws a comparison of the assessments made in respect of the other hotels and the number of rooms in them - Galadhari Meridien 493 rooms, Ceylon Intercontinental 234 rooms, Ramada Renaissance 356 rooms and Hotel Hilton International 386.

Mr. Ameresekere said even that letter has been written on the basis that there were 386 rooms.

He said as in the case of the original plan there was no schedule of the furniture fittings and equipment which were to be installed.

Chairman: These findings of Mr. Soza after the report, was it brought to the notice of the Board? - No. I didn't give it myself.

Chairman: How did you get the report? From the Ministry file after I was asked to look into the Hilton project. Mrs. Casiechetty had however told me that Mr. Soza has said that there were no irregularities.

Witness said that it was in order to file the court case that he asked for the original schedule of furniture, fittings and equipment but the reply from the General Manager of Hotel Developers was that they hadn't the original schedule which was attached to the supplies contract. As a result it could not be made not only in regard to quantity but quality.

Even at that time the GM acknowledged that the company did not have a copy of the original plan.

Mr. Ameresekere said after he filed plaint he sent a memorandum to the Board pointing out that the two representatives of Mitsui and Taisei were disqualified from attending the Board meetings.

He wrote to the Board that he reliably understood that the 5th and 7th defendants together with the Japanese had attended consultations with Mr. Eric Amerasinghe.

Mr. Ameresekere said he had also stressed in his memo to the Board the need for the auditors to examine the accounts.

In reply to High Court Judge Jayasuriya, witness said the

original plan had 27 sheets. He had arrived at that conclusion from a letter which the Fire Brigade sent to the UDA.

Referred by acting SG to the minutes of a Board meeting Mr. Ameresekere said it referred to the legal action he had instituted. Mr. Choksy had denied that he had any consultations with Mr. Eric

Amerasinghe or had discussions with the Japanese. He had said the information sent by Mr. Ameresekere was entirely incorrect.

Questioned on the Board minutes witness said his position was that whatever action he had taken was in the interests of the company and the shareholders.

Mr. Choksy stated that since it was clear that there

was no support from the government for the action it would be very good to request the Attorney-General's Department to report to the company and the shareholders.

Mr. Shanmugalingam made it quite clear that the government has no hand in the action tacitly or otherwise and in a way the action has severely embarrassed the government.

Chairman: Mr. Choksy has taken up the position that there was no conflict of interests? - Yes.

Chairman: And that he did everything in his capacity as a director? - Yes.

Chairman: Do you agree? - No. A director would do what I did. It is a public listed company.

Mr. Ameresekere said Mr. Choksy's statement showed that he was speaking for the government.

Mr. Premaratne: Earlier it was rumoured that you were instigated by the government to file this action? - Yes.

Q: So, Mr. Choksy's consequent statement contradicts that position? - Yes.

Mr. Ameresekere said he filed the actions in January 1991. Trial is pending in both cases, awaiting answer to the interrogatories.

Chairman: You are complaining of the law's delays?

- No. My Lords. I have got justice from the courts. Your Lordship's Commission has given some relief to me.

Chairman: Anyway we appreciate the confidence you have in the Supreme Court.

Mr. Ameresekere said that Mr. Choksy pointed out section 129 of the Articles of Association permitted the Japanese representatives to veto the board decision.

HC Judge Jayasuriya: Did you ask why Mr. Choksy was raising a matter which could have been raised by the Consortium? - No.

Mr. Ameresekere said that he wrote to the Board through his lawyers deSilva and Perera stating that the minutes were incorrect.

Q: What was the necessity to write like that? - Because of the reluctance to record what was discussed the matters set out in this letter.

At the next Board meeting the issue was discussed. Witness had said his action was in effect an action by the company. Witness pointed this out to Mr. Choksy who, though a lawyer, did not accept that position.

Witness was asked by Mr. Choksy to leave on the basis that there was a conflict of interests. The Japanese who he would describe as fraudulent were permitted to remain.

Chairman: Did other members of Board agree with Mr. Choksy's request? - They acquiesced if I may use that word.

Mr. Ameresekere said that Mr. Choksy said that the question whether he (witness) had filed that action on behalf of the shareholders was a matter to be decided in courts.

At that time Mr. Choksy was very influential and powerful. He was also representing President Premadasa in the election petition before the Supreme Court.

Mr. Ameresekere said the Attorney-General's draft answer on behalf of the company had got into the hands of Mr. Ito, executive director of Mitsui Taisei.

The commission meets again at 9.30 am on April 6.

Auditors failed to function properly – witness

By M.J.M. Zarook and Darryl de Silva

The auditors, Ford Rhodes Thornton and Company had failed to perform their functions properly in auditing the accounts of the Hilton Hotel project, Mr. Nihal Sri Ameresekere, Chartered Accountant and Advisor to the Ministry of Finance said before the Special Presidential Commission of Inquiry sitting at the BMICH yesterday.

He was giving evidence examined by Mr. Douglas Premaratne PC acting Solicitor General before Justice Priyantha Perera, Justice Hector Yapa and High Court Judge Mr. F.N.D. Jayasuriya in the inquiry into alleged malpractices and irregularities relating to the Hilton Hotel project of Hotel Developers (Lanka) Ltd.

At the outset the OIC, Fort police produced certain documents in connection with the fire that had taken place at the Hilton Hotel site. He was directed to have his statement recorded by Mr. Godfrey Gunasekera SSP, Chief Investigating Officer.

Mr. Nihal Sri Ameresekere examined by Mr. Douglas Premaratne was referred to a letter (P99) addressed to former Supreme Court Judge Mr J.F.A. Soza by Mr. R. Paskaralingam, Secretary, Ministry of Finance appointing him to inquire into alleged irregularities in the Hilton Hotel project. In that letter Mr. Paskaralingam had informed Mr. Soza that if he wanted any more information he should contact Mrs. Casiechetty of the Finance Ministry and also that he could obtain on clarification from Mr. Nihal Sri Ameresekere and representatives of Mitsui and Taisei.

HC Judge Jayasuriya: What had Mr Soza been asked to do specifically? To look into the matters raised by me so as to ascertain whether there had been any irregularities in the implementation of the Hilton Hotel project and if so to identify those responsible indicating if there had been any financial implications.

Chairman: P99 gives very wide terms of reference? – Yes, My Lord.

Witness was referred to the report of Mr. Soza.

HC Judge Jayasuriya: So it looks from the report that he had only expressed an opinion of a perusing the documents. He had not made an inquiry? – Yes.

Mr. Ameresekere was referred to the answer of the 4th defendant Hotel Developers Ltd in the District Court case filed by him (witness).

Hotel Developers had admitted in the answer that the original plans were not available.

Chairman: The chairman of the 4th defendant has produced before this commission what he says are the original plans, but in the answer before the District Court he had said the original plans were not available? – Yes.

Mr. Ameresekere referred to the several memoranda he had submitted to the auditors, General Manager of HDL etc. He wanted to inform the auditors Messrs Ford Rhodes and Thorton the reason why he had instituted action in the District Court. In a memorandum to the Board he had said that no monies are due on the relevant contracts and agreements for the reason that Mitsui Taisei Consortium had failed to perform the contracts according to the terms.

In another memorandum he had said he could not accept the balance sheet of the company as correct.

The accounts could not have been certified by the auditors in the light of the several disclosures that he had made. But the auditors had certified the accounts and merely added a note to state that there was a case filed by one of the directors.

Chairman: Ordinarily when this sort of matter is raised what is the responsibility of the auditors? – They should have examined the matter fully.

Mr. Ameresekere was referred to the annual report of the company which included the auditors report. The auditors report incorporated the note suggested by Mitsui Taisei which was contrary to what the auditors had said in their note of November 7, 1990.

Chairman: Mitsui Taisei had exercised their power of veto? – Yes.

Justice Yapa: In your letter you had said the construction contract was affected and the supplies contract was affected. What was the responsibility of the auditors in that? – I shall answer that in due course My Lord.

Chairman: Is it your complaint Mr. Ameresekere that in the face of your disclosures the auditors had failed to perform their functions properly? – Respectfully, yes My Lord. As a director I had to point out the lapses.

Justice Yapa: When you cautioned the auditors what is the examination they could have carried out? – They should have, if they were unable to do so themselves, got the services of an expert to look into the construction and furniture, fittings and equipment. They should have given a true and correct view of the state of accounts.

Witness referred to Coopers and Lybrand Manual of Auditing which had referred to a judgement where it was stated: It is the duty of the auditor to state clearly in his report any qualification he seeks to make.

Information and means of information are by no means equivalent terms. An auditor who gives shareholders means of information instead of information in respect of a company's financial position does so at his peril and runs the very serious risk of being held judicially to have failed to discharge his duty in this case.

Chairman: What you say is that the auditors have fallen far short of the dictum? – Yes, My Lord.

Witness referred to international standards of auditing with reference to procedures to be adopted when fraud or error was indicated.

Witness said there were four types of reports the auditor could give. An unqualified report, a qualified report (subject to some item), an adverse report or a report which they will not certify.

Chairman: Are you aware of any instance when the auditors have given an adverse report? – I cannot recollect. It is a rare occurrence.

Chairman: Who will guard the guards?

Witness: Auditors are supposed to be the watch dogs, but sometimes they become pet dogs.

Witness said that auditing standards of Sri Lanka was mandatory for public listed companies.

Mr. Ameresekere told the Commission that the work of an expert could be engaged by an auditor to assist when put upon inquiry, and his duty was to probe to the bottom. HDL

was 64 percent government owned, he pointed out. He had therefore made representation to both the government and the HDL board that he took exception to the audit report.

Mr. Amarasekera had also written to the board of directors to refute his position if they desired to do so.

Q: Were the auditors also the auditors for the Japanese construction company Mitsui? – That is what I have come to understand. I shall be producing documents from the Registrar of Companies to support this.

Q: So it would have been prudent on this part to disclose that they were auditors to both HDL and Mitsui? – Yes.

Witness produced in evidence a document filed with the Registrar of Companies in December 1991 showing that Mitsui Construction had then changed its name to Sanken Lanka, and its auditors shown as Ford Rhodes and Thornton. But he was unable to say whether they had been auditors to Mitsui during the 1990 period. He suggested further search of records at the Registrar of companies.

On January 11, 1991, he filed action in the District Court against HDL, and produced a copy of the plaint, asking the company to make a full and factual statement of accounts. HDL's answer is to be produced later.

He told the Commission that subsequent to HDL's answer, he had filed a petition in court asking that the auditors also be made party to his January 11, 1991 action. This matter is still before court, he said.

Q: You also wrote to Securities and Exchange Commission and the Colombo Stock Exchange on several occasions? – Yes.

Q: Why? – Because I hoped they would carry out an investigation.

Q: Was action taken? – Up to now, no.

"My complaint is that the social system did not react. These are institutions to safeguard investors. If these things can happen, what hope has the country got to attract investment," witness said.

The HDL share price of Rs 10.50 in August 1991 had gone up to Rs 40 in January 1992. This alone should have not been ignored by the SEC and to Stock Exchange, and should have been investigated, Mr. Amarasekera said, as required by regulation.

In regard to the Hilton project, witness read from the prospectus which states that the hotel would have 452 rooms and 22 floors. He had also since found a discrepancy in the space of the recreational area. There was also an error in the supplies contract (Rs 90 million more than agreed upon).

Q: What is the total square area in the project plan? 51,160 sq. meters.

Witness said that he would consider it more than erratic to say that the public and service areas of the hotel were included in the floor space of the 452 rooms. He agreed, however, that the project plan would be more reliable than the prospectus.

Mr. Amarasekera said that as a matter of public interest, he was placing on record the fact that he himself had transferred his own audit practise to Ford Rhodes in 1982, and had therefore had past contact with this firm.

Sittings were adjourned for April 19.

Hilton Hotel probe

THE ISLAND - THURSDAY 20TH APRIL, 1995

Amarasekera continues to give evidence

By Dilrukshi Handunnetti

Mr. Nihal Sri Amarasekera, Advisor to the Ministry of Finance and a Director of Hotel Developers Lanka (Ltd), testifying before the Special Presidential Commission of Inquiry probing into the Hilton Project said yesterday that according to the original plan there should have been 21 floors to the Hilton project. He said that the original plans of the Urban Development Authority have been subsequently amended.

The Commission comprise Supreme Court Judge P. R. P. Perera (Chairman), Appeal Court Judge H. S. Yapa and High Court Judge F. N. D. Jayasuriya.

Acting Solicitor General Douglas Premaratne led the evidence when the Commission resumed sittings yesterday.

At the commencement of the proceedings, Mr. Amarasekera read out a letter sent to the Ministry of Finance by the Mitsui Company.

He referred to the agreement reached between the Hotel Development Ltd., and the Mitsui and Taisai Companies which had been subsequently amended excluding the loan agreement, and only referring to the construction agreement.

Q. Do you think that the Auditor General was not adequately briefed on the matter of the discrepancies in accounts?

A. I am unaware of any verbal communication which took place. But there are no comments to establish that the position was made clear.

Q. Do you believe that the Mitsui Company wanted the balance sheets prepared in favour of them?

A. There were many obvious irregularities, and the Auditors appear to have failed in their duty.

Q. Was it the auditors' duty to vouch and verify that the accounts were not erroneous?

A. Yes. All this is part and parcel of any normal audit, let alone a special audit.

Chairman — Do you believe that the auditors were trying to cover up?

A. Whether it was de-

liberate or accidental I do not know. But this appears to be professional negligence, according to my knowledge. Even a much senior accountant has challenged that documentation was procedurally incorrect; and subsequently requested for an inquiry.

Q. Shouldn't the auditor's have brought these matters before the Board of Directors?

A. I believe so.
Q. This conflict has arisen with regard to Mitsui Company.

A. Yes.
Q. In spite of your objections Board of Directors adopted the accounts?

A. Yes. And I made representations to the government at that stage. I wrote to the Finance Ministry

Secretary Paskaralingam to defer the accounts on several occasions.

As there was no action taken on their part, I instituted action seeking to prevent the adoption of the accounts in the District Court.

Mr. Amarasekera — Then proceeded to produce a letter before the Commission which has been addressed to the then acting Finance Minister Ranil Wickremesinghe seeking to prevent the adoption of accounts due to evident documentary discrepancies.

Q. Was there any response from Mr. Ranil Wickremesinghe?

A. No. The company went ahead and adopted the accounts. Prior to the Annual General Meeting, I was removed from the Board of Directors.

Q. Were you removed with the re-constitution of the Board.

A. Yes. But I was not the only member to be removed. Mr. H. N. Mendis was also removed.

Q. You have made representations to this Securities and Exchange Commission?

A. Yes. This was done through my lawyers.

Q. Do you believe that the Commission had a statutory duty to hold an inquiry?

A. I certainly believe so. The Chairman of the Commission Stanley Jayawardene has always welcomed public complaints. I don't believe the Commission was ill-equipped to hold an inquiry at all.

Q. Why do you think the commission did not take any action on representations made by you?

A. I cannot answer that.

Q. Is the Delmege Forsyth Company, a promoted of the Hilton Project?

A. Yes.

A. It appears that you have made representations to several competent institutions to take material action?

A. The norm of the day was not to take any action I believe. Nobody seemed interested enough to highlight the discrepancies.

Q. You have also made representations to the Institute of Chartered Accountants?

A. Yes. But there was no action.

Q. Is it prohibited to purchase shares if prospective buyers have inside information.

A. It is not equitable then, if both buyer and seller and all buyers don't have same information. I don't think it would be ethical at all.

(Two (2) letters written by Mr. Amarasekera to the Institute of Chartered Accountants were presented to the commission)

Q. Could you tell what a module is according to these plans?

A. A construction unit of a standard size room, according to the Japanese architect of the hotel. These are terms repeatedly used in industry.

Q. There should be 456 room modules according to the hotel construction plan?

A. Yes. In each tower there should be 228 room modules, and a total of 456.

Q. What is the total number of floors according to the plan.

A. A total of 21 floors.

Q. Will it be inaccurate to state the project plan had only referred to 20 floors?

A. Certainly incorrect. (Mr. Amarasekera at this juncture produced the amended plan of the Urban Development Authority). These are photo copies taken from the Ministry of Finance.

According to the ori-

ginal plan, it referred to numeral 3 (for a three bay area). It has been deleted and numeral 2 added. I am unaware who changed the numerals in the original UDA plans, but my photo copy does not have such a 'numerical correction'. This is erroneous. I don't know who amended the plan however.

Mr. Amarasekera asserted that there are only 17 floors with rooms. 17 floors cannot accommodate 456 rooms. Five star hotels have to adhere to certain stipulated standards.

He said that there are standard room space, toilet space etc; in accordance to the international standards.

He said it was physically impossible to house the agreed number of rooms in 17 floors, unless the sizes were made smaller. This was a difficult task as a five star hotel had to confirm to international standard sizes etc;

Q. The hotel construction agreement was between the Hotel Developers Company and Mitsui and Taisai companies both?

A. Yes.

Q. But the design contract was between the Hotel Developers Company and Mitsui Company only?

A. Yes.



Justice H.S. Yapa

Justice P.R.P. Perera

Justice F.N.D. Jayasuriya

No response to several letters to acting minister - witness

By M.J.M. Zarook and Darryl de Silva

If institutions such as the Securities and Exchange Commission, the Institute of Chartered Accountants, the auditors etc had taken early action this matter of the Hilton Hotel Project would not have gone so far, Mr. Nihal Sri Ameresekere, Chartered Accountant and Advisor to the Ministry of Finance said before the Special Presidential Commission of Inquiry sitting at the BMICH yesterday.

The commission comprises Justice Priyantha Perera, Justice Hector Yapa and High Court Judge, Mr. F.N.D. Jayasuriya.

The commission is inquiring into malpractices and irregularities alleged to have taken place in certain public institutions and at present is inquiring into matters relating to the Hilton Hotel project and acts of commission and omission by the government and public bodies.

At the outset the commission directed Mr Godfrey Gunasekera SSP, Chief Investigating Officer to record and investigate the statements of Mr. Surein Wickremasinghe, chairman UDA, Mrs V.M.Y. Casiechetty, Director of Economic Affairs, Treasury, the OIC Fort among others.

Mr Nihal Sri Ameresekere Chartered Accountant and Advisor to the Ministry of Finance examined by Mr Douglas Premaratne PC, Solicitor General produced document (P121) where the auditors wrote to the Board of Directors that a note dated 19-11-90 be added to the balance sheet and by P122 the Secretary to the Treasury wrote to chairman Hotel Developers Ltd recommending that a note be added as suggested by the auditors (with a small amendment) indicating the factual position regarding the case filed by one of the directors (Mr. Ameresekere).

Q: Was that done? - No. Subsequently the note was substantially amended because Mitsui and Company wanted the note to be recorded. This amended note related only to the construction agreement and not to the loan agreement as suggested by the note of the auditors.

According to P122 Mrs Casiechetty had consulted the Auditor General on the matter, but the minute indicated that she had consulted the AG five months later.

Witness was referred to a letter of 12 November 1990 sent by Mrs. Casiechetty, Director of Economic Affairs to the Attorney General regarding the Auditor General's suggestion of a note to be included in the balance sheet relating to the case filed by Mr Ameresekere.

Chairman: This note was not in accordance with what you had suggested? - Yes and it was not in accordance also with what the auditors had suggested.

High Court Judge Jayasuriya: What you say is the loan agreement was not included? - Yes. Mitsui Company wanted the note to be worded in the way they required. They had the power of veto.

Q: Will that affect the auditors investigation? - No. The veto applied only to board decisions. In the normal course of audit, the auditors would have discovered the discrepancies.

Chairman: Is it your position if the auditors themselves were trying to deliberately cover up the discrepancies? - My Lord in the normal course of work they should have uncovered them. Otherwise it was negligence on their part. But here it is more than negligence. In the background of our complaint it appears that the auditors had acted together with the directors in the cover up ...

Chairman: They have ceased to be the watch dogs!

Mr. Premaratne: Do you say that the auditors had failed in their duty in not bringing the discrepancies to the notice of the shareholders? - On their own it would have been negligence. But in the light of the representations made by me, by Mr. K. Shanmugalingam, DST and others it was a failure of duty.

Witness was referred to the functions or requirements of the Colombo Stock Exchange.

Q: These auditors Ford, Rhodes and Thornton Ltd are also the auditors of Mitsui and Co.? - Yes.

Chairman: Do you say it is on impropriety? - The auditors can audit for both as long as there is no conflict of interest. At least there should have been disclosure.

Witness said he wrote to the Secretary, Ministry of Finance not to go ahead with the AGM and to defer the adoption of the accounts.

Then he instituted action in the District Court seeking to prevent the adoption of the accounts.

It was one of the functions of the Securities and Exchange Commission to make known to the public when there were rumours or allegations against a listed public company. Witness cited the recent case of Ceylon Guardian Investment Trust Ltd where the SEC and others had made some sort of explanation.

He wrote to the acting Minister of Finance Mr. Ranil Wickremesinghe about the matter.

Chairman: Was there any response? - No.

Witness said he was removed as Director on December 22, 1990.

The government had six directors on the Board, Mr. K. Shanmugalingam, Mr. Peter Perera and four others from the Treasury out of eleven directors.

Witness was referred to a letter written by Mr. Cornel Perera, chairman.

Witness said he made several representations to the Securities and Exchange Commission but no action was taken. He set out various charges against them.

The Securities Council in reply said that delisting of a listed company is an extreme step which is generally disfavoured because it removes the valuable rights normally enjoyed by shareholders in a listed company. Inquiring into professional conduct of public company is a detailed and involved process. The commission is at this time most equipped for such on exercise nor for that matter is the registrar of companies. Equally suspension of share trading is an extreme step.

Chairman: Were they equipped to hold an inquiry? - They should have been. They were in existence for some time.

Q: There was a statutory duty cost on them to initiate an inquiry? - Yes.

Witness said that the shares of Hotel Developers went up from Rs. 10.50 in August 1991 to Rs. 40 in May 1992.

Chairman: Could that have been due to the general improvement of the share market? - I cannot say without the figures, but it called for inquiry. The requirement of the SEC is that it holds the auditors responsible for proper accounts. The violation of the accounting standards was patent, but no action was taken.

Witness was referred to a letter he sent to Mr. Nivard Cabraal, President of the Institute of Chartered Accountants in August 1992. No action was taken on his letter.

Witness said: If these institutions had taken some action, this matter would not have gone so far.

Continuing, witness said that institutions concerned had not conformed to norms that gave effect to the laws in practice.

On the matter of sales of shares, you cannot trade in shares on the basis of inside information, he said. It was not a matter of the size of the share package, but the price at which it is sold and purchased, based on inside information, he maintained.

He went on to explain in depth the concept of room modules in a hotel to the commission, which had on a previous date asked for such detailed explanation. A bay or a module was the conventional language in the industry, and was the same used by the Japanese architects of the hotel.

Witness produced plans for the Hilton's 456 room modules and floor layout referring to bays in the same plan, in support of his submission that bays and modules were the same.

He agreed that if anyone was to say that there are 20 floors, that would be inconsistent with the project plan placed in evidence.

He also produced copies of the UDA plan which showed that the numeral '3' had been changed to '2', subsequent to his having made photo copies in March 1990. He could not say who had made the change.

Mr. Ameresekere said there were also other amendments to the plan. 19 guest-room floor levels which today are only 17, which cannot contain 456 rooms unless room sizes have also been changed. Basement levels for carparks had also been reduced, he pointed out. Scales also deferred on different sheets of the plans.

Witness in reply to questions said that it was best for an architect to give an opinion based on the doubts raised.

He said that the 456 planned rooms had by 1987 become 387 in Hilton reports.

Sittings will resume today.



Justice H.S. Yapa

Justice P.R.P. Perera

Justice F.N.D. Jayasuriya

Japanese directors refused to attend board meetings

The Japanese directors had refused to attend the Board meetings of Hotel Developers (Lanka) Ltd, the owning company of the Hilton Hotel until their matters were settled, Mr. Nihal Sri Ameresekera, Chartered Accountant and Advisor to the Ministry of Finance said yesterday.

He was continuing his evidence examined by Mr. Douglas Premaratne PC, acting Solicitor General before the Special Presidential Commission inquiring into malpractices and irregularities in certain public institutions.

The commission comprises Justice Priyantha Perera, Judge of the Supreme Court (Chairman) Justice Hector Yapa, Judge of the Court of Appeal and High Court Judge, Mr. F. N. D. Jayasuriya.

At the outset the commission issued summons on Mrs. Champa Weerakoon who is at present resident in Australia. The commission was informed that Mr. Godfrey Gunasekera SSP the Chief Investigating Officer had been able to trace her address.

The commission directed summons to issue through the Sri Lanka High Commission in Canberra returnable on May 30.

Mr. Nihal Sri Ameresekera, Chartered Accountant and Advisor to the Ministry of Finance was referred to a memorandum dated August 20, 1984 by the General Manager of Toisei Corporation Mr. Kasa Shimada to the Minister of Finance giving details of the matter relating to the construction of Hilton Hotel.

He also produced a similar letter addressed by Mitsui Corporation. The memorandum stated that the building would have 20 storeys with approximately 400 guest rooms.

The schedule at the end also gave the profitability and cash flow projections which gave the number of rooms as 452. Witness was also referred to the investment agreement. In a letter dated August 27, 1987 Mr. Ronnie de Mel, Minister of Finance had addressed the then President J. R. Jayewardene with regard to the government guarantee etc.

In that letter Mr. de Mel had stated: "If the government does not meet its obligations under the guarantee agreement, it will seriously affect our financial standing in international markets and make it very difficult for us to raise loans on favourable terms in the future. Moreover it might activate cross-default clauses in other loan agreements on loans taken by the government and the banks concerned may call upon us to make immediate repayment of all outstanding loans, which we will be able to do."

Chairman: The Minister of Finance had advised that the government must honour the guarantee?

Mr. Premaratne: Yes. In view of international obligations.

Mr. Ameresekera was referred to a letter addressed to the Attorney-General by Mr. Paskaralingam dated 25th May 1990 indicating the difficulty faced by the company in paying the debts to the Japanese consortium.

Witness referred to a letter dated 27 February 1990 addressed to the Director of Lands UDA by the Economic Division of the Ministry of Finance and another letter both relating to the plans of the Hilton Hotel project.

Mr. Ameresekera said it would be impossible to give the actual measurements of the Hilton Hotel without a physical check.

Witness was referred to a letter dated December 2, 1991 addressed by Mr. Prasanna Gunawardena, acting Director General, UDA to Mrs. V. M. Y. Casiechetty, Director, Economic Affairs, Ministry of Finance. He had said: **There is absolutely no record in the file that the UDA had admitted that the plans submitted in 1983 are not available, nor that they had been substituted.** Neither is there any record that information to that effect has been given by any officer of the UDA.

Mr. Ameresekera said that position was not correct.

Chairman: Before the certificate of conformity is issued isn't it the normal practice to measure the building? - I do not know My Lord, but when queries had been raised the UDA should have checked the measurements etc.

Witness was referred to the letter and other documents sent to former Supreme Court Judge, Mr. J. F. A. Zosa by the Ministry of Finance regarding the inquiry relating to the Hilton Hotel Project.

Mr. Paskaralingam wrote to witness stating that in his report Mr. Zosa had held that there were no regularities in the implementation of the project as indicated by him. (witness).

Witness was referred to a letter addressed by Mr. Vasudeva Nanayakkara to President R. Premadasa.

Referring to the share price movement which the commission had earlier queried witness said the all share price index and hotel trade index had moved from 30 to 40 percent but the share price of the Hilton Hotel had moved from Rs. 10.50 to Rs. 40 - a 300 percent increase.

"I also had one million rupees worth of shares and I could have sold for 4 million", he said.

In the case that he filed in the District Court against the Japanese consortium, the local directors who were the 5th, 6th and 7th defendants did not file answer.

The defendants were Mr. Cornerl Perera, Mr. F. G. N. Mendis and Mr. K. N. Choksy. Their lawyers in their motion stated that in view of the fact that the plaintiff was not asking for any relief from those defendants and that they had been cited only to give notice they were not filing answer.

Witness said they should have filled answer in the interest of the company.

Mr. Amerasekera was referred to the plan which indicated there was a basement ground floor, mezzanine and lobby level 1st floor.

High Court Judge Jayasuriya: If we take the basement, ground floor and mezzanine that would exceed 22 floors? - Basement is not counted. It has to start from the 1st floor.

High Court Judge Jayasuriya: There is also a reference to a penthouse on the roof top. That is not a penthouse in the proper sense. They are only mechanical rooms like water tank and storage room. I am going only on the number of rooms in 17 floors. A penthouse is a super luxury apartment. I have not seen it but this is not a penthouse in the proper sense of the phrase.

Chairman: After you became a director of the company didn't you have a chance to verify? From August 1994 we have not had a Board meeting. The Japanese have refused to attend until this matter has been settled. Without the Japanese there is no quorum for a board meeting.

Mr. Amerasekera said from the decision of the Court of Appeal he filed for special leave to appeal to the Supreme Court.

Consequent to this, special leave was allowed in both applications and the 7th defendant, Mr. Choksy's counsel was not allowed to participate nor counsel for the 4th defendant company (HDL).

The Supreme Court gave judgement on December 2, 1992 granting the relief witness had claimed.

Mr. Premaratne: This being a landmark Judgement it has been reported in the law reports of the Commonwealth? - Yes, My Lord.

Mr. Amerasekera said that in April 1992, Mr. Paskaralingam had initiated settlement discussions which lasted upto December that year. He tabled a letter written to Mr. Paskaralingam by the Japanese Ambassador, and another written by Mr. Paskaralingam to then Attorney General Sunil de Silva in this regard.

Witness: This is to demonstrate to your lordships that there was a lot of external pressure being brought to bear.

Q: Your attorneys also wrote to the Sri Lanka Ambassador in Japan, Mr. C. Mahendran on 10-7-92, setting out the matters discussed? - Yes.

Chairman: The Attorney General himself participated in the discussions? - Yes, at a certain stage in December 1992 and January 1993. Thereafter, discussions were done before Mr. Tilak Marapana and Mr. Paskaralingam also participated.

Q: You suggested some amendments to the draft agreement? - Yes.

Chairman: Was there consensus on the agreements reached? - Yes.

Mr. Amerasekera said that as at 1993, the Japanese had agreed to write off all accrued interest and 30 percent of the capital. As of yesterday, this sum consisted of US\$ 290 million as state guaranteed claims of which US\$ 180 million would be written off, having a balance of only US\$ 110 million.

Yet while discussions were going on, Mr. K. N. Choksy had intervened with President Premadasa and suggested amendments to the agreement, witness said.

Chairman: What was the reason for his objection? - One of the issues raised in those documents relate to Mr. Choksy's conduct.

Q: The Attorney General told you that amendments had been suggested by Mr. Choksy? - yes.

Mr. Amerasekera placed in evidence minutes written by Mrs. Casiechetty to Mr. Paskaralingam saying that Mr. Choksy's suggested amendments be looked into and a responding minute from Mr. Paskaralingam to Mrs. Casiechetty.

Chairman: You wrote to the Attorney General with your own observations on the proposals made by Mr. Choksy? - Yes.

Chairman: Choksy wanted your cases withdrawn? - Yes. I have responded to all points in his memorandum. A lot of pressure was being exerted on me and undue influence and pressure on my professional work.

Mr. Amerasekera entered in evidence a note dated 8-2-93 from President Premadasa to Mr. Paskaralingam and yet another memo with a covering note from the President in order to show the pressure he was subjected to.

On 7-1-93 and again on 4-5-93 Mrs. Casiechetty had sent the draft agreements to the Japanese and they replied on 3-6-93 with some counter proposals. On 21-6-93 Mrs. Casiechetty had written to Mr. Amerasekera asking for his comments on draft agreement. He as well as his attorneys had written to the Attorney General in this connection.

Mr. Amerasekera: On June 1, 1993 there was a meeting between President Wijetunga, Paskaralingam, Choksy, the AG and others. I was not present. We were of the view that if Choksy was present I and my counsel should have also been present. In July - August 1993 President Wijetunga changed all six government directors of Hotel Developers and appointed new and more powerful people to the directorate. I legally notified the new directors to take action but no action was taken till June 1994 when President Wijetunga initiated direct discussions with me in the light of the oncoming elections. He did this through the late Dr. Gamini

Wijesekera who was a good friend of mine. I was asked to come to President's House on June 17 and when I got there I found the Attorney General, the Deputy Solicitor General and Mr. Choksy waiting outside. Dr. Wijesekera ushered me in to see the President alone where the three of us had a discussion. President Wijetunga conceded that we couldn't pay Rs. 11,000 million but wanted me to conclude a settlement in view of the oncoming elections. The others were brought in after this without Mr. Choksy who only came in for the final 15 minutes we were with the President. There was a lot of heat. The Attorney General was asked to finalise a settlement agreement.

Chairman: Was the agreement ultimately effected? - No. President Wijetunga ultimately wanted the Bank of Ceylon Chairman Jehan Cassim to resolve the matter and I said there was nothing to resolve when the President phoned me and said that he would be helpful. Jehan Cassim also phoned me many times. One day when I was walking out of his room the Japanese were sitting outside.

Mr. Amarasekera said that shortly thereafter he fell seriously ill and was in the intensive care unit. While there, the acting Treasury Secretary Mr. Weragoda without knowing that Mr. Amerasekera was ill had also summoned a meeting at the Treasury for 3 p.m. on August 10, 1994. But with no settlement in sight witness said he had left the island on election day.

HDL controlled by six government directors had filed action against him on August 4 for professional misconduct in order to pressurise him further.

Mr. Amarasekera: We have filed answer and also filed interrogatories which up to now have not been answered because the HDL board has not met since last August. The purpose behind my introducing in evidence the several letters (from 1991) proposing what action the government should take was to show your lordships that I did my best to keep the highest levels of government informed.

Chairman: Thank you, Mr. Amarasekera for your evidence. You now stand discharged unless perhaps we want you again.

Sittings of the Commission resume at 9.30 a.m. today.



Justice H.S. Yapa

Justice P.R.P. Perera

Justice F.N.D. Jayasuriya

Cornel said Japanese had 'played out'

- Architect Wickremasinghe

By V. K. Wijeratne

"Mr. Cornel Perera, a Director of Hotel Developers (Lanka) Ltd. told me that there was a shortfall in the volume of the building of the Hilton Hotel, by two basements and this he attributed to the Japanese collaborators saying that they had 'played out'". Mr. Surendra Wickramasingha, Chartered Architect, Fellow of the Institute of Architects, Chairman LIDA and Director, Hotel Developers (Lanka) Ltd., yesterday told the Special Presidential Commission of Inquiry probing into alleged malpractices in certain government bodies, when the Commission resumed sittings at the BMICH on May 4.

Commission of Inquiry consists of Judge of the Supreme Court P. R. P. Perera (Chairman), Judge of the Court of Appeal H. S. Yapa and Judge of the High Court F. N. D. Jayasuriya.

Mr. Wickramasinghe was giving evidence in the Hilton project probe. His evidence was led by Mr. P. L. D. Premaratna, Acting Solicitor-General.

The witness was actually recalling a conversation that he had aboard a flight to London on 17.1.95 where Mr. Cornel Perera too had booked a seat next to him.

The witness explained the meeting as a coincidence and the conversation as informal and casual.

Mr. Wickramasingha said that Mr. Cornel Perera during nearly a seven hour flight discussed history of the hotel and recounted the various obstacles he had to face in getting the hotel to function.

He said that Mr. Perera highlighted the few missing basements and explained that the constructors had pointed out that building further underground could have been much expensive due to a water level problem.

Mr. Perera had also mentioned of a fire at the construction site and had remarked that fires were a common occurrence in Japanese building sites.

Mr. Wickramasinghe answering the Commission said that originals of building plan were not normally kept at construction sites.

At this stage the Commission tried to ascertain from the witness the number of copies of a plan that has to be submitted for approval and the procedure adopted.

The Commission also requested the witness to explain the difference between a Module and a Bay.

"After my return, a special meeting of the Directors of Hotel De-

velopers (Lanka) Ltd., was fixed for 7.3.95. But as the Japanese Directors did not turn up for the meeting, it could not be held.

The Japanese Directors have explained that they would not be attending any meetings till the pending matters were sorted out. "Under the circumstances no meeting has yet been held," stated Mr. Wickramasinghe.

The witness then went on to explain that on 15.3.95, he swore an affidavit regarding the discussion Mr. Cornel Perera had with him.

Commission: Are you clear that the contents of the affidavit were in accordance with the text of the conversation you had?

Witness: I am confident that what I stated was what he told me in the conversation we had.

Witness also said that Mr. Cornel Perera was referring to a newspaper report, where he had mentioned that if he was found guilty of any charge he would sell all his shares for a cent.

Answering the Commission witness also said that Mr. Cornel Perera had only paid the initial payment for the land to the UDA and that payments to the tune of Rs. 50 to 60 million might be now in default.



After repeated questioning, witness admits signing contract

The overnight witness Ms Malini Jinidasa, a clerk attached to the UDA was then summoned.

On examination of the building application received by her, the name of the owner appeared in it as Cornal and Co. But this entry appeared to be made upon an earlier entry which had been obliterated. According to her the covering letter accompanying the plans had been signed for the Hotel Developers (Lanka) Ltd and even a receipt had been issued in the name of Hotel Developers (Lanka) Ltd. The witness being questioned, she said that the entry "Cornal and Co" appeared to have been inserted later.

According her evidence the application bears the date stamp of 19.10.83 on it, which she said, she had placed. She said that she could vouch for this date.

Mr. David Bernard Mervyn de Alwis Seneviratne, then Senior Administrative Officer of the UDA was next called to give evidence.

He said that he was seconded to the UDA from the Pensions Department in 1980 and that he joined the UDA outright in 1982.

He said that the movement of files and documents were through him. Mr. Seneviratna said in his evidence that he got the plans pertaining to the Hilton hotel from Mr.

Ananda Rajakaruna, Planning Officer. He said once the plans were approved by the UDA one copy was referred to him for safe keeping.

He said that he retired from the UDA in June 1991 and about a month before that he handed over the file and plan pertaining the Hilton hotel to Mr. Prasanna Silva Senior Architect in charge of the unit. But at the inquiry it was revealed that he had no documentary evidence to show that the file and plans were handed over to Mr. Prasanna Silva.

He said that in October 1990 some Japanese People were coming to see the plans of the Hilton Hotel at the UDA office and that in that connection Mr. Prasanna Gunawardena additional Director General had told Mr. Seneviratne to show them the 1986 approved plan and to forget about any other plan.

Witness said that this was a verbal order and that he had to carry it out without questioning as Mr. Gunawardane was all powerful at that time.

Witness admitted that when he told the Japanese that the only plan available was the 1986 one, that he was telling an untruth.

The Commission repeatedly questioned witness as to why he did not commit to writing the order given to

him by Mr. Gunawardane. if there was nothing sinister in the order.

Witness said as it was a verbal order he did not write it down.

Mr. K.D. Maheepala the acting Officer in Charge of the Fire Brigade who went to the site of the fire at the Hilton worksite on 18.10.85 and Mr. R. C.L. Perera, Electrical Engineer of the CEB also gave evidence.

The commission will resume on May 29 at the BMICH.



No direction to alter architectural plans - Witness

By M. J. M. Zarook and Daryll de Silva

The approval of the UDA for the building plans of the Hilton Hotel project was given on certain conditions being fulfilled but there were no directions to alter the architectural plans, a former official of the Urban Development Authority said before the Special Presidential Commission sitting at the BMICH yesterday.

Mr. D. B. Mervyn de Alwis Seneviratne, former Administrative Officer, UDA was being examined on matters relating on the Hilton Hotel project by Mr. Douglas Premaratne, Acting Solicitor General who was assisting the commission with Mr. Milinda Gunatillake, State Counsel.

The commission inquiring into malpractices and irregularities in public institutions comprises Justice Priyatha Perera (chairman), Justice Hector Yapa and Justice Ninian Jayasuriya.

At the outset the overnight witness Mrs. Malini Jinadasa of the UDA in her evidence said that in the case of the Hilton project application four sets of plans had been sent under cover of a letter dated 14-10-1983 from Hotel Developers Lanka Limited (HDL).

The receipt issued to HDL for Rs. 22,850 was for planning approval. It was made out by one Soma Perera and signed by the administrative officer, Mr. Seneviratne. However the application itself had been typed and Cornel and Company Limited overtyped as the owner of the project.

Q: The receipt is issued to the person making the application? - Yes.

Q: Was Cornel and Company substituted later? - It looks like it.

Q: Was the receipt issued to HDL because they would have initially made the application? - Yes.

SG: So it is obvious that the change was made subsequently.

Chairman: The receipt is normally issued to the owner? - Yes.

Q: The application form does not have a date although there is space for the date - That is so.

Q: Who placed this seal bearing the date 19-10-83? - I did. Those are my initials on it.

Q: Was the application made on that date? - As I have initialled it, yes.

Chairman: Did you notice that the receipt was made in favour of HDL when Cornel and Company had made the application? - Not in particular. The receipt would have been written later.

Q: Was Cornel and Company named as the applicant when you received the application? - I can't remember. But if it was so, then the receipt would have been written in favour of Cornel and Company.

Chairman: That is another factor that supports the substitution.

The next witness was David Bernard Mervyn de Alwis Seneviratne of Janatha Mawatha, Mirihana, Pitakotte, government pensioner.

SG: You just now took an oath to tell the whole truth and nothing but the truth. Will you tell the truth now? - Yes.

SG: I am saying this because you have made two statements to the police which contradicted each other. So I hope you will speak the truth now!

Mr. Seneviratne said he joined the UDA as staff assistant on secondment from the Pensions Department, was promoted as Administrative Officer in 1988 or so and held the position till 1991.

Witness said after building applications were processed by the clerk-in-charge of accepting applications, Mr. Jinadasa they were sent to him.

Witness was referred to the application in connection with the building of the Hilton Hotel. After the building application was registered it was forwarded to him on November 8, 1983 by the Planning Officer, Mr. Ananda Rajakaruna.

The plans of the building would have been attached to the building applications. If the plans were not with the building applications he would have made a note to that effect.

Earlier if he had said he did not receive the plans it would not be correct. Normally three sets of plans would have come along with the application.

Chairman: In point of fact Mr. Seneviratne if the building application was made without the plans you would have rejected the application? - Yes, My Lord.

One copy of the approved plans were sent to him. The others were given to the owner and the municipality. He handed over his copy of the plans to the Deputy Director, Planning who gave them to Mr. Prasad Gunawardena.

Witness said the approved plans were returned to him and they were in his custody. The plans were also sent to the Fire Chief for approval. The approval of the UDA was granted on certain conditions which included clearance being obtained from the Chief Fire Officer, CMC. Parking area should be used exclusively for parking of vehicles and that no permanent structure is constructed on street lines.

Chairman: There were no directions to alter the architectural plans? - Yes. There was no such directions.

When he made his statement to the police he would have said that he received the plans with the application because that was the normal practice. If he had said he did not receive the plans, that was a mistake.

Chairman: That is a serious error on your part? - Yes, a serious error My Lord.

Witness was referred to a letter dated 8 August '85 to the Director Development UDA, G. L. G. de Silva from the chief engineer Hotel Developers Ltd requesting that certain amendments be allowed to the original plans as the Japanese architects wanted such alterations. A reply was sent by the UDA asking that the alterations be worked in red and forwarded to the UDA.

Witness said he had handed over the file containing the Hilton documents to his immediate superior, Mr. Prasanna Silva, Senior Architect UDA as Mr. Prasanna Gunawardena had wanted the file to be kept in safe custody.

There was an endorsement in the movement register dated 16-1-91 to show that witness had handed over the file to Mr. Prasanna Silva.

Chairman: So the original plans were not available at the time you handed over the file to Prasanna Silva? - I was told by Mr. Prasanna Gunawardena to tell the Japanese that only the amended plans of 1986 were available.

Chairman: Does that mean that he asked you to suppress the original plans from the Japanese? - Yes.

Chairman: He told you to tell a lie? - I had to. He is very powerful.

Q: So you are prepared to tell a lie if told to tell a lie? - I was forced to do it.

Chairman: Was the original plan in the file at the time? - Yes.

Q: So you are a person who tells lies if told to do so? I was forced to.

Q: Did Mr. Gunawardena tell why the Japanese were coming? - To go through the plans. I was told to show the amended plans of 1986 since there was a court case pending. He told me the only valid plan was the amended 1986 plan, and to show them only that, not the earlier plan which was invalid.

Witness said that Mr. Prasanna Gunawardene had later wanted the file kept under confidential cover and that nobody was to be given any information without his approval.

"He told me that it was on the 1986 plans the certificate of conformity had been issued, and to only show them those plans. I told him there was another plan, but he told me to forget about that," witness said.

Chairman: But he did not specifically tell you not to tell the Japanese about the 1983 plans - No, I may have erred there.

Chairman: Several witnesses who have testified before this commission have accepted committing a series of errors. Why did you take upon yourself the responsibility of saying that the 1983 plans were not available? - I presumed that he wanted me to do that.

Q: Were you told to tell them that the 1983 plans were not available? - No.

Chairman: So you went a step further and jumped the

gun. That's why you have now got into this trouble.

Witness said that both plans were available at the time he retired in June 1991. He said he had handed over the file and plans some time in May 1991 to senior architect Prasanna Silva.

Q: But in your statement to the police, you have said that you had not handed over any documents to any officer. Why did you say so? - Because I had no documentation to prove that I handed over the file to him. I had to tell them that. I may have made a mistake.

Chairman: Again you have made a mistake. Its a very serious omission? - Yes, I realise that.

Q: Why did the Treasury call for this file? - I don't know, it's very strange.

Chairman: How do you expect us to believe your evidence? - If Mr. Prasanna Silva vouches that I handed over the documents to him, it will be a plus point for me.

Chairman: Exactly. There are so many minus points! Not telling the police is not the normal conduct of a reasonable man.

SG: I am suggesting that the original plans went missing while they were in your custody? - I cannot accept that.

The next witness was **K. Mahipala, retired OIC of the Fire Brigade** who said that the report filed by him regarding the Hilton fire was based on his responding to the fire call. He did not know whether any follow-up investigation had been done later by other officials.

The final witness electrical engineer, **CEB, Colombo City branch** said that the report that the fire was not caused by a short circuit had been signed by **Mr. V. Rajaratnam**, now resident in Australia. He was quite familiar with **Mr. Rajaratnam's** signature, and testified to it being the same as in the certificate issued.

Sittings will resume on Monday, May 29.

THE ISLAND - Saturday 17th June, 1995

SPC probe on malpractices

UDA has no record of plans submitted

by Assumpta Alles

Urban Development Authority's Director Development Regulations Nihal Fernando yesterday told the Special Presidential Commission probing Colombo Hilton project, that the practice of maintaining a register for building plans submitted for approval was stopped in 1985.

The register books for plans within Colombo cannot be located while the books of 1983 for plans submitted outside Colombo was available. Mr. Fernando said.

Justice Perera: How do you explain loss of the register?

Answer: No registers were maintained after I joined. The practice was stopped in 1985. He said that not a single register was kept by the UDA about applications and the register relating to Colombo was not available for 1983.

The Special Presidential Commission of Inquiry into malpractices and irregularities in public institution sitting at the BMICH comprises Justice Priyantha Perera (Judge of the Supreme Court, Chairman), Justice Hector Yapa and Justice Ninian Jayasuriya (Judges of the Court of Appeal).

Walking painfully with the aid of crutches 43 year old Hillary Prasanna Silva answering Acting Solicitor General Douglas Premaratne, said that normally a minimum of three plans are submitted to the Urban Development Authority and on January 25 1984 the plans were sent to him for observation.

When asked by Justice Jayasuriya whether there was a bill of quantity attached to the plans, Prasanna Silva said that he could not remember.

When Mr. Seneviratne Administrative officer of the UDA testi-

fied at an earlier date, he had said that he had handed the file and plans of the Hilton project to Prasanna Silva.

He had said that there were two sets of plans which he had given to Silva.

Prasanna Silva said that there was only one plan and the original was missing.

G. P. S. U. Silva (Former Secretary to the Ministry of Plantation Services) said that he had been appointed to act for the Chairman Tourist Board (Siriwardene) in his absence. He said that when an application for a hotel project is made it must

be sent with a set of plans to the Tourist Board. According to him a 10 year tax holiday extended to new hotels was due to expire on March 20, 1983 and there was a rush of applications for approval.

On March 15, 1983 the Board sent a letter giving conditional approval for this project. The hotel was to have 684 rooms, balconies and banquet halls, car park for 450 cars, swimming pool and supermarket.

Prasanna Gunewardene, an architect planner in the UDA in 1983 said that in October 1983 Hotel Developers Ltd had made an application and submitted a set of plans with the

application. On March 23 1984 approval had been granted for the construction of the hotel.

Hotel Developers Ltd had wished to make amendments to the plans and get UDA to certify it. UDA had advised them to submit a set of amended plans with the amendments indicated in red, which was done.

Justice Perera: Did the etched red have any impact on the number of rooms or floors?

Prasanna G: No impact

Justice Perera: How did the plans disappear from the file? Administrative Officer Seneviratne is positive that both sets of plans were there.

Prasanna Yapa: Hotel Developers Ltd was earlier known as Cornel and Co.

Prasanna Gunewardene said that Divisional Heads and Administrative officers in the UDA are responsible for the custody of plans. He said that he had only seen the 1986 approved plans.

The project plan was drawn in 1980 and the architectural plan drawn in 1983 by the same architect.

Justice Jayasuriya: The project plan was adopted by Cornel and Co. in 1983.

Prasanna G: In 1983 Hotel Developers Ltd was not in existence.

Justice Perera: What is the provision in the project plan for car parks?

Prasanna G: Car Parking floor area is 12,730 sq. metres, provision for 450 cars.

Acting Solicitor General said that the amended plans of 1986 had 26 sheets whereas the plans of 1983 had 21 sheets.

The amended plans were to be made available to Prasanna G. to calculate the floor area.

The inquiry resumes on June 20.

Daily News - Tuesday June 27, 1995

Amendments done on new set of plans

By M. J. M. Zarook and Madubashinee Dayabandara

Amendments to an approved plan must be done on the original plan. But in the case of the Hilton Hotel project the amendments had been done on a new set of plans former Deputy Director, Development Regulations, Urban Development Authority said yesterday before the Special Presidential Commission of Inquiry into malpractices and irregularities in public bodies.

The commission comprises Justice Priyantha Perera (Chairman), Justice Hector Yapa and Justice Ninian Jayasuriya.

Mr. G. L. D. de Silva, Deputy Director, Regulations examined by Mr. Douglas Premaratne PC, acting Solicitor General said that once the original plan had been approved, if an amendment had to be done it must be done on the original plan.

Chairman: But in this case the amendment had been done by way of a new set of plans? - Yes. In this instant case.

At the outset Mr. Anandaraja Rajakaruna, former Town Planner, Urban Development Authority examined by Mr. Douglas Premaratne, acting Solicitor General said on 14th October, 1983 an application was received for the construction of the Hilton Hotel project in Echelon Square. The application was accepted by the clerk, Mrs. Malini Jinadasa and sent to witness to process the application. Payment had to be made on the calculation of the area which was done by Mr. Terence Fernando, after which he processed the application by calculating the floor area which was 444,506 square feet, (41,311.59 metres). There were 20 floors with the

He had sent what was described in the file as a "characteristic floor plan" to Mr. Prasanna Silva, Architect, UDA.

Chairman: Do you have any knowledge of what a characteristic floor plan is? - That's what was written on the file.

Witness said three copies of the plans were submitted to the UDA. The third copy of the plan was kept in the records

of the UDA.

Chairman: Do you know that the plan is not available? - That is what I heard from the officers who came to question me.

Witness said the "characteristic floor plan" which was sent to him was not necessary when the original plan had already been forwarded. ground floor on the building comprised 31,685 sq. metres without the second floor and the penthouse.

Witness said he did not measure the second floor.

Justice Yapa: So your report is not a proper guide to establish the floor area? - Yes.

According to Mr. Terence Fernando's report the floor area was 35,718 sq metres.

SG: From the ground floor up to the penthouse it adds up to 21 floors? - Yes. Without the mezzanine floor.

Witness said the calculation of the area was a rough one to charge a fee for processing. He sent his report with the plans to the Administrative Officer, Mr. Mervyn Seneviratne to be forwarded to Mr. G. L. D. de Silva, Deputy Director, Development Regulations.

Witness was referred to a receipt addressed to Hotel Developers Lanka Ltd. The applicant's name was given as Cornel Perera but it had been tipexed.

Chairman: Can you explain how if the applicant was Cornel Perera the receipt was issued to Hotel Developers Lanka Ltd? - I don't know and I can't explain.

Questioned by the Commission, witness said it was probable that the application was originally the name of Hotel Developers Ltd, and it had later been erased (tipexed) with Cornel Perera's name substituted.

Witness was referred to an amended set of plans which had been submitted in July 1985 and approved in 1986.

SG: This is a different set of plans? - Yes. It had been submitted in 1985 while the original plans were submitted in 1983. I had left the UDA in 1984.

The next witness, Mr. G.L. Dayananda de Silva, former Advisor, Planning, UDS examined by Mr. Douglas Premaratne said that in 1983 he was Deputy Director, Regulations. In October 1983 Hotel Developers Ltd made an application for the construction of the Hilton Hotel project.

The receipt given was in the name of Hotel Developers (Lanka) Ltd. The name of the applicant was given now as Cornel and Company but the name appeared over an erasure (typexed).

The building plans consisted of 27 sheets. He had sent a set of plans to the Fire Chief, Colombo Municipality.

Approval was granted for the construction plans by letter dated 23 March 1984 signed by Chairman, UDA and witness had countersigned it.

The letter said that a set of approved plans would be forwarded to HDL in due course.

SG: Why has the letter also asked for three additional sets of plans? – That may be because we wanted to send them to other departments such as tele communications etc.

Witness was referred to a request from the Chief Engineer HDC, C. Weerakoon asking for advice on how to make amendments to the plans and witness had replied asking them to send the amended set of plans with the amendments etched in red.

A new set of plans were submitted consisting of 28 sheets in September 85 and the UDA granted a development permit on 29 April 1986.

Witness said when the second set of plans were approved the original plans were deemed to be cancelled.

Chairman: In your records, Mr de Silva will you have a set of the original plans? – It should be there.

Chairman: But the problem is that it has mysteriously disappeared? – That is what I have heard.

Chairman: Once the original application has been approved, if an amendment has to be done it must be done on the original plan? – Yes.

Chairman: But in this case the amendment has been done by way of a new set of plans? – Yes. In this instant case.

Witness said to issue the certificate of conformity he had to check that the building has been constructed according to the approved plan.

Chairman: Do you make a physical check of the building? – Yes we do. But we do not check on the measurements of each room. If we suspect there is something wrong only we will measure every detail.

Continuing Mr. G.L. de Silva was referred to two letters dated March 5 and 6, 1990 by secretary Ministry of Finance to the Chairman UDA requesting for some information on the Hilton Hotel project.

Witness was referred to a letter giving the necessary information, dated 20 March 1990. The information was based on approved amended set of plans and certificate of conformity and not on actual measurements on the premises. Twenty three floors were mentioned including the ground floor, mezzanine floor, lobby and two penthouse floors.

Witness was referred to a letter from secretary Ministry of Finance to Chairman UDA dated 30 April 1990 asking for the original set of plans for which approval had been granted in 1984.

On 3 May 1990 the chairman UDA had sent the plans mentioning 21 sheets, to the secretary Ministry of Finance.

On 19 January 1984 the witness had sent an original set of plans mentioning 27 sheets, and he couldn't explain how a difference of 6 sheets had occurred. Either the sheets were missing or it could be a new set.

Witness was referred to a letter dated 20 January 1990, from the Treasury to the UDA mentioning that two sets of plans, amended set of plans approved on 29 April 1986 and original set of plans dated 29 June 1983 consisting of 28 and 21 sheets respectively are being returned.

Prasanna Senaka Rupasinghe Gunewardene, former Additional Director General, Planning and Operations UDA said that the total fully covered floor area as in the amended set of plans approved in 1986 is 39, 604 square metres. He was requested by the commission to do the calculation at an earlier sitting.

But he said that his calculation could vary from another's on the basis of the purpose. Referred to a letter dated 2 December 1991 by him to Mrs. Casichetty of the Finance Ministry in response to some representation made by Mr. Vasudeva Nanayakkara to the President. The letter referred to an application made in 1983 and for which approval had been granted in 1985.

When witness's attention was drawn to the fact that approval had been granted in 1986 and not 1985 he admitted that he had made a mistake.

He went on to say that as the 1985 application was only a letter submitted with a set of drawings by the applicants he didn't consider it as a proper application. He went by the 1983 application which was of proper format.

He also said that he considered the 1986 building development permit as only a letter of approval given in 1984.

DSG: But the 1986 permit says that it supersedes the permit issued in 1984 – Yes, it seems as if the authority had considered the 1985 submission as an application.

In the letter the witness had mentioned that as the amended set of plans was having 27 sheets the original plans and 1986 approved plans must be comparable.

DSG: But the secretary Ministry of Finance mentioned that 28 sheets were returned to the UDA in the letter dated 20 June 1990. So how can the 1986 approved plans consist of 27 sheets? – I personally didn't check the number of sheets at that time. Now I can see that there are 28 sheets in the set of plans. I only went on the information given to me by my officers.

Chairman: So all the information given in your letter is erroneous.

The witness had mentioned that there's no record that the UDA had admitted of the 1983 original plans missing or substituted.

DSG: But even at that time there was this letter dated June 1990 to the Project Secretary of HDL Mr. A.B.J. Perera by Mr. Somapala de Silva at UDA informing him that the UDA doesn't have a set of plans submitted in 1983.

I didn't check the file so I didn't notice the document. I agree that it's contrary to my statement in the letter. I take the full responsibility of it as the officer in charge.

Chairman: When did you come to know that the original plans were missing? – In December 1991.

Chairman: Did you endeavour to make an inquiry into the matter or to seek police assistance in recovering it? – We were getting advice from the Attorney General. I was satisfied with that.

DSG: But there's no evidence in this file showing you were in touch with the AG. – Mr. Prasanna Silva personally reported the proceedings to me.

On the report made by Mr. Gamini Edirisinghe to the witness an endorsement had been made as 'plan withdrawn by the client'. Mr. Edirisuriya was issued summons returnable on June 27.

The commission resumes today.

UDA land was on 99-year lease to Cornels

By M. J. M. Zarook and Madubashinee Dayabandara

The Director, Legal, Urban Development Authority said yesterday before the Special Presidential Commission of Inquiry into malpractices and irregularities in public bodies that UDA land in Echelon Square was leased to Cornel and Company for 99 years for a sum of Rs. 103,743,000.

An initial payment of Rs. 20.4 million was made and the balance was to be paid in 33 equal instalments of Rs. 2.5 million. But the instalments were not paid.

Mrs. Y. P. Kanendran was giving evidence examined by Mr. Douglas Premaratne, acting Solicitor General before the commission comprising Justice Priyantha Perera (chairman), Justice Hector Yapa and Justice Ninian Jayasuriya.

At the outset Mr. Ackiel Mohamed former Secretary, Ministry of Power and Energy, Mr. K. Shanmugalingam Deputy Secretary to the Treasury and Mrs. C. Amerasekera of the Treasury, the members of the Divestiture Committee in connection with the sale of Nylon-6 plant appeared on notice before the commission.

They were directed to appear on July 4.

Mr. Gamini Edirisuriya, Architect, former senior draftsman, Urban Development Authority, examined by Mr. Douglas Premaratne, acting Solicitor General, who appeared with Mr. Sobitha Rajakaru, State Counsel, said from 1979 to 1992 he was senior draftsman in the UDA. He did a comparison between the set of plans submitted in 1985 for the construction of the Hilton Hotel project and the processing sheets that were available in connection with the 1983 plans to verify the floor area.

He had made an endorsement that the administrative officer Mr. Seneviratne had informed him that the plans of 1983 had been withdrawn by the client.

Witness said he thought the new plans had been approved and therefore the original plans had been withdrawn.

Justice Yapa: Would your comparison figures have been more accurate if you had the 1983 plans and the 1986 plans? - Yes.

Witness said on the 1983 processing sheets he had given the ground floor area as 5,684 sq. metres while on the 1986 plans the ground floor area was 10,800 sq. metres.

Witness said even if the client had removed the original plans one set of plans should have been retained by the UDA. Witness said he did the comparison of the floor area between the 1983 plans and the 1986 plans because of a court case.

Mrs. Yamuna Preetham Kanendran of Manning Town, Director Legal, Urban Development Authority, examined by Mr. Douglas Premaratne, said in 1984 she was Asst. Director, Legal in UDA. Mrs. Maya Nanayakkara was a Director at the time.

The land on which the Hilton Hotel was situated was crown land which was vested in the UDA and it was leased to Cornel and Company in February 1984 for 99 years by a

deed attested by Mrs. Maya Nanayakkara for a sum of Rs. 103,743,000. At the time of attestation Rs. 20.4 million was paid while the balance Rs. 82,994,400 was to be paid in 33 equal instalments of Rs. 2,414,981.82 cts for 27 years and Rs. 2,514,981.82 cts for the balance 6 years.

The assets of Messrs Cornel and Co. were required to be mortgaged with the UDA for the lease. The initial payment of Rs. 20.4 million was paid but the assets were not mortgaged and not a single instalment was paid after the initial payment.

Chairman: Had your legal department at any stage made any attempts to have the assets mortgaged? - There have been letters sent on the matter.

Chairman: What are the sanctions provided in the lease bond if Cornel and Co. defaults? - There is no provision which says that the lease can be terminated.

Chairman: Don't you think that the legal dept of the UDA had been remiss in not providing for sanctions if they defaulted? - No provisions have been made.

Chairman: Have you even seen a lease bond in your 12 year experience with the UDA where there are no sanctions mentioned in the event of default? - No.

Witness said that by another deed of lease dated 13 February 1984 the land adjoining the Treasury building was leased to Cornel and Company for Rs 33,065,250 with a down payment of Rs 6,613,000. The balance Rs 27 million was to be paid in 33 equal instalments. For this deed too Cornel and Company was required to mortgage their assets. But the assets were not mortgaged.

Except for the initial payment in this case too the instalments were not paid. Letters had been written to Cornel on and off but there was no response. So the UDA filed action in the District Court for recovery of the arrears in October 1988.

Witness was referred to an amendment in both lease bonds whereby Cornel and Company was given a grace period of three years for payment.

Justice Yapa: Even after obtaining a grace period no payment was made? - Yes.

To a question by the Chairman, the Solicitor General said that the amount due now as arrears was Rs 45,227,438.46cts, both capital and interest included.

Witness said in connection with the District Court case after a number of dates issues were framed but the main witness was not present on the trial date and on an application by the defendant the District Judge dismissed the action. The UDA filed an appeal but that was also dismissed. A fresh action was filed in the District Court in April 1994. The UDA obtained the services of private counsel instead of the AG's dept. Cornel and company, in its answer denied all the averments and repudiated the least agreement. On that answer, the UDA was advised to withdraw the action.

Witness said the UDA was contemplating further action.

Chairman: I have no doubt that action too will end in the same way!

Witness said that Mr. R. Paskaralingam was the Chairman of the UDA at the time she joined the UDA in 1983.

Mr. K. Shanmugalingam, Deputy Secretary to the Treasury examined by Solicitor General Mr. Douglas Premaratne said that he was appointed as a Director to Hotel Developers Limited in March, 1990. He was representing government interest in the company as an official from the Treasury.

Witness was referred to the minutes of a board meeting held on 7, March 1990. At the meeting Mr. Amarasekera who was also a director had pointed out certain discrepancies in the cash flow and that the Hotel Hilton which was to have 450 rooms contained 387 rooms. The board agreed that those matters should be clarified.

On 24 April 1990, the board had come to a decision to assist Mr. Amarasekera to do an independent inspection with the help of a local architect, after having discussed the memorandum submitted by him highlighting the fact that original plans had been substituted.

Subsequently Mr. Amarasekera had filed a case in the district court challenging the company and an injunction was issued against HDL.

On 21 December 1990 the accounts of the company had been approved by the board. The witness had signed the approval.

Chairman: There was a very significant matter being highlighted by Mr. Amarasekera. What made you approve the accounts in the middle of all that? - As there was a case against the company by a member, the Attorney General's advice was that it may affect the liabilities. The AG had suggested amendments to the note be made. We approved the accounts subject to that. And Mr. Choksy advised us to approve it as members of the board.

Chairman: Why did you seek advice from Mr. Choksy? - Because he was also a member of the board and that he was familiar with company laws and forms.

Witness was referred to a minute made by him to the secretary of the Treasury.

It read, "Request Attorney General to take a fair view of the situation and support the Japanese to the extent possible."

Chairman: Why did you ask AG to support Japanese while a court case was going on? - From July 1990 we had been having discussions with them about rescheduling the loans. We came to an informal agreement to write off 30 per cent of interest and capital.

Chairman: Upto then you had agreed with Mr. Amarasekera. Why did you suddenly take a different view? - Mr. Paskaralingam convinced me that everything was all right. He said that checking with the UDA director he had

found that the building was in accordance with the plans. The UDA had evidence to that effect. The certificate of conformity had also been issued.

Witness was referred to an endorsement made by Mr. Paskaralingam, to the witness as "please discuss with Mr. Choksy and map out our strategy."

Justice Jayasuriya: What's this strategy? - To come to a settlement with the concerned parties.

Chairman: Why did you try to influence the AG to support Japanese when he would have acted fairly without any doubt? - My view was that nothing was wrong. My cause was to protect the agreement.

Witness was referred to a minute by Mrs. Casichetty, Director General, Ministry of Finance mentioning that if Japanese had committed a fraud then the government guarantee would be null and void.

SG: In the light of all that what was the necessity to protect the Japanese? - What we got from them we didn't want to lose.

SG: Wasn't it your duty as Deputy Secretary to the Treasury and as a director of the company to have acted in the interest of the government? - The interest of the government was to maintain the best relationship with the Japanese.

Chairman: Mr. Shelton Wijeratne the architect who assisted Mr. Amarasekera was not allowed to do a private check on the hotel when an application was made in the court and the Additional Solicitor General who had appeared for the company had objected. Who advised the counsel to object to that? - I am not aware of such advice. The Secretary to the Treasury may have. Afterwards we held a meeting and decided that the Board of Directors hold no objection to the proposal. We conveyed it to the General manager to instruct the counsel.

And Mr. Choksy had telephoned me earlier that he got to know that Mr. Amarasekera was trying to get the company delisted from the stock exchange, which would have frozen the shares and the publicity would have affected the hotel itself.

Chairman: Why was the GM taken into that? The client was the board and it has to instruct the counsel. Mr. Shanmugalingam, what is your final position? - Mr. Choksy was interested in this matter. He was interceding for the Japanese.

Even when Mr. Amarasekera was asking for clarification of the matters he said it was not necessary.

Justice Jayasuriya: Even if Mr. Paskaralingam's minute was partial you acted upon it as he was the Secretary to the Treasury? - Yes.

Chairman: Were you influenced by someone when you made that minute referring to AG? - I was influenced Mr. Choksy and Mr. Paskaralingam. We weren't in picture right through. They were answering everything connected to the action.

The commission resumes sittings today.

SPC into malpractices in public bodies

UDA land was leased to Cornel without providing for default

The Urban Development Authority had leased out land in Echelon Square to Cornel and Company to build the Hilton Hotel without providing for default.

Cornel and Company now owed Rs.45 million as arrears of instalment but they had repudiated the lease, Mrs. Yamuna Konendran, Director, legal, Urban Development Authority said before the special presidential commission sitting at the BMICH yesterday.

The commission comprises Justice Priyantha Perera (chairman) Justice Hector Yapa and Justice Ninian Jayasuriya.

Mrs. Yamuna Preetham Konendran, examined by Mr. Douglas Premaratne PC, acting solicitor general said that the land on which the Hilton Hotel project was situated was crown land which was vested in the

UDA. It was leased to Cornel and company for 99 years for a sum of Rs.103,743,000.

An initial payment of Rs.20.4 million was paid while the balance Rs.82.9 million was to be paid in 33 equal yearly instalments.

The assets of Messrs Cornel and Company were required to be mortgaged for the lease. But neither were the assets mortgaged nor was a single instalment paid after the initial payment.

Another piece of land on the opposite side of the Hilton Hotel was also leased for Rs.33 million with a down-payment of Rs.6.6 million. In that case too the instalments were not paid nor were the assets mortgaged.

The UDA filed action in the district court, Colombo where Cornel and Company repudiated the lease.

DAILY NEWS - THURSDAY JUNE 29, 1995

Director General only relevant papers for inquiry

By M.J.M. Zarook and Madhubashinee Dayabandara

Mrs Manel Casiechetty, Director General, Fiscal Policy and Economic Affairs, General Treasury said yesterday before the special Presidential Commission of Inquiry into malpractices and irregularities in public bodies that she did not forward all the documents in relation to the complaint against the construction of the Hilton Hotel project to the former Supreme Court Judge, Mr. J.F.A. Soza, the inquirer as she thought they were not necessary.

She only sent what she considered were the relevant documents.

The Commission comprises Justice Priyantha Perera (Chairman), Justice Hector Yapa and Justice Ninian Jayasuriya.

At the outset Mr. Johannes (Lambertus Bouens, a businessman of The Hague, Holland appeared before the commission to complain that he had entered into an agreement with Mr. Cornel Perera, Chairman of Hotel Developers Lanka Ltd to run a casino at the Hilton Hotel but it had not come to pass.

Chairman: How does this come within the purview of this commission?

Solicitor General: Except that the chairman had acted without the authority of the Board.

Chairman: We are probing into the construction of the hotel. Whether this will come strictly within the purview of this commission is the question. This is a matter that is more relevant to be considered by the Bribery and Corruption Commission.

SG: Very well my Lords, if your Lordships are of the view. This is strictly not within the Commission's purview.

The Chairman told Mr. Bouens that the commission was thankful for his presence and cooperation. The commission would suggest to the Solicitor General to bring up the matter before the corruptions commission.

Mrs. V.M.Y. Casiechetty who was called to give evidence said that she wanted to make a statement first. She said that confidential files which were in her custody had been handed over to Mr Nihal Ameresekera in 1990 on the instructions of the secretary though she objected. On the contents of the file Mr. Ameresekera had built up his case.

Chairman: This is a fact finding commission. You are here as a witness to assist the commission.

Mrs Casiechetty: I agree my Lords in Mr. Nihal Ameresekera's evidence already impressions have been created in the press reports which has greatly prejudiced me as a public servant.

Mrs. Casiechetty referred to the Establishment Code (sect 15) and stated that Mr Nihal Ameresekera had violated this section as Advisor to the Ministry of Finance.

Chairman: This is a fact finding commission. Our warrant supersedes all other laws. What we have to find is whether any malpractice has been committed by anyone, Minister, Prime Minister or official in the course of his duties.

SG: With reference to the Establishment Code there is no private case filed by Mr. Ameresekera. He has not claimed relief personally. Relief claimed is for the company.

The commission informed Mrs Casiechetty that her counsel would be allowed to peruse all proceedings and documents that would be necessary to prepare her defence.

Mrs. V. M. Y. Casiechetty, Director General, Fiscal Policy and Economic Affairs, General Treasury, examined by Mr. Douglas Premaratne, acting Solicitor General said that there were certain representations made in April 1990 by Mr. Nihal Sri Amerasekera, a Director of Hotel Developers Lanka Ltd to the Secretary to the Treasury, Mr. R. Paskaralingam, regarding the construction of the Hilton Hotel project. In consequence, Mr. Paskaralingam referred the matter to former Judge of the Supreme Court Mr. J. F. A. Soza to make inquiry and submit a report.

Chairman: Do you know how Mr. Soza came to be appointed? – It was the late President R. Premadasa who wanted a one man committee to be appointed and he had suggested Mr. Soza.

Subsequently Mr. Amerasekera by letter dated 8th May, 1990, submitted certain documents to witness relating to Hotel Developers Lanka Ltd and she forwarded the documents to Justice Soza. On 17 May 1990 Mr. Amerasekera wrote to witness relating to the plans submitted to the UDA stating that the original set of plans consisted of 27 sheets while the set of plans submitted by the UDA to the Chief Fire Officer, CMC on January 19, 1984, consisted of 21 sheets.

In May 1990 witness sent some further documents to Justice Soza consisting of approved amended plans of 1986 and the plans submitted in 1983.

Witness said she had no familiarity with plans. She merely forwarded the plans sent to her by the UDA.

SG: Why didn't you forward the letter of Mr. Amerasekera where he claimed discrepancies in the building to Mr. Soza? – When Mr. Paskaralingam appointed Justice Soza to inquire into irregularities in the construction of the Hilton Hotel, the objective of the Ministry of Finance was to see whether the building complied with the construction agreement and the loan agreement. I used by discretion and forwarded the documents that were necessary. We only wanted to find whether the construction was according to the construction agreement.

Justice Yapa: This inquiry was initiated because of complaint by Mr. Amerasekera. Why didn't you send the letter of Mr. Amerasekera where he has mentioned about the discrepancies? – It was not necessary. I used discretion bona fide.

Chairman: Mr. Amerasekera's grievance is that original plan was 27 sheets while the amended plan had 21 sheets? – Witness said that she went by the construction agreement to see whether the construction complied with the agreement. In any case she sent both sets of plans to Justice Soza.

Justice Yapa: Do you now think it would have been better to have sent Mr. Amerasekera's letter too to Justice Soza? No. I don't think so.

Witness said she used her discretion. Mr. Paskaralingam told her to send what she thought were relevant. Mr. Amerasekera used to write many letters on the same subject repeating himself. Therefore she did not want to burden Justice Soza with all those letters. She used her discretion and forwarded what she thought were necessary.

Witness said she had also forwarded to Justice Soza the memorandum of Mr. Amerasekera's in which he had highlighted his complaint. **SG:** But you did not send him the

letter referring to the 27 sheets and the 21 sheets? – Justice Soza had the two sets of plans before him. I am sure he would have seen them.

Witness said the UDA had stated that there was no substantial difference in the floor area.

Justice Yapa: Why did you take upon yourself the responsibility of sending Justice Soza some documents and keeping back other documents. Did anyone ask you to keep back the documents? – No. I acted on my own. If Justice Soza wanted any other documents for his inquiry he could have called for them.

Witness was referred to the resolution of the Board of Hotel Developers to remove the directors, Coronel Perera, Fred Mendis and Nihal Amerasekera. It was later withdrawn.

SG: Why? – On the complaint of Mr. Amerasekera the Minister of Finance submitted a memorandum to the cabinet and the Cabinet appointed a committee of Secretaries. The committee decided that the government nominees in the Board of Hotel Developers was insufficient in relation to the shares held and wanted the composition of the Board changed from 2 government nominees to five.

The cabinet approved the report of the committee recommended by the Ministry of Finance for the restructuring of the Board. At that time Mr. Cornel Perera agreed to the restructuring of the Board. All documents pertaining to the matter were referred to the Attorney General's Dept. approval.

Witness was referred to the two District Court cases filed by Mr. Amerasekera. The Court granted two injunctions preventing payment to the Japanese Contractors. In this lawyers connection Mr. Amerasekera wrote to the Ministry of Finance and she (witness) made a minute to the Secretary, Ministry of Finance and the DST in which she made some comments on the judgement and asked the Secretary to ignore the lawyer's letter.

Chairman: This minute appears to suggest that you were holding a brief for the Japanese? – At that time the Japanese investment to the country was very vital. Our foreign resources were very low. We were trying to find whether we could get Mr. Amerasekera to withdraw the case.

Chairman: Why did you take it upon yourself to make these comments when the judgement refers to a fraud? Even if fraud's proved we will still have to pay something to the Japanese as they have constructed the building even if two floors were missing.

Commission: If there is fraud there is no liability to pay. It vitiates the contract!

Witness said that at that point of time this matter was having an impact on government. Investment was affected. Aid was affected. Her minute to the Secretary and the DST were an internal matter arising out of the letter sent by Mr. Amerasekera's lawyers.

SG: Mrs. Casiechetty, Why did you try to help the Japanese? – Help them, because there was other considerations.

SG: By Mr. Nihal Amerasekera's letter he had requested you to convey to the Attorney General to tell the concerned parties that if fraud was proved the government guarantee would be null and void. You had mentioned that that there

was no merit whatever in his statement. But in the same minute you had mentioned the same thing. Why did you say that it's of no merit? - What I was referring to was informing concerned parties. The parties were well aware of what would happen if fraud was proved.

SG: Is it fair for you to comment that the Judge has not reached any conclusion of his own? - I was not finding fault with the judgement. As then DG. I was a junior officer to the Secretary to the Treasury. I was only analysing the situation and conveying my observations to my senior officers. I acted in good faith. It was only an internal minute.

Chairman: So in the teeth of the judgement you were supporting the Japanese? - There were so many other economic considerations to be made.

Justice Yapa: Didn't you realise that the judgement would have been in the interest of the company and the country? - It was. But there were larger interests.

SG: That means any foreign company can come here, defraud government and people and get away with it.

Witness went on to say that there was a lot of pressure at

that time on the President and Mr. Paskaralingam. The Japanese ambassador to Sri Lanka and the Sri Lankan ambassador to Japan were concerned. It would have had a huge impact on foreign aid and investments.

Chairman: Was not the best way to find a solution in the courts? - We were trying to reach a settlement out of courts. Even Mr. Amerasekera agreed to that.

Chairman: Which proved to be a futile endeavour? - But we tried our best.

Witness was referred to Mr. Paskaralingam's minute.

SG: Even in this it is mentioned that Mr. Choksy should be consulted. What was the necessity in that? - Mr. Choksy was a director in HDL representing the public. He also was the Legal Advisor to the Board. We were contemplating on signing three agreements. So the Board was to be consulted. Observations of Mr. Choksy was sent to AG for the agreements to be drafted.

Mr. Athula Bernard Senaratne the next witness gave evidence in camera.

The commission takes up the matter on July 4. Sittings resume at 2.30 pm today.

THE ISLAND - THURSDAY 29 JUNE, 1995

SPC probe on malpractices — Hilton Hotel project

Internal minute made in the interests of the country says witness

(By Assumpta Alles)

Mrs. V. M. E. Casie Chetty, Director Economic Affairs Ministry of Finance said yesterday that she had written an internal minute to two Directors of Hotel Developers Ltd., keeping in mind the interests of the country, because there would have been economic and financial repercussions if the Japanese had not been supported.

Mrs. Casie Chetty was being examined by Acting Solicitor General Douglas Premaratne before the Special Presidential Commission inquiring into malpractices in public institutions at the BMICH yesterday.

The Commission comprises Chairman Justice Priyantha Perera (Judge of the Supreme Court), Justice Ninian Jayasuriya and Justice Hector Yapa (Judges of the Court of Appeal).

A.S.G. — There must be some reason why you are going all out to help the Japanese.

Witness — Because of the economic repercussion.

Justice Perera — The evidence disclose that there is some partiality towards the Japanese. What provoked you to make this minute?

Witness — This was an internal minute my lord.

Court — Why have you said that the court order is unfair?

Acting Solicitor General — If the Courts of Sri Lanka hold that the Japanese contractors had committed fraud, do you think that any government would support them?

Witness — Fraud has not been proved.

Justice Yapa — Did you make that minute on your free will?

Witness — Yes.

The A.S.G. read extracts from the minute where Mrs. Casie Chetty states wish to make the following observation. "The lawyers of Mr. Nihal Amarasekera has requested A.G. to inform relevant parties that the state guarantees would be null and void under circumstances of fraud in view of the recent decision of the District Court.

"The request made has no merit whatsoever.

Mr. Amarasekera's lawyers do not need to remind AG of his responsibilities and duties. The Gunaratne document signed by the Government clearly states that in case fraud is proved that the guarantee will be null and void. Therefore, there is no need for anyone to remind the parties concerned about this fact.

"The recent letters sent by Mr.

Amarasekera show that he is over reacting to the recent judgement. Please see letter of November 8, 1991 where in he says the District Judge has observed (a) to (1) on page (1) and (2). It is correct that these facts are mentioned in the judgement but in doing so the Judge has merely repeated the allegations made by Mr. Amarasekera and has not reached any conclusion of his own. The Judge has merely considered whether a loss would be caused to the country by the payment of monies to Japanese in view of the allegations made by the Plaintiff and concluded that damage could be caused if the monies are siphoned off and therefore, decided that the Interim Injunction should stand.

The Judge has also observed that the lenders would have to be

compensated with adequate interest if the final decision is in their favour.

"The Japanese are appealing against the decision of the D.C. Judge that no payment at all should be made to them.

"The decision of the Judge that no payment at all should be made seems unfair in view of the fact that it is only a part of the construction that is in dispute. Mr. Aziz is also of the view that we should support the appeal of the Japanese. I think it is reasonable to support the appeal if A.G. considers it proper to do so.

"The other way we could help the Japanese and also, strengthen the position of the Government, is by expediting the signing of the amended Investment and Share Transfer Agreements".

SIGNED — Mrs. Casie Chetty.

DATED — 20.11.91.

The Acting Solicitor General also read an endorsement on this minute made by K. Shanmugalingam, Director of the Board of Hotel Developers Ltd., which stated "Request A.G. to take a fair view of this situation and support the Japanese firm to the extent possibly in their appeal to the Supreme Court. I think we should take a positive stand on this.

"SIGNED by Shanmugalingam.

DATED 22.11.91".

The ASG said that

Mr. Paskaralingam has also made an endorsement on the same minute which needs "Please discuss with Mr. K. N. Choksy and map out our strategy. The UDA Directors tell me that the building is in accordance with the claim. The UDA had issued the Certificate of Conformity. The UDA can give evidence. This must be settled.

"Signed by Paskaralingam.

"Dated 23.11.91".

Mrs. Casie Chetty

said that Mr. Choksy was a Director of HDL Ltd., and he was representing the public on the Board. The shareholders had elected him at the annual general meeting. He was a legal advisor to the Board of Directors. She said that Mr. Choksy's observations were forwarded to the Attorney General.

Justice Ninian Jayasuriya told Mrs. Casie Chetty that it was bordering on contempt of Court to say that the Judge has

merely repeated the allegations made by Mr. Amarasekera and has not reached any conclusion of his own. He said that in a Court case the judge goes into the process of evaluation which is a legal matter and accepts one version put forward. In this case the two version have been put forward by affidavits.

When the ASG sought to lead the evidence of Mr. Johannes Lambertus Maria Bovens a businessman

from The Hague, Holland, Justice Perera ruled that his evidence did not come within the purview of this inquiry. Mr. Bovens was permitted to leave.

Athula Bernard Senaratne who was involved in the contract with HDL, acting as an agent, gave his evidence in camera since he said that it was very confidential.

The Commission will resume the enquiry today.

DAILY NEWS - FRIDAY JULY 07, 1995

DC order stalled any payment to Japanese

By M. J. M. Zarook and Madhubasinee Dayabandara

Mr. Nihal Sri Amersekere, Chartered Accountant, Advisor, Minister of Finance and Planning said yesterday before the Special Presidential Commission that after a settlement had been reached with the Japanese consortium in respect of the Hilton Hotel project, a shareholder had gone to the District Court and obtained an enjoining order preventing any payment to the Japanese.

Mr. Amersekere who was recalled to give evidence was being examined by Mr. Douglas Premaratne, Solicitor General before the commission comprising Justice Priyantha Perera (chairman), Justice Hector Yapa and Justice Ninian Jayasuriya.

Mr. Nihal Sri Amersekere, Advisor to Ministry of Finance (recalled) examined by Mr. Douglas Premaratne, Solicitor General said that subsequent to his giving evidence before the commission Mitsui and Taisei Corporation entered into an agreement with the government with regard to the monies claimed by them.

The total monies claimed by the Japanese combine was Rs. 16,120 billion as at 30 June 1995. The Japanese agreed to write off past interests as well as 30 per cent of the capital which amounted to Rs. 10.2 billion.

All interest was written off up to 30 June 1993 the date on which the last government agreed to a settlement which was not put into operation and a reduced interest charge of 3 percent was made from 30 June 1993. The write off amounted to 63.3 percent of the total claimed giving a total write off of 10,200 million rupees.

There was also monies accumulated as a consequence of the interim injunctions amounting to 30 million dollars. Of this Rs. 1,341 million was deducted from the proposed payment.

In rupee terms the total amount claimed as due was Rs. 16,120 million from which Rs. 10,200 million had been written off and Rs. 1,341 million was being paid from accumulated funds leaving a balance debt of Rs. 4,544 million which was to be paid from 1996 over a period of 15 years.

Mr. Amersekere said the earlier settlement discussions broke down because the Japanese wanted promissory notes from the government which the witness did not agree to as it would have caused considerable damage and loss to the government. (Witness said he could give his reasons in camera). The present settlement terms were more beneficial to the country than the earlier terms.

Witness was referred to a memorandum dated 10 September 1994 from the Secretary, Ministry of Finance to the Minister of Finance who was then the Prime Minister.

Witness was referred to an action filed by the Secretary, Ministry of Finance Mr. A. S. Jayawardena in the District Court in June 1995 to suspend the articles of the company which referred to the vote powers of the Japanese and for a declaration that Mr. Cornel Perera was not a fit and proper person to be chairman and Managing Director of the Company (HDL). In the settlement agreement with the government Mitsui and Taisei agreed to the suspension of the articles which referred to their powers of board meetings except that no resolution should be moved affecting the loan repayment.

Subsequent to the agreement an action had been filed in the District Court by a shareholder, Mrs. Abeygunawardena Pahalage Daisy Ranjanie against Mitsui Company Ltd and an enjoining order had been made by court restraining the company from making any payment to the Japanese consortium.

Chairman: She is taking the same action that you took at that time? - Yes, My Lord. But she could have joined one at that time. Nobody come to my assistance then. In the DC case the plaintiff has alleged that there has been a fraud committed by the Japanese in the construction of the Hilton Hotel. Mr. Ameresekeera said same lawyers Mr. S. Sivarasa PC and Mr. Harischandra have appeared in support. The Solicitor General informed court that he would be summoning the plaintiff, Mrs. Abeygunawardena Daisy Ranjane before the commission.

Witness was referred to a letter dated December 1, 1994 written by the Secretary, Ministry of Finance to Mr. Cornel Perera, Chairman HDC. The letter stated: "The only payment to Mr. Ameresekeera is as set out in the settlement agreement for the legitimate payment of his costs and professional time, for action instituted in the right of the

company to protect its interests and that of the government as the guarantor. The statement of yours under reference is therefore false."

Witness was referred to a letter from the Institute of Chartered Accountants of Sri Lanka dated 22 June, 1995 to Mr. Ameresekeera referring to a complaint of professional misconduct in his part.

The complaints had been received from Mr. V. Visvanathan, Financial Consultant Cornel and Company Ltd and from Mr. John Wilson, Attorney-at-Law on the instructions of Hotel Developers (Lanka) Ltd.

The letter stated that the Council of the ICA had considered the complaints and the evidence and decided not to pursue the matter.

Mr. Ameresekeera concluded his evidence.

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SPC issues notice on Choksy, Cornel and others

The special presidential commission sitting at the BMICH yesterday directed notice to issue on Mr. Cornel M. Perera, former chairman and Managing Director, Hotel Developers (Lanka) Ltd. the owning company of the Hilton Hotel, Mr. K. N. Choksy, Director and nine other directors of HDL in connection with the Hilton Hotel project inquiry.

The commission which is inquiring into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (chairman), Justice Hector Yapa and Justice Ninian Jayasuriya.

At the outset Mrs. Victorine Manel Yvette Casie Chetty Director General of Fiscal Policy and Economic Affairs, General Treasury gave evidence at her own request regarding the earlier negotiations to settle

the dispute between Hotel Developers (Lanka) Ltd, the government and the Japanese Consortium.

At the conclusion of her evidence Mr. Douglas Premaratne, Solicitor General said that he had considered all the evidence presented before the commission in this matter and would move that notice be issued on the former directors of HDL Mr. Cornel Perera, Chairman, Mr. F. G. N. Mendis, Mr. K. N. Choksy, Mr. K. Shanmugalingam, Mr. D. P. S. Perera, Mrs. I. S. Jayasinghe, Mr. G. Hewagama, Mrs. T. P. Perera, Mrs. D. A. de Silva, Mr. P. Ramanujam and Mr. R. Paskaralingam.

The commission issued notice under section 16 of the SPC law against all the persons named returnable on August 1.



Justice H.S. Yapa

Justice P.R.P. Perera

Justice F.N.D. Jayasuriya

Presidential Commission probing malpractices

Notice to be issued on HDL Board of Directors of 1990

by **Assumpta Alles**

Acting Solicitor General Douglas Premaratne moved that notice be issued, returnable on August 1, 1995, on K. N. Choksy, Cornel Perera former Chairman Hotel Developers Limited (HDL) and the other members of the Board of Directors HDL during 1990.

The Special Presidential Commission of Inquiry into malpractices in public institutions sitting at the BMICH yesterday comprises Chairman Justice Priyantha Perera (Judge of the Supreme Court), Justice Hector Yapa and Justice Ninian Jayasuriya (Judges of the Court of Appeal).

The other members of the Board of Directors to be issued notice are F. G. N. Mendis, K. Shanmugalingam, D. P. S. Perera, G. Hewagama, Mrs. I. S. Jayasinghe, Mrs. T. P. Perera, Mrs. D. A. de Silva, P. Ramanujam and R. Paskeralingam (as owner of the shares of the government).

Mrs. V. M. Y. Casie Chetty (Director Economic Division of the Treasury in 1992 and Director General of the Department of Fiscal Policy and Economic Affairs in 1993) giving evidence before the Commission said that negotiations between HDL, Sri Lanka government and the Japanese companies began in 1992. It was Mr. Paskeralingam who initiated the settlement she said.

Continuing her evidence Mrs. Casie Chetty said that HDL was having liquidity problems and were unable to service the debt. Government was the major

shareholder and Mitsui and Taisei of Japan had made certain representations to the government.

Mrs. Casie Chetty added that she was dealing with the subject as Junior Officer to Mr. Paskeralingam.

Mrs. Casie Chetty said that in August 1989 the Japanese lenders had made presentations to Mr. Paskeralingam who was very concerned. He had requested Shanmugalingam to meet the Japanese lenders to reconsider the loan. Shanmugalingam had proposed to the Japanese that a portion of the capital and accrued interest be written off, the interest be reduced to 5.9 percent from 6.2 percent, and loan repayable within a period of 25 years.

The Japanese then returned to their head office in Japan, Mrs. Casie Chetty said.

Mrs. Casie Chetty — While Mitsui wanted time to negotiate with their principals Amarasekera brought to Paskeralingam's notice that two floors were missing, and he alleged that the Hilton building was not in accordance with the original plan and agreement. It was in December 1989 that Amarasekera drew attention to the car park and the missing rooms. Mr. Paskeralingam was very concerned as he was on the Board of Directors that took over from the contractors.

Justice Perera — If he was so concerned what did he do about it?

Mrs. Manel Casie Chetty — In February 1990 he appointed a Committee, chaired by

Shanmugalingam with Mr. Amarasekera and myself as members, to meet the Japanese and discuss the allegations. The Japanese had their own explanation which Mr. Amarasekera was not willing to accept.

In March 1990 Paskeralingam enquired from the UDA who replied that the building was in accordance with the plan.

Justice Ninian Jayasuriya — Did you consider the allegation with regard to the project plan. Did you on your own go into the square area?

Mrs. Casie Chetty — No. Since Mr. Amarasekera was not satisfied Mr. Paskeralingam, on late President Premadasa's direction, appointed Justice Soza as a one-man committee, to report on the matter.

Justice Jayasuriya — Justice Soza expressed an opinion. He did not hold an enquiry.

Mrs. Casie Chetty — D. B. Wijetunga was Minister of Finance at that time. The Cabinet appointed a Committee of Secretaries (Akiel Mohamed, A. R. M. Jayawardene, D. A. Wijesinghe and K. Shanmugalingam) to enquire into this project and also to negotiate with the Japanese regarding the repayment of the loan.

This Committee submitted an interim report to reconstitute the Board of Directors. Thus six government directors were appointed.

They then submitted further report proposing that 51 percent of shares be held by the government on behalf of Cornel Perera.

Cornel Perera transferred the shares to the government; the loan was repaid. The secretaries made a submission to the Cabinet and it was approved.

In September 1990 Mr. Amarasekera filed action in the District Court and obtained an injunction. (Case No. 3155 SPL).

The negotiations in Japan stopped for a while. Much pressure was brought on the Sri Lanka government by the Japanese government to bring about an out-of-court settlement.

Mr. Paskeralingam appointed another committee chaired by Mr. Shanmugalingam and comprising Nihal Amaresekera, Mrs. Jayasinghe and myself. This committee proposed that 30 percent of the capital and all accrued interest upto the date of settlement be written-off, that the interest be reduced from 6.2 to 5.9 percent and a repayment period of 15 years be given. Mr. Amarasekera agreed to these conditions, but brought in several other conditions namely costs of litigation to be reimbursed, action taken against certain public officers, certain cases filed against him by People's Bank and Commissioner of Labour to be withdrawn.

After discussions and amending the agreements to satisfy him, June 14, 1993 was fixed as the date.

A Japanese delegation of 5-6 members came to Sri Lanka. Mr. Amarasekera set the time for 11 p.m. saying it was an auspicious time. But he failed to be present. His wife and

personal secretary did not know where he was. On June 15 he was available and said that on legal advice he had been told to be absent.

Acting Solicitor General — Mr. Amarasekera wanted the promissory notes given by HDL and not by the government.

Mrs. Casie Chetty — The government is the guarantor of the loan and it would be proper for the government to issue the pro notes. The principal debtor should do so. The agreement we were to sign said that the government would give the pro note. The late 1993, although dismissed, the Japanese agreed to this. In 1993 the yen was 29 cents.

Acting S.G. — The loan was in yen and not in dollars.

Mrs. Casie Chetty — Because he did not agree at that time, it was a loss to the country.

Justice Perera — Since the hotel was not in accordance to the original plan did it not occur to you to get a physical check?

Mrs. Casie Chetty — Our committee was formed to negotiate the loan. However, Paskeralingam requested the Board to make a physical check.

Justice Ninian Jayasuriya — Paskeralingam has stated in a minute "Consult Choksy and help the Japanese".

Mrs. Casie Chetty — In early 1990 some agreement would have been made.

At this juncture the Commission adjourned sittings, which will be resumed today.

Earlier negotiations to settle Hilton matter failed

(by M. J. M. Zarook and
Madhubashinee Dayabandara)

Mrs. V. M. Y. Casie Chetty, Director General Fiscal Policy and Economic Affairs, General Treasury said yesterday before the Special Presidential Commission that there were earlier negotiations to settle the Hilton Hotel matter with the Japanese consortium but they failed due to various reasons.

She was giving evidence examined by Mr. Douglas Premaratne PC, Solicitor General before the commission comprising Justices Priyantha Perera (Chairman), Justice Hector Yapa and Justice Ninian Jayasuriya in the inquiry into the Hilton Hotel matter.

At the outset Mr. R. K. W. Goonesekera appearing with Mr. W. B. C. Senerath Nandadeva handed over the statement of Mrs. V. M. Y. Casie Chetty in answer to the show cause notice issued on her in respect to the contract to purchase 1,500 bus chassis and body kits from Ashok Leyland of India.

The commission directed that the matter be called on August 1 to fix a date for inquiry.

Mr. Surendra Wickremasinghe, chairman, Urban Development Authority examined by Mr. Douglas Premaratne Solicitor General produced the list of directors of the Urban Development Authority from September 1978 to date.

Witness was referred to the lease of the land at Echelon Square to Mr. Cornel Perera. He had been given the details by the Director (Legal), UDA.

The next witness Mrs. Victorine Manel Yvette Casie Chetty, Director General of Fiscal Policy and Economic Affairs was permitted to give evidence at her own request regarding the proposed settlement between the Hotel Developers (Lanka) Ltd, the government and the Japanese consortium.

Witness said that the negotiations started in 1992 and concluded in 1993. She was Director of Economic Affairs in 1992. In 1993 she was the Director General of Fiscal Policy and Economic Affairs.

Mr. R. Paskaralingam, Secretary to the Treasury initiated the settlement negotiations around June 1992. The Hotel Company was having severe liquidity problems and they were unable to service the debt. The government was the major shareholder and Mitsui and Taisei had made representations to the Japanese Govt. and the Japanese ambassador spoke to Mr. Paskaralingam to settle the matter as the government was the guarantor of the loan.

Witness said that even in 1989 even before Mr. Nihal Amerasekera filed action Mr. Paskaralingam was anxious to settle the dispute.

Mr. Paskaralingam requested Mr. Shanmugalingam DST and her to make a request to Mitsui and Taisei to reschedule the loan. Mr. Shanmugalingam proposed to the Japanese that 50 percent of the capital be written off along with all accrued interest upto the date of settlement.

Interest to be reduced to 5.9 percent from 6.2 and the loan repayment period be made 25 years from 15 years.

The Japanese wanted time to consider the matter but they suggested that they could waive off 20 to 25 percent of the capital.

These negotiations did not go through as at that time in December 1989 Mr. Amerasekera made the allegation that two floors were missing and that the building was not in accordance with the plan and construction agreement. He said the car parking space was also missing.

Mr. Paskaralingam was concerned about this allegation and he appointed a committee chaired by Mr. Shanmugalingam and consisting of herself and Mr. Amerasekera to meet the Japanese and discuss the allegation. The Japanese had their explanation but Mr. Amerasekera was not satisfied with the explanation.

Chairman: Were the other members satisfied? - We didn't look into it. We were not qualified to make a comment about the building.

Witness said Mr. Amerasekera did not do anything about it since 1987. He should have resigned if the committee did not agree with him.

Chairman: Mrs. Casiechetty, we will leave Mr. Amerasekera's conduct out. He might have had his reasons. He would have thought he'll stick around and fight.

Witness was referred to the appointment of Justice J. F. A. Soza by President R. Premadasa to inquire into the matter.

Chairman: Are you aware that Mr. Amerasekera was not called before Justice Soza? - Yes.

Witness said the cabinet appointed a committee of secretaries to negotiate with the Japanese regarding the repayment of the loan. The committee submitted an initial report stating that the Board of HDL should be reconstituted so that the government would have a majority of directors. The committee recommended that 51 percent shares held by the government which had been conditionally transferred to the government by Mr. Cornel Perera be made on absolute transfer. Mr. Cornel Perera was not agreeable to an absolute transfer.

In September 1990 Mr. Amerasekera filed action and obtained an injunction preventing any payment to the Japanese and the negotiations with the Japanese come to a standstill.

By the end of 1991 much pressure was brought on Mr. Paskaralingam by the Japanese ambassador, the Sri Lanka Ambassador in Japan to bring about an out of court settlement.

Mr. Nihal Amerasekera was also willing to bring about a settlement and a committee was appointed consisting of Mr. Shanmugalingam, Mr. Amerasekera, Mrs. Jayasinghe, Director General of Public Enterprises and witness for the purpose.

It was proposed to the Japanese that 30 percent of the capital be written off and all the accrued interest up to the time of settlement.

The interest should be 5.9 percent and repayment period of 20 years be given. After several discussions the Japanese did agree to this about January, 1993.

However Mr. Nihal Amerasekera brought in several other conditions. He wanted action taken against certain public officers who had a hand in the Hilton Hotel project.

He also wanted his cost of litigation to be reimbursed. He also wanted certain cases filed against him by the People's Bank and the Commissioner of Labour to be withdrawn.

Chairman: Mrs. Casiechetty it was Mr. Amerasekera's allegations which triggered these off. So did the committee realize that it was reasonable for him to ask for his cost of litigation? - Not really. But afterwards we agreed to a reasonable sum. And to withdraw the action filed against him by the Commissioner of Labour.

SPC on malpractices in public bodies

After many discussions and amendments a date was fixed for signing the agreement. It was for 14 June, 1993. The Japanese delegation came from Japan and Mr.

Amerasekera fixed the time for 11.00 p.m. that day. He had said that it was an auspicious time for him. "But when I tried to contact him he was missing. Even his wife did not know his whereabouts."

Chairman: Was he abducted? - We also thought so.

It was very embarrassing for Mr. Paskaralingam as the Japanese had come. The next day he appeared and said that his lawyer had advised him not to sign the agreement.

Witness said that Mr. Amerasekera had said he wanted the promissory note to be given by HDL and not by the government.

Mr. Amerasekera had said it would be improper for the guarantor (govt) to sign the pro-note, but it should be given by the principal debtor which was the company.

Chairman: Mrs. Casiechetty you can't find fault with him. He was only trying to safeguard the government? - But he could have been present and signed the settlement we could have made an amendment about the pro-note.

Later in 1994 the Japanese agreed to the promissory notes being given by the HDL. It took some time because the Japanese were disgusted with what had happened.

SG: At any stage before the settlement did he make any objection to the pro-notes being given by the government? - No.

The witness said that after 1994 she was not associated with the problem.

SG: Did your legal advisors advise you that it was improper for the government to provide the pronotes? - No. It was the Attorney-General's Department which was advising us. Even Mr. Amerasekera did not object then.

"In 1993 the yen was only 29 cents. Today it is 59 cents. In respect of Japanese investments and aid it would have been in the larger interest of the country to have brought out the settlement then, witness said.



Justice H.S. Yapa

Justice P.R.P. Perera

Justice F.N.D. Jayasuriya

Chartered architects to check on Hilton building

(By M. J. M. Zarook and Madhubashinee Dayabandara)

The Special Presidential Commission of Inquiry into malpractices and irregularities in public bodies yesterday announced that it would appoint a panel of chartered architects to determine whether the Hilton Hotel had been constructed in accordance with the construction agreement, original approved plan, the project plan and the schedule of future income projections.

The commission directed the President of the Institute of Chartered Architects to forward a list of architects from several architectural firms before September from whom they would select five architects to form the panel.

The commission comprises Justice Priyantha Perera (Chairman), Justice Hector Yapa and Justice Ninian Jayasuriya.

The parties noticed in connection with the Hilton Hotel project inquiry, Mr. Cornel M. Perera, Chairman and Managing Director of Hotel Developers (Lanka) Ltd, the owning company of the Hilton Hotel and other directors, Mr. K. N. Choksy, Mr. F. G. N. Mendis, Mr. K. Shanmugalingam and six others were present.

Mr. R. Paskaralingam former Secretary to the Treasury, also a party noticed was absent.

At the outset the chairman of the commission stated that on the material placed before the Commission by the Solicitor General they had decided to appoint a panel of chartered architects to do a physical check of the hotel as the main allegation was that the building was not in accordance with the construction agreement, project plan, original approved plan and the scheduled of future income projections.

At this stage Mr. K. N. Choksy told the commission that he accepted this course of action. Although the Original Plan is said to be missing, there are other relevant documents the authenticity of which have not been questioned in the proceedings before the Commission. They are the Building Application made in October 1983 and the Construction Agreement signed in January 1984 and the Interior Decoration Agreement of 1984. These documents should be made available to the panel of architects because they contain particulars of the building which the contractors had agreed to construct.

Chairman: Mr. Choksy, where will these documents be?

Mr. Choksy: I joined the Board of Directors some years after all the contracts were signed. In fact, the construction of the entire building had been completed and the roof laid before I became a director. When Mr. Nihal Amerasekera made his allegation against the Japanese contractors, I went to the hotel office to check on his complaint and examined these documents there.

Chairman: Mr. Cornel Perera I think has produced them before this Commission, and so they can be made available.

Mr. Choksy: I believe Cornel Perera has also produced the duplicate plans in bound volumes. These too should be made available to the panel of architects. I wish to bring to the notice of the Commission that the Board of Directors itself had authorised Mr. Nihal Amerasekera as far back as

1990 to obtain a Report from an architect. He then obtained a report from Mr. Shelton Wijeratne, but Nihal Amerasekera did not show the report to the Board. Instead he filed a court case. Mr. Shelton Wijeratne's report is now available and clearly shows that he had not been provided with the relevant documents or plans. Only tentative drawings had been given to him. Shelton Wijeratne has concluded his report stating that he could not express a complete opinion without inspecting the building.

Mr. Nihal Amerasekera had not informed the Board of Directors of all this.

Chairman: We will now have the building inspected.

Mr. Choksy: It may also be useful if the Commission permits the Directors who are appearing before the Commission today to be present with their own architects or engineers at the time of the inspection in order to point out any relevant facts. This will facilitate the inspection.

Chairman: This is a reasonable request which we will consider. You are free to inspect the documents produced before this Commission by arrangement with the Secretary and indicate to us what documents you suggest should be made available to the team of architects, when its case is next called on 4th September.

The Chairman then made order: We have heard Mr. Choksy, Mr. D. S. Wijesinghe and Mr. Goonesekera. The commission has given careful consideration to the material that has been placed before us by the Solicitor General. One of the important matters to be determined by the Commission is the issue whether the Hilton Hotel has been constructed in accordance with the construction agreement, project plan, original approved plan and schedule of future income projections. Having regard to the matters set out the commission is of the view that it is expedient to issue a commission to a panel of chartered architects drawn from several architectural firms. The commission will select five architects in the exercise of its discretion to execute the terms of the commission. President of the Institute of Chartered Architects is directed to forward a list of architects from several firms before September 1, 1995. Parties noticed will be notified thereafter if necessary to be present before the commission. This matter will be called on September 4, 1995 to name the panel, on which day the parties noticed may be present if advised.

Mr. D. S. Wijesinghe PC with Mr. S. C. Crossette Thambiah, Mr. Chula Bandara instructed by Sivanandan and Associates appeared for Mr. Cornel Perera and his wife Mrs. T. P. Perera.

Mr. Eardley Perea PC with Mr. Shantha Perera instructed by Mr. Mahanama Dissanayake appeared for Mr. D. P. S. Perera.

Mr. R. K. W. Goonesekera with Mr. W. B. C. Senarath Nandadasa appeared for Mr. F. G. N. Mendis.

Mr. R. Paskaralingam who was absent was represented by Mr. Ranjit Abeyesuriya PC with Mr. Neil Dias instructed by Mr. N. Sambandan.

Mr. K. N. Choksy represented himself.

Fresh look into Hilton building by panel of architects

(By M. J. M. Zarook and Madhubashinee Dayabandara)

The Special Presidential Commission sitting at the BMICH yesterday announced that a panel of chartered architects would be appointed out of a list submitted by the Institute of Chartered Architects to look into the matter of the Hilton Hotel building afresh in fairness to all parties.

The chairman of the Commission made this observation when Mr. K. N. Choksy who appeared on notice referred to a report by the late Mr. Shelton Wijeyeratne in respect of the Hilton Hotel based on the project plan which Mr. Choksy said should not be used by the panel in their survey since it was in fact nothing more than a preliminary proposal.

Chairman: We are not placing much reliance on that report in view of our decision to appoint a panel to look into the matter afresh. We will not refer to the report in our terms of reference to the panel.

The Commission of Inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (Chairman), Justice Hector Yapa and Justice Ninian Jayasuriya.

The parties noticed to appear in connection with the Hilton Hotel project inquiry were Mr. Cornel Perera, Chairman and Managing Director of Hotel Developers (Lanka) Ltd, the owning company of the Hilton Hotel and other former directors, Mr. K. N. Choksy, Mr. F. G. N. Mendis, Mr. K. Shanmugalingam, Deputy Secretary to the Treasury and six others.

Mr. R. Paskaralingam, former Secretary to the Treasury who is now reported to be in the UK is also a party noticed.

At the outset the chairman said that they had received the names of six architects, Dr. Justin Samarasekera, Mr. Upali Iddawela, Mr. V. N. C. Gunasekera, Mr. Dudley Vass, Prof. Nimal de Silva and Mr. Archie Milroy Perera.

The Commission had decided to nominate a panel of either three or five out of the list depending on the financial implications. Any representation that the parties noticed wished to make could be filed before the Commission and this would be passed onto the panel. The state also would be given the same opportunity to make their representations.

Chairman: Would this be satisfactory, Mr. Choksy?

Mr. Choksy who appeared for himself said that when the architect panel conducted their survey he would like that a representative of the respondents be also present.

Chairman: That might cause some obstruction if the panel requires clarification on any matters you can indicate them through the Commission. If there is any problem you can bring it to the notice of the

Commission. You might inform the Secretary what matters you would want the panel to consider.

Mr. S. C. Crossette Tambiah appearing for Mr. Cornel Perera said he would have liked to have one of their architects to be present while the panel was doing its inspection...

Chairman: He could also set out whatever matters he wants the panel to take into consideration.

Mr. R. K. W. Goonesekera who appeared for Mr. F. G. N. Mendis said he would wait for the terms of reference before making any representation.

Chairman: Broadly it would be to conduct a physical survey of the building and to see whether the building is in accordance with the project plans, scheduled for future income projections, construction agreements, bills of quantity and specifications.

Mr. Choksy submitted that the so-called project plan was not a project plan. That was only a proposal or schematic drawing.

"I examined this in 1990 when the problem arose before the Board of Directors. It set out certain proposals and alternative projections," he said.

The Hilton Hotel had its main building and the sports complex. One of the alternative proposals was to connect them by an overhead bridge and another proposal was for an underground tunnel.

Although described as a project plan it was only a proposal for consideration of the owning company. Those were matters for the panel to consider.

Mr. Choksy referred to the report of Mr. Shelton Wijeyeratne which had been based on P4 (the project plan) which had been given by Mr. Nihal Amarasekera to Mr. Wijeyeratne. The report had been produced in the District Court case but had not been made available to the Board of Directors.

Mr. Choksy said it would not be fair to hand over that report to the architect panel.

Chairman: We are not placing much reliance on that in view of our decision to appoint a panel to look into the matter afresh in fairness to all parties. We will not refer to the report in our terms of reference to the panel.

The matter will be called on September 25. Mr. D. S. Wijesinghe, PC with Mr. S. C. Crossette Tambiah and Mr. Chula Bandara instructed by Sivanandan and Associates appeared for Mr. Cornel Perera and his wife Mrs. T. P. Perera.

Mr. Eardley Perera, PC with Mr. Shantha Perer instructed by Mr. Mahanama Dissanayake appear for Mr. Peter S. Perera.

Mr. R. K. W. Goonesekera with Mr. W. Senarath Nandadeva appeared for Mr. F. G. Mendis.

Mr. K. N. Choksy, PC represented himself

Hilton probe

PC hands over written submissions

by Assumpta Alles

D. S. Wijesinghe PC, appearing before the Special Presidential Commission of inquiry into alleged malpractices, on behalf of Cornel Perera and Mrs. T. P. Perera, handed over written submissions to the SPC, where the panel of architects appointed on September 20 to execute an inspection and survey of the Colombo Hilton Hotel, be asked to report on the following questions:

1. Are the documents marked in evidence as **P4 and P4A of July 1980**, only a set of alternate schematic designs and proposals by the architects for consideration by the owning company, and not a completed or finalized plan for UDA approval and construction of the hotel building?
2. Do the floor plans in the volume containing the Contract Draw-

ings of Civil and Architecture signed by the architects dated August 15 1983, tally with the UDA approved amended plans dated April 29, 1986 taken together with the Architects List of Amendments dated September 12, 1985?

3. Is the Hotel building as constructed and completed in April 1987 in accordance with the Plans and List of Amendments referred to in question No. 2 above?
4. Does the model of the Hotel building prepared by the architects in March 1984 and the cross-sectional plan mounted on a rigid foam board, accord with the number of floors (storeys) shown in the said volume containing the Contract Drawings of Civil and Architecture?
5. Is the hotel building as constructed and

completed in April 1987, in accordance with the Construction Agreement dated January 31 1984, requiring a first class hotel containing 452 bays with construction area of 39.042.3 sq. meters?

6. Does the said building and number of car parking bays also accord with the Building Application made by Cornel and Co. Ltd., on behalf of the Hotel Developers (Lanka) Ltd., to the UDA; the UDA receipt dated 19.10.83 issued to Hotel Developers (Lanka) Ltd. and the several agreements marked in evidence as **P₁ P₂ P₃ P₄ P₄ and P₇**?
7. Does the hotel building as constructed and completed in April 1987 have 387 keys for the several guest rooms and suites on the 3rd to the 19th floor?
8. Does the hotel build-

ing as constructed and completed in April 1987, have a Managers Apartment and six Committee Rooms. With seven keys therefore?

9. Do the floor plans in the said Volume of Contract Drawings of Civil and Architecture and in the said UDA approved amended plans dated April 29 1986 show approximately 453 bays have been allocated for the Managers Apartment, the six committee rooms, and the quest rooms and suites on the 3rd to the 19th floors?



Justice H.S. Yapa

Justice P.R.P. Perera

Justice F.N.D. Jayasuriya

Question for architects panel probing Hilton

by M. J. M. Zarook and Madhubashinee Dayabandara

A questionnaire for the consideration of the Architects Panel appointed to investigate the construction of the Hilton Hotel project was submitted by the parties noticed in the Hilton inquiry before the Special Presidential Commission on Thursday.

The Commission of Inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (Chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

The parties noticed in the Hilton Hotel inquiry are Mr. Cornel Perera Chairman and Managing Director of Hotel Developers (Lanka) Ltd, the owning company of the Hilton Hotel, his wife Mrs. T. P. Perera and former directors Mr. K. N. Choksy, Mr. F. G. N. Mendis, Mr. Peter Perera, Mr. K. Shanmugalingam and four others.

Mr. R. Paskaralingam former Secretary to the Treasury who is also party noticed is said to be in the U.K. but is represented by lawyers.

At the outset Mr. Srinath Perera, Additional Solicitor General on behalf of the Solicitor General tendered documents and submissions in respect of the Hilton Hotel inquiry.

Mr. D. S. Wijesinghe PC appearing for Mr. Cornel Perera and Mrs. T. P. Perera listed certain documents and submitted certain questions and requested the commission to direct the panel of architects appointed to execute a local investigation, survey inter alia of Hilton Hotel to consider them in their investigation.

Mr. Nihal Fernando appearing for Mr. Choksy and Mr. R. K. N. Goonesekera appearing for Mr. F. G. N. Mendis associated themselves with the questionnaire submitted by Mr. D. S. Wijesinghe.

In answer to the Commission, Mr. Peter Perera said he had no representations to make to the architects panel.

Mr. Faisz Musthapha PC appearing for Mitsui and Taisei the Japanese contractors said two representatives were present notice to produce certain documents. The commission directed them to first make a statement to the Investigating Unit.

Among the documents listed for the consideration of the Panel of Architects were the Contract Drawings of Civil and Architecture for Hilton International Colombo signed by Architects Kanko Kikaku Sekkeisha dated 15th August 1983; the Model prepared by the Architects dated March 1984; the Cross-Sectional Plan of the main hotel building mounted on a rigifoam board, showing the floors; the Building Application made to the Urban Development Authority for the Hotel made by Cornel & Co. Ltd., on behalf of Hotel Developers (Lanka) Ltd; the Letter dated 23rd March 1984 from the U.D.A. to Hotel Developers (Lanka) Ltd. approving the Building Application dated 19.10.83 and forwarding a set of approved plans; the List of Amendments to the Plans, submitted by the Architects Kanko Kikaku Sekkeisha to the U.D.A. dated 12th September 1985 and the Amended Plans approved by the U.D.A. dated 29th April 1986 marked in evidence as P17, P104 and P269.

The questions which have been put to the panels were: Are the documents marked in evidence as P4 & P4A of July 1980, only a set of alternate schematic designs and proposals by the Architects for consideration by the owning company, and not a completed or finalized Plan for U.D.A. approval and construction of the hotel building?;

Do the Floor Plans in the Volume containing the Contract Drawings of Civil & Architecture signed by the Architects dated 15th August 1983 tally with the U.D.A. approved amended Plans dated 29th April 1986 taken together with the Architects List of Amendments dated 12th September 1985;

Is the Hotel Building as constructed and completed in April 1987 in accordance with the Plans and List of Amendments;

Does the Model of the Hotel Building prepared by the Architects in March 1984 and the Cross-Sectional Plan mounted on a rigifoam board accord with the number of Floors (Stories) shown in the said Volume containing the Contract Drawings of Civil & Architecture;

Is the Hotel Building as constructed and completed in April 1987, in accordance with the Construction Agreement dated 31st January 1984 requiring a first class hotel containing 452 bays with construction area of 39,042.3 sq. meters;

Does the said building and number of car parking bays also accord with the Building Application made by Cornel & Co. Ltd on behalf of Hotel Developers (Lanka) Ltd. to the U.D.A.;

Does the Hotel building as constructed and completed in April 1987 have 387 keys for the several guest rooms and suits on the 3rd to the 19th floors?

Does the Hotel building as constructed and completed in April 1987, have a Manager's Apartment and six Committee Rooms, with 7 keys therefore?

Do the Floor Plans in the Volume of Contract Drawings of Civil and Architecture and in the UDA approved amended plans dated 29th April 1986 show approximately 453 bays have been allocated for the Manager's Apartment, the six Committee Rooms, and the guest rooms and suites on the 3rd to the 19th floors.

The Panel of Architects which commenced its work on September 26 has been directed to report back to the Commission by October 31.

Mr. D. S. Wijesinghe PC with Mr. S.C. Crossette Thambiah and Mr. Chula Bandara instructed by Sivanantham and Associates appeared for Mr. and Mrs. Cornel Perera.

Mr. Nihal Fernando appeared for Mr. K. N. Choksy. Mr. R. K. W. Goonesekera with Mr. W.B.C. Senerath Nandadeva appeared for Mr. F.G.N. Mendis.

Mr. Paskaralingam who is absent is represented by Mr. Ranjit Abeysuriya PC with Mr. Neil Dias instructed by Mr. N. Sambandan.

Mr. Faisz Musthapha PC with Mr. L. A. Wickremasinghe and Mr. H. Soza instructed by Mr. Razmara Abdeen appeared for Messrs. Mitsui and Taisei.

The Solicitor General Mr. Douglas Premaratne PC is assisting the commission.

Japanese architect comes forward to give evidence in Hilton case

By V. Varthasuntharam

The architects of the Hilton Hotel Project, Kanko Kikaku Sekkeisha Yoyo Shibata and Associates have made an application to the Special Presidential Commission of Inquiry probing into malpractices to permit them to appear before the Commission and assist it in the areas relevant to it.

Special Presidential Commission comprises

Justice Priyantha Perera, Justice H. S. Yapa and Justice Ninian Jayassuriya.

The motion filed by Mather and Ramanathan, counsel for the architects stated that they would be of assistance in areas relevant to the inquiry.

The motion stated that the drawing of the preliminary design scheme by the architects about May/June 1980, its purpose, the obtaining of the

building permit from the Urban Development Authority, the fire which occurred at the site office used by Mitsui Taisei Consortium, the circumstances in which the amended architectural drawings of July 15, 1985 came to be drawn up, the insurance of the completion certificate and final certificate, as to the number of floors and bays and rooms in the hotel building and as to why there were no

Bill of Quantities for the construction of the Building would be the relevant areas in which they could be of assistance to the Commission.

L. C. Seneviratne (PC) with S. D. Yogendra, J. C. Borange and F. D. Jayaseelan instructed by Mather and Ramanathan appeared for the architects.

DAILY NEWS - TUESDAY 17th OCTOBER, 1995

Hilton architects allowed to appear

The Special Presidential Commission sitting at the BMICH yesterday made order that the architects of the Hilton Hotel project, Kanko Kakako Sekkeisha Ozo Shibata and Associates of Tokyo, Japan would be allowed to intervene in the Hilton Hotel inquiry as a party concerned.

This order was made on the application of Mr. L. C. Seneviratne PC, counsel for the Japanese architects that his clients be permitted to appear before the commission as they wished to assist the commission with regard to the various charges that had been made relating to the construction of the hotel.

The Commission of Inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (Chairman), Justice Hector S. Yapa and Justice Ninian Jayassuriya.

The chairman told counsel, Mr. Seneviratne that they had given their anxious consideration to his application and decided to permit them to intervene as a party concerned in the inquiry.

The commission would expect the full cooperation of the architects particularly in regard to producing the 1983 plan approved in 1984. This would be the most important aspect in which they could be of assistance.

Mr. Seneviratne said that he would produce the architectural drawings, technical specifications and list of alterations. There was no shortage of floors or height, he said.

Mr. L. C. Seneviratne PC with Mr. S. D. Yogendra and Mr. N. D. Jayasena appeared for the Japanese architects.

Mr. Douglas Premaratne, Solicitor General assisted the commission.

The matter will be called on October 24. The commission resumes sittings on October 18.

Hilton Hotel Commission

Permission granted to PC to help in inquiry

by Assumpta Alles

Permission was yesterday granted by the Special Presidential Commission of Inquiry into alleged malpractices in government bodies, to L. C. Seneviratne PC to intervene "as a person concerned in the enquiry."

Justice Priyantha Perera: We have considered your application and offer of assistance to the Commission and have decided that, in terms of Section 16, we would permit you to intervene as a person concerned in the matter under enquiry. Not as a respondent. Not as a person on whom notice has been issued to show cause, but as a person concerned in the enquiry.

But the Commission would expect the fullest co-operation from your client — the international firm of architects Kanko Kikaku Sekkusha Yozo Shibata and Associates — particularly in regard to the production of the architectural plan which has been submitted by the architects in 1983 and approved by the UDA in 1984, i.e. the original set of plans.

This is the most important aspect in which your client could help us.

Seneviratne PC: I have stated that what was called for and approved were 27 sheets consisting of 17 architectural drawings

and 10 fire hydrant drawings. These sheets were called for by the UDA through Hotel Developers Limited. We have supplied them and approval was given on that basis.

Justice Perera — We have with us certain documentation — UDA, Tourist Board, etc. that a plan which had been submitted to the UDA in 1983 had been approved in 1984. We are interested in this plan and it would be very helpful if you could produce a copy of this plan.

Seneviratne PC: I will do that. My clients say that they had nothing to do with the UDA or Tourist Board and had forwarded all documentation to HDL. It is HDL who made the application and the approval was given to HDL.

They are the proprietors of the Hotel project and the 27 sheets were given back to us. My client had nothing to do with the Tourist Board.

Justice Perera: What is important is that the plans have been drawn by your client. There is a subsequent plan which has been approved in 1985.

Seneviratne PC: My submission is that there is no difference between the 1983 plan and the 1985 plan except that the 1985 plan incorporated the

amendments into the 1983 plan. These amendments did not involve the structural alterations nor affect the price, nor did it affect the time limit within which the hotel was to be constructed. They were amendments which were made in the course of discussions which were regularly held between HDL, the contractors and us from time to time, as the building progressed.

I have got a list of all the alterations and it was these alterations which were incorporated into the plan and application was made to get it approved.

Justice Priyantha Perera: The alterations are not the problem. The allegation is that there is a shortage of floors.

Seneviratne PC: I have specifically stated that there is no alterations of floor space or height.

Justice Perera: You know the case from cover to cover.

Seneviratne: From floor to floor my lord. I can tender the architectural drawings and technical specifications within the next few days for the panel of architects to use. My Japanese client who was here last week has informed us that he could come again for a few days.

Hilton building report submitted to commission

The final report of the architects panel which was appointed to do a physical survey of the Hilton Hotel project inter alia was submitted to the special Presidential Commission sitting at the BMICH yesterday.

Present before the Commission were architects Dudley Vaas and Upali Iddawela on behalf of the panel.

The panel had been directed to do a physical examination of the building as there were allegations that the Hilton project did not contain the number of

storeys etc envisaged in the original approved plan.

The Commission directed that the matter be called on December 8 and directed the secretary to issue notice on all the parties concerned including the Solicitor General who is assisting the Commission to be present on that day.

The commission of inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (Chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

THE ISLAND - SATURDAY 9 DECEMBER, 1995

Hilton Hotel: Total area is same as indicated in the agreement

By V. K. Wijeratne

The panel of experts appointed by the special Presidential Commission of Inquiry on the Colombo Hilton International Hotel has concluded that 'the total area of the hotel building constructed is more or less the same as indicated in the construction agreement'.

'The present third floor of the hotel tower originally identified by the architect as a guest room floor has been converted to accommodate a different function than to provide guest rooms i.e. to have meeting rooms and the managers quarters.

The above changes in the final plans have resulted in the reduction of one floor available for use as guest

rooms. These changes have resulted in having 400 room boys (25x16) that

can be used to accommodate guest rooms.

Because some of the room boys in the 18th and 19th floors have been joined together to form suites the number of saleable rooms and suites has been reduced to 387.

The Special Presidential Commission of Inquiry probing into alleged malpractices in certain government bodies yesterday (8) issued show cause notices on Cornel Lionel Perera, Chairman and Managing Director of Hotel Developers (Lanka) Ltd, K. N. Choksy, F. G. N. Mendis, Directors of Hotel Developers (Lanka) Ltd and R. Pasakalingam former Secretary to the Treasury and Secretary Ministry of Finance and Planning and Implementation.

They were given time till December 22 to file written submissions.

Counsel for all four wanted copies of all proceedings and documents related to the inquiry and the Chairman, Justice P. R. P. Perera directed the Secretary that their request be compiled with.

K. N. Choksy stated that two weeks time would not be sufficient to make submission. The Commission said that on the next day (22) that request would be considered.

He also asked the Commission that he be allowed to make oral submission before the Commission.

The Chairman said in reply that this was the normal practice in the Commission and that he would be given all opportunity to do so.

Show cause notice

served on Cornel Lionel Perera read as follows "whilst holding the office of Chairman and Managing Director of Hotel Developers (Lanka) Ltd, which was the owning Company of the Colombo Hilton Hotel and the Company responsible for the construction of the said Hotel by Mitsui and Taisei Corporation of Japan and having negotiated and induced the issue of guarantees by the government of Sri Lanka to Mitsui & Taisei Corporation behalf of the Company did omit to do, between March 15 1983 and 16 August 1994 the following acts.

Wrongfully failed to retain the company's set of original Architectural Plans dated 15.08.1983 that had been submitted and approved by the Urban Development

Authority, as the owner's copy thereof.

Wrongful permit and or cause a new set of Architectural plans dated July 15 1985 to be substituted at the Urban Development Authority without the approval of the Board of Directors of the Company.

Deliberately and wrongfully fail and neglect to take action to ensure that the construction of the said hotel was in accordance with the original Architectural Plans dated 15.08.1983 and the schematic design plan of 1980 marked as P4 and P4A notwithstanding the fact that these matters were specifically brought to your notice by Nihal Sri Amarasekera, a Director of the said company.

Wrongfully oppose the recommendation made by the Government Nominee Director, M. T. L. Fernando to have an independent physical examination of the said hotel carried out to ascertain whether the said Hotel had been constructed by the contractor in accordance with the original Architectural Plans dated 15.08.1983 and the schematic design plan of 1980 marked as P4 and P4A.

Notwithstanding the serious discrepancies and queries that had surfaced at the meetings of the Board of Directors of the said company and the objections raised by several directors to the payments to be made to the contractors collusively act together with K. N. Choksy and persuade and or induce the Secretary, Ministry of Finance, R. Paskaralingam, to make a payment of US dollars two million to Mitsui &

Taisei Corporation of Japan,

Dishonestly and fraudulently collude with Mitsui & Co. to submit a set of false future cash flow projections and future income statements of the said hotel to the government of Sri Lanka and thereby induce the government of Sri Lanka to issue guarantees to Mitsui & Taisei Corporation of Japan.

Collusively acting together with the Executive Director of the said Company dishonestly and fraudulently prepare Agreements to effect a mortgage of the said Hotel to Mitsui & Taisei Corporation notwithstanding the fact that Mitsui & Taisei Corporation had already obtained state guarantees on this account from the Government of Sri Lanka.

Disregard the discrepancies, shortcomings and irregularities which were brought to the notice of the Board of Directors, and wrongfully attempt to approve as authentic the annual accounts of the said company for the year ended March 31, 1990 and endeavour to take action to adopt the accounts with the object of suppressing the aforesaid fraudulent acts and omissions.

Fraudulently and or dishonestly enter into an arrangement with Mitsui & Co Ltd, Japan, with the object of receiving payments amounting to a sum of Japanese Yen three hundred and forty million for procuring concessions from the Government of Sri Lanka and thereby compromise the interest of the said company and the Government of Sri Lanka and fail to take any action, whatsoever when serious discre-

pancies relating to the construction of the said hotel had surfaced at the meetings of the Board of Directors of the said company.

The aforesaid acts of commission and or omission on your part were fraudulent and were detrimental to the interests of the said company and or the Government of Sri Lanka in its capacity as the major shareholder causing financial loss and damage to the said company and or the Government of Sri Lanka.

Having regard to the matters set out hereinabove you are hereby required to show cause as to why you should not be found guilty of misuse or abuse of power and or corruption and or the commission of fraudulent acts in terms of Section 9 of the Special Presidential Commission of Inquiry Law No. 7 of 1978 as amended.

Show cause notices on the directors too were on similar lines.

Show cause notice addressed to R. Paskaralingam read as follows

You whilst, holding office of Secretary to the Treasury and the offices of Secretary Ministry of Finance & Planning & Implementation and thereby being vested with control over state finance and guarantees, issued to Mitsui & Taisei Corporation of Japan; did or omit to do between December 1988 and 30 June 1994 the following acts.

Deliberately and, wrongfully fail and neglect to take meaningful measures through the representative directors of the Ministry of Finance to ensure that the said hotel was con-

structed in accordance with the original Architectural Plans dated 15.08.1983 and the schematic design plan of 1980 marked as P4 and P4A notwithstanding the fact that these matters were specifically brought to your notice by Nihal Sri Amarasekera, a director of the said company.

Deliberately and wrongfully fail and neglect to take any action or cause any action whatsoever, to be taken to safeguard the interests of the Government of Sri Lanka in the act of issuing guarantees to Mitsui & Taisei Corporation based on the set of false future cash flow projections and future income statements of the said hotel, submitted dishonestly and fraudulently, by Mitsui & Co. to the government of Sri Lanka.

Notwithstanding the serious discrepancies shortcomings and queries that had surfaced at the meetings of the Board of Directors of the company and notwithstanding the objections raised to the making of any payments to Mitsui & Taisei Corporation of Japan at such meetings which matters had been specifically brought to your notice, authorised the payment of US dollars Two Million to Mitsui & Taisei Corporation of Japan and further directed that a contribution of US dollars One Million be made from the funds of the General Treasury to Mitsui & Taisei Corporation of Japan which was detrimental to the interest of the government of Sri Lanka and or the said company.

The aforesaid acts of commission and or

omission on your part were fraudulent and were detrimental to the interests of the said company and or the Government of Sri Lanka in its capacity as the major shareholder, causing financial loss and damage to the said company and or the Government of Sri Lanka.

Having regard to the matters set out hereinabove you are hereby required to show cause as to why you should not be found guilty of misuse or abuse of power and or corruption and or the commission of fraudulent acts in terms of Section 9 of the Special Presidential Commis-

sion of Inquiry Law No 7 of 1978, as amended K. Shanmugalingam D P S Perera, I. S Jayasinghe, G. Hene-gama, T. P. Perera, D. A.*de Silva and Dr. P. Ramanujam present before the Commission were told by the Commission that they would not be served with show cause notices on

that day. Paskaralingam who was absent was represented by Ranji Abeyasuriya PC. The Commission consists of Justice P. R. P. Perera (Chairman Justices H. S. Yapa and F. N. D. Jayasooriya.

DAIILY NEWS - SATURDAY DECEMBER 09, 1995

Show cause notice on ex Hilton Hotel directors

THE Special Presidential Commission sitting at the BMICH yesterday issued show cause notices on Mr Cornel Perera, chairman and managing director of Hotel Developers (Lanka) Ltd, the owning company of the Hilton Hotel and on former directors, Mr. K. N. Choksy, Mr. F. G. N. Mendis and Mr. R. Paskaralingam, former secretary to the ministry of finance, in the matter of the Hilton project inquiry.

The Commission of Inquiry into malpractices and

Irregularities, comprises Justices Priyantha Perera (chairman), S. Yapa and Ninian Jayasuriya.

The parties noticed were required to show cause separately why they should not be found guilty of misuse or abuse of power and or corruption and or commission of fraudulent acts in connection with the construction of the Hilton Hotel.

The respondents were directed to file their written statements in two weeks time.

Seven other former directors of Hotel Developers Ltd who appeared on notice, Mr. K. Shanmugalingam former DST, Mr. Peter S. Perera, Mrs. I. S. Jayasinghe, Mr. Hewagama, Mrs. T. P. Perera, Dr. P. Ramanujam and Mrs. D. A. de Silva were directed to appear on December 22, when the commission will decide whether they too would be issued show cause notices.

The panel of architects appointed to make a local investigation and survey of

the Hilton Hotel building presented its report where it was stated inter alia that the total floor area of the hotel building was more or less the same as indicated in the construction agreement ie 39.042.3m².



Justice H.S. Yapa

Justice P.R.P. Perera

Justice F.N.D. Jayasuriya

One director raises objections to jurisdiction

Hilton hotel inquiry

MR. K. N. Choksy, one of the parties noticed in the Hilton Hotel inquiry yesterday informed the Special Presidential Commission sitting at BMICH, that whilst denying the facts he was raising objections to the jurisdiction of the commission and the warrant issued by the president.

He also objected to the manner in which the charges had been framed and said that the charges cannot be maintained in law or in fact.

The Commission of Inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (chairman), Hector S. Yapa and Ninian Jayasuriya.

The Commission directed the parties noticed, to file their written submissions setting out their legal and factual objections on January 30, 1996.

Seven other former directors of Hotel Developers (Lanka) Ltd who appeared on notice, Mr. K. Shanmugalingam, former DST, Mr. Peter S. Perera, Mrs. I. S. Jayasinghe, Mr. G. Hewagama, Mrs. T. P. Perera, Dr. P. Ramanujam and Mrs. D. A. de Silva were discharged from the proceedings as the commission was of the unanimous view that no notice should be issued on them.

Mr. K. N. Choksy, one of the parties noticed in the Hilton Hotel inquiry yesterday informed the Special Presidential Commission sitting at BMICH, that whilst denying the facts (in the show cause notice) he was raising objections to the jurisdiction of the commission and the warrant issued by the President.

He also objected to the manner in which the charges had been framed and said that the charges could not be maintained in law or in fact.

The Commission of Inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (Chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter Mr. Cornel Perera, Chairman and Managing Director of Hotel Developers (Lanka) Ltd, the owning company of the Hilton Hotel and former directors Mr. K. N. Choksy, Mr. F. G. N. Mendis and Mr. R. Paskaralingam former secretary to the Ministry of Finance had been asked to show cause why they should not be found guilty of misuse or abuse of power and or corruption and or commission of fraudulent acts in connection with the construction of the Hilton Hotel.

Mr. D. S. Wijesinghe PC with Mr. S. C. Crossette Thambiah and Mr. Chula Bandara instructed by Sivananthan Associates appeared for Mr. Cornel Perera and Mrs. T. P. Perera.

Mr. R. K. W. Goonesekera with Mr. W. B. C. Senarath Nandadeva instructed by Mr. M. D. de Silva appeared for Mr. F. G. N. Mendis.

Mr. Ranjit Abeysuriya PC with Mr. Neil Dias and Miss Priyadharshanee Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam who was absent.

Mr. K. N. Choksy PC appeared on his own behalf.

At the outset, Mr. R. K. W. Goonesekera, senior counsel for Mr. F. G. N. Mendis said that he accepted full responsibility for his clients absence at the last date the matter was called.

He said that Mr. Mendis prior to his leaving the island had inquired from him whether his presence was necessary. As he was not aware that the show cause notice was due to be issued on them and because there had been instances where the commission had allowed counsel to appear when the party noticed was absent, Mr. Goonesekera had indicated to Mr. Mendis that his presence would not be necessary.

Chairman: We were unhappy because Mr. Mendis was not present the last time. But we were unaware that he had kept away on instructions.

When the written statements were called, Mr. K. N. Choksy said that as a volume of proceedings and some 300 documents had to be perused, he would require more time to file the submissions.

Mr. Choksy: The last occasion we appeared, show cause notice was served on us. I certainly dispute the allegation of fact contained in the show cause notice. I do not accept the factual basis on which those allegations had been made. There are also certain objections that arise to the charges that have been made and also about the jurisdiction of Your Lordships' commission. I'm applying today for permission to file in the first instance a written statement of objection to the charges and also to the jurisdiction of the commission, both under the law and in terms of the Act.

Mr. Choksy said that he was not in a position to file an adequate written response, considering the manner in which the charges had been framed. After the last sitting he had been served an amended charge sheet where a factual error in the fifth charge had been amended.

Chairman: The purpose of directing the parties to file a statement is for the commission to be made aware of the line of defence they would take. A broad denial would not help at all.

Mr. Choksy: With great respect, the evidence on which the allegations have been made was ex parte.

That is a fact. My position regarding the evidence was not ascertained before the charges were made.

Chairman: In our view a prima facie case had been

made on the ex parte evidence that had been led. I've discussed this matter with my brothers. They are also of the view that this cannot be taken piecemeal. We have given you the opportunity to file a written statement. You are free to file that with regard to the matters of jurisdiction and charges.

Mr. R. K. W. Goonesekera, counsel for Mr. F. G. N. Mendis said that as far as his client was concerned he was not going all along with Mr. Choksy. The position of my client is somewhat different. The charges against him are not relating to any positive acts he had done. I am in a position to satisfy Your Lordships and explain that he had good reasons with respect of all those matters. But one of the difficulties in answering the charges is that sufficient particulars had not been furnished in the notice.

Mr. D. S. Wijesinghe PC appearing for Mr. Cornel Perera said that he associated himself fully with Mr. Choksy.

Mr. Ranjit Abeysuriya, counsel for Mr. Paskaralingam said that he would also have to raise matters both of fact and law.

Chairman: Having regard to the submissions of counsel and Mr. Choksy we are of the view that this application should be allowed. We direct the parties noticed to file their written statements incorporating matters of law and fact on January 30, 1996.

Seven other former directors of Hotel Developers (Lanka) Limited, who appeared on notice.

Mr. K. Shanmugalingam, former DST, Mr. Peter S. Perera, Mrs. I. S. Jayasinghe, Mr. G. Hewagama, Mrs. T. P. Perera, Dr. P. Ramanujam and Mrs. D. A. de Silva were discharged from the proceedings as the commission was of the unanimous view that no notice should be issued on them.

The Chairman said: The commission has considered all the material in this case. We have taken the unanimous view that no notice should be served on you. You are discharged from these proceedings.

The commission resumes sittings on January 8, 1996.

THE ISLAND - WEDNESDAY 31, 1996

SPC probing malpractices in public bodies

Choksy raises objections

by V. K. Wijeratna

K. N. Choksy making his written submissions to the Special Presidential Commission of Inquiry probing alleged malpractices in the Hilton Hotel project has raised three preliminary objections, while totally denying the allegations.

He submits that the Commission has no jurisdiction in law to inquire into matters relating to the Hilton Hotel project.

He also states that each of the counts in the notice served on him is bad in law and/or contrary to natural justice and/or procedural fairness on several grounds.

Mr. Choksy also states that the counts are in any event vague

and unspecific.

Some of the highlights of his submission are:

- Selective and one-sided evidence placed before the commission ex-parte.

- Evidence should have been recorded in camera, then record and consider his statement and thereafter issue notice, if justified.

- State controlled media gave wide publicity to ex-parte evidence.

- Shortly before appointing the commission, the President claimed over state controlled television that a fraud had been committed in the Hilton deal and wrongfully identified him as a person involved in the fraud.

- His statement or explanation was not recorded or as-certained by the commission prior to the issue of notice.

- He was not a Director at the time the plans were prepared, the building contract entered into and the construction work executed.

- Notwithstanding the legal position arising out of the contractual documents, the legal opinion he gave to the Board of Directors was that the Board could proceed to appoint an independent engineer or architect to examine and report on the hotel building, if the Board had reason to doubt the integrity of the Japanese architects.

- The Board authorised Nihal Amarasekara to obtain a report from an independent engineer/architect. He obtained a report but suppressed it from the Board.

- He was not present at the Board meeting at which the Directors approved the annual accounts for the year ended 31.3.1990.

In regard to the matter of jurisdiction, he says, "Hotel Developing (Lanka) Ltd. is not and has at no time during the period specified in the terms of reference of the Commission, been a public body within the meaning of the SPC Inquiry Law No. 7 of 1978 as amended".

Mr. Choksy also

Choksy challenges jurisdiction of probe

Denies totally allegations on Hilton project

The well known lawyer K. N. Choksy, former Constitutional Affairs Minister and Director Hotel Development (Lanka) Ltd., appearing before the Special Presidential Commission on a show court notice challenged the jurisdiction of the commission to inquire into matters relating to the Hilton Hotel Project while denying totally the allegations against him.

It is by way of a preliminary objection he challenged the commission's jurisdiction contending that the terms of reference of the commission according to the warrant, are restricted to public bodies within the meaning of the relevant law No. 7 of 1978.

Hotel Developers (Lanka) Ltd. has not been and is not a public body within the meaning of that law, for it is not a body performing public duties or functions of governmental nature for public benefit, but a body carrying on hotel business for private gain and profit, he argued.

The other preliminary objections Mr. Choksy raised are:

Each of the counts in the Notice under Section 9 served on me is bad in law and/or contrary to natural justice and/or procedural fairness on several grounds.

The Counts are in any event vague and unspecific and the Notice does not contain sufficient particulars as to enable me to adequately reply the allegations contained therein fully.

Mr. Choksy submitted further that,

I am also proceeding to place before the Commission, without prejudice to the above objections in limine, an outline, as far as is possible in the circumstances, of my position on the factual aspects of the Counts, despite the aforesaid deficiencies in the Counts. I am doing so because amongst other reasons:

(i) Certain evidence has been placed before the Commission ex-parte. Such evidence has been selective and one-sided and has not placed the whole facts fairly before the Commission; such evidence is also false in several respects;

(ii) The procedure in receiving such ex-parte evidence, I respectfully submit, is contrary to established legal principles and also violative of the rules of procedural fairness and natural justice, and is prejudicial. The Commission is empowered to record evidence in camera. I respectfully state that the correct and fair and legally acceptable procedure would have been to record such evidence in camera in the first instance, then record and consider my statement, and only thereafter to proceed to issue Notice under Section 9, if the facts so ascertained justified the issue of such Notice;

(iii) The state-controlled media (both print and electronic) gave wide publicity to such ex-parte evidence led before the Commission;

(iv) H.E. President Chandrika Bandaranaike Kumaratunga, the very appointing authority of this Commission, on 22nd December 1994, shortly be-

fore appointing this Commission, claimed over the state controlled Television that a fraud had been committed in the Hilton Hotel Project by the non-construction of 'five floors' and wrongly identified me by description as a person involved in the fraud; (v) My statement or explanation was not recorded or ascertained by the Commission prior to the Notice under Section 09 being served on me, which I respectfully reiterate should have been done, particularly in view of the contradictory and speculative nature of the allegation made in respect of the Hilton Hotel Project, starting with 'two floors' said to be missing, increased to 'five floors' by H.E. the President, and then changed to 'two missing basements' by a witness before the Commission, ending with the report of the Panel of Architects appointed by the commission itself which Report states that upon a measurement of the total floor area of the hotel building as constructed, they found that there is no shortage, but an excess of 203 square meters over and above the area contracted and agreed to be built by the Contractors;

(vi) I was not a Director at the time the plans were prepared, the building contract entered into, and the construction work executed. The construction of the building had been completed when I joined the Board. If a fraud has been committed in the construction, it was done prior to my

becoming a director, and the contractors would obviously have been privy to the same. Nevertheless, whilst I am being charged, the contractors are not although they appeared before the Commission on summons.

(vii) In my first legal opinion given in writing to the Board of Directors at its request, I had specifically stated that notwithstanding the legal position arising out of the contractual documents, the Board could proceed to appoint an independent engineer or architect to examine and report on the hotel building if the Board had reason to doubt the integrity of the Japanese Architects; the charge against me that I had obstructed an investigation to be made into Nihal Ameresekere's allegations is thus both untrue and unfair.

(viii) On 24th April 1990 the Board authorised Nihal Ameresekere to obtain a report from an independent engineer/architect. He obtained a Report in August 1990, but suppressed the Report from the Board. This is because he had not given the Architect from whom he obtained the Report the available relevant documents for examination, but only certain documents selected by Mr. Ameresekere.

(ix) One of the allegations against me is that I attempted to have approved the Annual Accounts for the year ended 31.3.1990. The Board Minutes show that I was in fact not present at the Board

Meeting at which the Directors approved these Accounts! Moreover, the Directors who made the decision had done so after several discussions with the Company's auditors (Ford, Rhodes, Thornton & Co.) and these auditors had certified the Accounts, and also the Auditor General had been consulted by the Government Directors.

(x) Another allegation is that I induced the Treasury to make a token payment to the Japanese. But the documentary evidence and Board Minutes show that the Treasury had by letter requested the Board of directors to consider making this payment, and that the decision to accept this recommendation was made collectively by the Board at two meetings, and Nihal Ameresekere (the complainant) was the very person who proposed the Board resolution to formalise such payment.

The above are but a few reasons only which compel me to set out whatever factual basis I could, despite the above objections in limine. I reserve the right to file further written submissions, if necessary.

Special Presidential Commission of Inquiry

Written submissions of K. N. Choksy

Objection to jurisdiction

The Commission has no jurisdiction to inquire into Item No. 2 contained in the Schedule to the Warrant issued to the Commission for the following reasons.

Hotel Developers (Lanka) Ltd., is not and has at no time during the period specified in the terms of reference of the Commission been a public body within the meaning of the Special Presidential Commissions of Inquiry Law No. 7 of 1978 as amended, and accordingly,

(i) This Commission has no jurisdiction or authority under the said Law to inquire into any matter relating to the said Company.

(ii) The Warrant issued by the President in respect of the said Company is ultra-vires the said Law, and in excess of the statutory authority and powers of the President.

(iii) In any event, the terms of reference of the Commission as contained in the said Warrant do not vest this Commission with jurisdiction or authority to inquire into matters relating to the said Company inasmuch as the said Company is not a public body as required by the terms of reference set out in the Warrant. Accordingly, Item No. 2 in the schedule to the Warrant cannot be given effect to by the Commission and the Commission can come

to no finding thereon. (iv) In any event, the terms of reference of the Commission as contained in the Warrant are restricted to public bodies within the meaning of the said Law No. 7 of 1978. Accordingly, item No. 2 contained in the Schedule to the Warrant cannot be given effect to and the Commission can come to no finding thereon.

(v) The Notice issued under Section 9 of the said Law is therefore illegal and/or issued without or in excess of jurisdiction or authority in law, and ultra-vires, and ought to be recalled.

In excess of the jurisdiction and authority of the Commission in law and thus illegal, and cannot be lawfully continued.

It is submitted that Hotel Developers (Lanka) Ltd., has not been and is not a public body within the meaning of the said Law No. 7 of 1978 as amended or the Warrant containing the Terms of Reference of the Commission in that,

(i) It was and is not a body performing public duties or functions of a governmental nature for the benefit of the public, but a body carrying on a hotel business for private gain or profit.

(ii) It was not and is not a company vested in the Government or owned wholly or mainly by or on behalf of the Government.

The Memorandum and Articles of Association

of the Company show that the Company owns a luxury hotel operating in Colombo.

The shares (51%) registered in the name of the Secretary, Ministry of Finance and Planning are not owned by the Government and were at all times and still are owned by Cornel & Co. Ltd. They are only held by the Government for the purposes of the Investment Agreement and the Share Transfer Agreement. The Government was never the owner of these shares. The Government did not pay for the same. The entire consideration was provided by Cornel & Co. Ltd. The shares were and are being held by the Government only as security or surety until such time as the guarantee given by the Government to the foreign lenders is discharged and the Government released from the guarantee. The aforesaid Agreements, the related documents and subsequent negotiations between the Government, the lenders and Cornel & Co. Ltd. make this clear.

The Agreements prohibit the Government, dealing with the shares in any manner and require the Government to retransfer same to Cornel & Co. Ltd., free of payment once the guarantee is discharged and the Government released of its obligation under the guarantee.

The only shares in

fact owned by the Government is the shares to the value of Rs. 40M. paid for by the Government and issued to it in 1990. This constitutes only 8.5% of the issued and paid up share capital of the Company. There are approximately 1,000 members of the Company.

Neither the Chairman, nor Managing Director nor Executive Director of the Company were government nominees. No Board Meeting could be held unless the quorum present included a Japanese director. No resolution to which the Japanese shareholders object could be passed by the Board. The government had only minority representation on the Board until 1991 when the loan repayments, capital and interest, had mounted-up considerably.

The terms of reference contained in the Warrant also restrict the Commission's authority to the investigation of the affairs of "public bodies", which Hotel Developers (Lanka) Ltd., was and is not.

The documents listed in appendix No. 1 hereto are relied upon, inter alia, for the purpose of this preliminary objection.

The objections to the counts contained in the notice

Objection is raised to the Counts contained in the Show-Cause

Notice issued under Section 9 on the under-noted grounds. The Counts contained in the Notice are bad in Law and contrary to natural justice and procedural fairness and accordingly cannot be had or maintained. The Notice must accordingly be discharged in Limine.

(1) Count No. 1 refers to "original Architectural Plans dated 15.08.1983." These Plans have not been made available to me. The allegation is that I deliberately and wrongfully failed to take action to ensure that the construction of the hotel was, inter alia, in accordance with the said plans. It is, therefore, essential for my defence that the said Plans should be made available to me because I may then be in a position to demonstrate that the construction of the Hotel was in accordance with such Plans. This is all the more so because the Architects (KKS of Japan) have appeared before the Commission and stated that the hotel has been constructed according to the original Plans. The failure to furnish these documents to me causes serious prejudice to my being able to defend myself adequately on this count. It should be noted that there is no allegation against me that I was party to the alleged loss of these Plans; nor is it alleged that I did not take adequate steps to ensure their safe custody. In these circum-

stances, if this Count is to be maintained against me, I state that I am entitled to be furnished with these documents so as to enable me to adequately defend myself. Otherwise, the charge has to be struck out in limine. It is bad in law and also contrary to natural justice and fairness and cannot be proceeded with.

(2) The same observations, as above, apply to Count No. 2.

(3) Counts Nos. 3, 4 and 5 refer to "discrepancies, shortcomings, irregularities and queries". However, there is no indication in these Counts as to what these are. The charges are vague and unspecific. I am accordingly entitled to proper particulars of these matters to enable me to adequately answer these Counts. Otherwise, they cannot be proceeded with and must be struck out.

(4) I state that I am entitled to be furnished with the matters referred to in paragraphs 1-3 above, particularly because the Notice alleges corruption and fraudulent acts. Where such allegations are made it is accepted law that the charges must be specific and particulars furnished. The rules of natural justice and procedural fairness also demand that the requisite documentation and particulars be furnished to the Respondent, as otherwise he will be prejudiced. The particulars and nature of the alleged corruption and/or fraud



Justice H.S. Yapa

Justice P.R.P. Perera

Justice F.N.D. Jayasuriya

also noted been stated.

(5) Counts No. 4 and 5 are allegations of "attempts" said to have been made by me. The charges are bad in law and beyond the powers and jurisdiction of the Commission under the Special Presidential Commissions of Inquiry law and/or the Warrant issued to the Commission. The Commission has no authority or jurisdiction to inquire into alleged "attempts" to commit any act.

(6) Neither the Notice nor any of the Counts contained therein specify what was the loss or damage or detriment to the alleged public body or the Government, or the nature of such loss or damage or detriment. The same must be stated.

The Counts are therefore illegal, bad in law and contrary to natural justice and procedural fairness and prejudicial, and accordingly cannot be had or maintained. The Notice must accordingly be discharged in limine.

Background facts

I was elected to the Board of Directors on 19th December, 1986, as the representative of the public shareholders. The first Board Meeting I attended was on 30th January, 1987.

It is important to note that by this time, the undermentioned events had already taken place and had been completed.

(a) The Building Plans — these had been prepared and completed in August 1983 by the Architects.

(b) The Construction Agreement and all other Agreements relating to the constructor, — these had been drawn up, signed and approved by the Board in January 1984.

(c) The Construction of the entire building had been completed and the roof also laid. The interior finishing touches alone were being done.

The completed hotel building was taken over from the Contractors on 30th April, 1987, and on the same day handed over for management to the representatives of Hilton International. I played no part in this operation.

The hotel was opened for business in

July 1987, and no question was raised that there had been any deviation whatsoever from the Plans or the Contract, not even by Mr. Nihal S. Ameresekere, even though he had been a member of the Board from the very inception of the Company.

At the Board Meeting held one year later, on 25th May 1988, (Minute No. 9/88), the Chairman and Executive Director reported that the final inspection of the hotel building at the conclusion of the one year Warranty Period had been carried out in March 1988, by the Architects and Hilton International.

The Minute records that Mr. M. T. L. Fernando suggested that it would be prudent for the Company to retain the services of an independent engineer for this purpose as the Architects and the Contractors were both Japanese. The Executive Director (Mr. H. Ogami) stated that in terms of the Construction Agreement it was only the Architects named in the Contract who are authorised to carry-out an inspection and issue a Report. The Board then decided that my advise should be obtained on the legal position.

It is important to note that no allegation whatsoever was made of any deviation from the Contracts or Plans or any irregularity, or that any floor area was short.

Nor did Hilton International make any such complaint.

My advise dated 8th August 1988 was submitted in writing and tabled at the Board Meeting of 12th August 1988. (Minute No. 13/88). I advised that under the terms of the Construction Agreement, the Architects' Report alone was binding and that any Report of a 3rd party Architect or Engineer would not be binding on the Japanese Contractor. I, however, made the important qualification that despite the terms of the Construction Agreement, if there was reason to suspect the integrity of the Japanese Architects, then the Board could proceed in the interests of the shareholders to obtain a Report from an independent Architect or Engineer. This appears in my written advice.

The Minute shows that the Board unanimously decided not to retain any independent Engineer for the time being and to await receipt of the Architect's final certificate. Mr. Nihal S. Ameresekere and Mr. M. T. L. Fernando were parties to this decision.

Mr. Nihal Ameresekere's evidence before the Commission that he was afraid to question my advice because, I was "an influential person" is totally false. Much later, in February 1990 (by which time I was a MP and also appearing for H.E. the President as his Senior Counsel in the election Case, and therefore more "influential") when my further written advice was tabled he said he could not agree and wanted to make representations to me with a view to getting me to reconsider my advice, to which I agreed (Board Minute No. 3/90). He was not afraid then!

Mr. M. T. L. Fernando has never complained that he was obstructed by me.

No payment was made to the Contractors on the building contract after 25.5.1988 when the Board was informed of the inspection of the building prior to the issue of the Architect's Final Certificate, and the question of whether or not a report from an independent engineer or architect should be obtained first arose.

Thus, in any event, no loss or damage or detriment has been caused either to the Company or the Government as alleged, and the Counts set out in the Notice under Section 9 cannot be maintained.

Counts Nos. 1 and 2

Items Nos. (1) and (2) contained in the Notice under Section 9, are on the facts interrelated. I categorically deny them.

As stated above, I was elected to the Board of Directors on 19th December 1986, by which time the construction of the building had been completed. Accordingly, I could not have played and did not play any role in the preparation of the Building Plans, the Construction Agreements, the approval of

the plans as well as the monitoring of the construction work. They were all matters in which I played no part.

Inasmuch as I was not a member of the Board during the above period, I did not participate in the taking over of the building from the Contractors or handing over the same to Hilton for management, which events took place shortly after I joined the Board.

One year after the building was taken over, when the warranty period expired, the Board was informed that the inspection of the Hotel at the conclusion of the warranty period was carried out by the representatives of both the Architects and Hilton International. The Final Certificate consequent upon such inspection would follow. I was not present at this meeting. Mr. Nihal Ameresekere, who was present, had raised no queries. (Board Minute No. 6/88 of 28.3.1988).

At the Board Meeting held on 25.5.1988, the aforesaid final inspection was once again referred to. Mr. M. T. L. Fernando suggested that it would be prudent for the Company to retain the services of an independent engineer. He gave as a reason that "the Architects are more or less connected with the Contractors". The Executive Director had pointed out that in terms of the Construction Agreement, this inspection had to be carried out by the Architects (K.K.S.). The Board had then decided to seek my advice on the legal position. It will be noted that Mr. M. T. L. Fernando did not allege any shortcoming in the construction. (Board Minute No. 9/88).

At the Board Meeting held on 30.6.1988, I was referred to the aforesaid decision and my advice requested based on the Construction Agreement. It will be noted specifically that M/s. M. T. L. Fernando and N. S. Ameresekere who were present raised no query in regard to the construction (Board Minute No. 11/88).

My advice was contained in the document dated 8th August 1988 which was tabled at the Board Meeting on 12.8.1988. I advised that upon a considera-

tion of the Construction Agreement the Contractors will not be bound by the certificate or report of a third party engineer or architect. **My advice went on to say that notwithstanding this contractual position, the Board could proceed to obtain an independent report if there was any reason to doubt the integrity of the Architects (KKS of Japan).** M/s. M. T. L. Fernando and N. S. Ameresekere who were present at the meeting neither raised any allegation in regard to the construction work or stated that they had any reason to suspect the integrity of the Japanese; nor did they question or disagree with my advice (Board Minute No. 13/88).

The Final Certificate of the Architects was tabled at the Board Meeting held on 4.10.1988. Once again, neither M/s. M. T. L. Fernando nor N. S. Ameresekere who were present raised any objection or made any observation. (Board Minute No. 16/88).

By letter dated 21st February 1990 and annexures, my opinion was sought on the Architects' Final Certificate in relation to the Construction Agreement. I tendered my advice in writing dated 28th February 1990. This opinion was tabled at the Board Meeting. Mr. Ameresekere thereupon stated that he wished to make certain "explanations and clarifications" to me in regard to my opinion. I stated that my opinion had been expressed on the basis of the letter dated 21.2.1990 and the documents furnished to me. I expressed willingness to consider any further matters and requested that the same be intimated to me, and also stated that I would revise my opinion, if necessary, after consideration of such further matters placed before me. (Board Minute No. 3/90).

Mr. Ameresekere's evidence before the Commission on 4/4/1995 that he did not ask me to reconsider my opinion is thus utterly false.

Moreover it is important to note that Mr. Ameresekere never, at any stage, placed any further material or documents before me although I had express-

ed willingness to reconsider my opinion, if necessary.

At the Board Meeting of 7th March 1990 Mr. Ameresekere stated that the certification contained in the Completion Certificate was not sufficient and wanted more details from the Architects. The Board decided that Mr. Ameresekere could clarify direct with the Architects any points that, according to him, were not sufficiently explained in the Completion Certificate. (Board Minute No. 4/90).

At the subsequent Board Meeting held six weeks later, on 24.4.1990, upon inquiry being made from Mr. Ameresekere whether he had sought the clarifications from the Architects, he replied that he had not done so due to lack of time. The Board thereupon discussed the matter further and authorised Mr. Ameresekere to communicate with the Architects and Hilton International and obtain all necessary clarifications, explanations and certifications he required. **The Board also specifically agreed that Mr. Ameresekere could obtain the services of a local Architect and/or Engineer and obtain a proper and comprehensive report for the Board.** (Board Minute No. 6/90). **It is important to note this decision.**

Thus, Mr. Ameresekere's allegation made before the Commission that he was obstructed in his attempt to have all his queries clarified is false and contradicted by the above Minute. The Board authorised him to obtain the services of local Architect and/or Engineer, and also to establish direct contact with the Architects and Hilton International since Ameresekere did not like to use the Executive Director (Mr. Ogami) as the channel.

It should also be noted that at the above Board Meeting, the Executive Director confirmed that the Company should have in its possession a set of architectural plans that formed part of the Construction Agreement finalised in 1983, and which had been submitted to the UDA for approval in 1983.

At the next Board Meeting held five weeks later on

13.15.1990. Mr. Ameresekere once again stated that he had not taken any action in accordance with the previous Board decision, due to pressure of work. At this meeting the Japanese Directors stated when questioned by Mr. Ameresekere that the plans said to have been attached to the Construction Agreement should be the bound books (black cover) running up to 11 Volumes that are kept in the H.D.L. Office. (Board Minute No. 7/90).

The aforesaid bound 11 Volumes (black cover) are those which have been produced to the Commission by the Chairman of the Company, Mr. Cornel L. Perera.

It will be noted that up to this point of time Mr. Ameresekere had not placed before me the material he had stated that he desired me to consider, although 3 months had elapsed since 28.2.1990. Nor did he do so thereafter.

The next Board Meeting was held on 26th July 1990. Although 03 months had elapsed since the Board had authorised Mr. Ameresekere to obtain the services of a local architect and/or engineer to assist him to obtain a proper and comprehensive report, Mr. Ameresekere did not inform the Board whether or not he had done so.

At this meeting, Mr. Ameresekere conceded that the Board was trying to resolve the matter. He added that the availability of the original architectural plans is an important factor.

Mr. Ameresekere then, for the first time, made a new suggestion, namely, that a meeting of the local Directors be held as soon as possible to discuss all aspects of the matter and to finalise a quorum could be properly constituted in the absence of a Japanese Director, the Board nevertheless agreed to this suggestion also. Such meeting of local Directors was fixed for 3rd August 1990. (vide Board Minute No. 8/90).

The meeting of the local Directors took place on 9th August, 1990. A lengthy discussion transpired. Mr. Ameresekere set out

his position. The Chairman referred to the bound volumes of the Plans which were available in the Company's Office, signed and dated by the Architects and which he said were a duplicate set of the plans approved by the Board in 1983. Thereafter, only certain minor changes were made in the plans according to a list prepared by the architects.

He also drew attention to the Model of the Building prepared by the architects, which was available. He also made available a copy of the Building Application submitted to the UDA, and stated that the Building, as constructed, was in accordance with the particulars set out in the Building Application and the Construction Agreement. Mr. Ameresekere suggested that a letter should be written to the Contractors pointing out the alleged lapses referred to by him and stated that he would prepare a draft of such a letter. The meeting agreed to this. The meeting also decided that Mr. Ameresekere should proceed to obtain a report from an independent architect/engineer. Mr. Ameresekere was further authorised to himself prepare the minutes of this meeting and circulate the same, and it was decided that a further meeting of local Directors would follow when Mr. Ameresekere was ready with the information.

However, Mr. Ameresekere did not circulate the draft minutes to the local Directors until 29th August 1990. The draft, as submitted by him had several omissions, but the same could not be rectified since no further meeting of the local Directors was held due to the subsequent improper and deceitful conduct of Mr. Ameresekere, hereinafter referred to.

Events show that in pursuance of the Board decision, made on 24th April 1990 (Board Minute No. 6/90) and the further decision made at the meeting of the local Directors held on 9th August 1990, Mr. Ameresekere had obtained a report from Mr. Shelton Wijeratne (Architect) on 22nd August 1990. He should then have brought this

report to the notice of the Board, for consideration thereof by the Board and any necessary follow up action. He, however, suppressed this report from the Board. Nor did he bring it to the notice of the local Directors. In his letter to the local Directors dated 29th August 1990, annexing the draft minutes of the meeting of the local Directors, he made no reference to this report although he had already obtained it.

Nor did Mr. Ameresekere bring this report to my notice although I had agreed, as far back as February 1990, to consider any further documents or matters he wished to place before me and on the basis thereof to reconsider, if necessary, my legal opinion expressed to the Board.

Instead of bringing Mr. Shelton Wijeratne's report before the Board, he instituted legal proceedings on 9th September, 1990.

Mr. Shelton Wijeratne's report shows that it is based on the schematic drawings of 1980 and not on any architectural plans. It is also clear that he had not examined the bound volumes of plans available in the Company's Office. Nor had he inspected the building. His report states that he considered an inspection important. His report is, therefore, defective in several aspects. These shortcomings could have been rectified and a proper report obtained from him after examination of the available plans, agreements and documents and inspection of the building if the report had been placed before the Board. Ameresekere never gave the Board an opportunity to consider this report.

The aforesaid facts and sequence of events establish the following:—

(i) Neither the Board nor myself as a Director obstructed any investigation, as falsely alleged by Mr. Ameresekere.

(ii) In my very first legal opinion expressed to the Board on 8th August 1988, I had expressly stated that if the Board had reason to doubt the integrity of the Japanese, then the Board should proceed to appoint an independent engineer or architect notwithstanding the contractual pro-

vision that the Completion Certificate had to be issued by the Japanese Architects.

(iii) The Board at its meeting held on 24.4.1990 expressly authorised Mr. Ameresekere to obtain a report from a local engineer/architect. The Board also authorised him to deal directly with the Japanese Architects and Hilton International, if he so desired.

(iv) The Board agreed to a separate meeting of the local Directors only, as requested by Mr. Ameresekere, although this was not in accordance with the Articles.

(v) The local Directors at their meeting held on 9th August 1990 themselves authorised him to proceed to obtain a report from an independent architect/engineer.

(vi) Mr. Ameresekere delayed almost 05 months from April 1990 to obtain such a report. He never informed the Board that he was obtaining the same. Nor had he placed before Mr. Shelton Wijeratne the available plans and undisputed documents, such as the Construction Agreement and the Building Application, nor the bound volumes of the Plans.

(vii) Even after obtaining the report, he did not submit the same to the Board or to the local Directors for further action if necessary, but instituted legal proceedings within a few days.

His allegation, therefore, of obstruction in his inquiries is false and stands contradicted by the aforesaid facts. A further fact is important to note.

At the Board meeting held on 16.10.1990, I brought it to the notice of the Board that the meeting of the local Directors had taken place as decided at the previous Board Meeting. This fact was recorded. The Japanese Director thereupon stated that decisions taken by the local Directors will not bind his Company. (Board Minute No. 9/90).

At the next Board Meeting held on 30.10.1990, Mr. Ameresekere wrongfully attempted to get deleted from the minutes, the record of the fact that a meeting of the local Directors had taken place. This attempt makes clear his mala fides and deceitfulness. He was not able to give any valid reason why he wished

to suppress from the minutes the fact that a meeting of the local Directors, held at his request, had taken place. (Board Minute No. 10/90).

At the Board Meeting of 16.10.1990 (Board Minute No. 9/90) referred to above, Mr. Ameresekere made the false allegation that I had attended consultations at the Chambers of the late Mr. Eric Amerasinghe, PC, who was Counsel appearing for the Japanese in the court action. I denied the same. The Japanese Director confirmed what I stated. Had Mr. Amerasinghe, PC, been alive today I would have called his evidence to establish the falsity of Mr. Ameresekere's allegation.

Mr. Ameresekere has told this Commission in his evidence that in a conversation held by him with Hon. Ranil Wickremasinghe on board a flight from London, the latter had complimented him for having filed legal proceedings. I respectfully invite the Commission to summon Mr. Wickremasinghe to ascertain whether this is true, because upon reading the report of this evidence in the newspapers, Mr. Wickremasinghe promptly communicated to me in writing that he had never made any such statement.

Mr. Ameresekere has claimed before the Commission that he applied to the District Court to have a physical inspection of the Hotel made but the Board of Directors objected to the same. (Vide his evidence on 28/3/1995). This too, is false. I invite the Commission's attention to the Board Meeting of 26.3.1992 (Board Minute No. 3/92). At this meeting it was reported to the Board **ex post facto** that application had been made to the District Court by Nihal Ameresekere for inspection of the building by Mr. Shelton Wijeratne (Architect) and that objection had been raised to the same by the Additional Solicitor General (Mr. A. S. N. Perera) appearing for the Company on the ground that Mr. Shelton Wijeratne was the same person who had issued an earlier report and, therefore, it would not be proper for the same person to carry out this inspection. **The Board thereupon decided that it had no objection to physical verification of the Hotel,**

subject to the legal objection raised by the Additional Solicitor General. The Board Minute records this fact. There was no objection by the Board to a physical verification at any stage. In fact, Mr. Shelton Wijeratne in his report obtained by Mr. Ameresekere himself had stated that his report was not complete in the absence of a physical verification. But, as stated above, Mr. Ameresekere suppressed this report from the Board. Otherwise a physical verification could have taken place with Mr. Wijeratne being put in possession of all available relevant documents.

In his evidence before the Commission on 28.3.1995, Mr. Ameresekere admitted that in the absence of the measurement of the hotel building he could not say whether or not there is a shortage in the floor area constructed.

The Construction Agreement and the Building Application are both undisputed documents. They both state the total floor area to be constructed. The Panel of Architects appointed by this Commission has reported that on measuring the hotel building they find no shortage, but an excess of floor area over and above the contracted area.

Evidence led before the Commission on 4.4.1995 shows that upon Mr. Ameresekere being informed that Mr. J. F. A. Soza had reported that Mr. Ameresekere's allegations were unfounded, Mr. Ameresekere had not alleged that any fraud had been committed but said there were irregularities in the construction. He has given evidence as follows to this Commission:—

"My immediate response was that I can understand him (Mr. Soza) saying that there is no fraud. But I cannot accept that there are no irregularities".

In his evidence before this Commission Mr. Ameresekere alleged that I had appeared in the court case through Counsel and opposed him. This is also false. The Board Minutes Nos. 9/90, 3/91, and 1/92 as also letter dated 19/12/1991 written by Julius & Creasy all show that the Counsel in question

watched the interests of all three non-governmental directors, whilst the Attorney General did so for the government nominees.

In fact, in the plaint filed by Ameresekere in the District Court, he made no allegations against me. The plaint states that I am being made a party only for the purpose of giving me notice of the action as a Director of the Company. (Vide Paragraph 6 (d) of the Plaint).

All the above demonstrate that Mr. Ameresekere was never obstructed in the holding of an inquiry or investigation. Every suggestion made by him was agreed to. He was given a free hand to pursue the matter. His evidence before the Commissioner is false and mala fide.

Count No. 3 is denied. There is no basis for the allegation that acting collusively together with Mr. Cornel Perera I persuaded and/or induced the Secretary, Ministry of Finance, Mr. R. Paskaralingam, to make a payment of U.S. Dollars 2 Million to Mitsui & Taisei Corporation.

This Count has been made in the teeth of the documentary evidence. The recommendation to make this payment to the Japanese was a decision taken directly by the Treasury itself at a meeting with the Japanese in which I played no part whatever. The decision of the Treasury was conveyed to the Board of Directors by letter dated 2nd February 1990 from the Ministry of Finance.

The allegation that I acted collusively with Mr. Cornel Perera to induce the Treasury to make the payment is the very converse of the truth.

Mr. Nihal Ameresekere's evidence that the decision to make this token payment was taken at a meeting held at the Treasury on 26th January 1990 at which Mr. Cornel Perera and myself represented the Board is false. The aforesaid letter of 2nd February 1990 from the Treasury states clearly that the decision was taken on 27th January 1990 (not 26th January), at a meeting between Treasury representatives and the Japanese.

In fact, a person actively involved in the

discussions between the Treasury and the Japanese was none other than Mr. Nihal Ameresekere. The Board Minutes referred to hereinafter show this.

This Count is also based on another fundamental mis-conception and basic error of fact. The Treasury letter aforesaid and the Board Minutes all show that this token payment was not made "to the Contractor" as alleged in the Count, but was made by the Company on account of the outstandings on the Loan Agreement. It was certainly not a payment made against the building contract. The Count is totally misconceived and not based on recorded facts.

Furthermore, the Count is misconceived in that the token payment was not made by the Treasury. The Government paid the Company U.S. 1M (Rs. 40M.) and purchased shares in the Company to this value. The Company utilised the money so received and having added a further sum of U.S. 1M (Rs. 40M) of the Company's funds made the token payment against the outstandings on the loan agreement.

It is important to know the factual background that preceded this payment. The Board Minutes of the year 1989 show that at several meetings the Japanese Directors raised the question of the arrears of the loan repayments. The Treasury representative, Dr. Randeni, insisted that the obligation to make re-payment of the loan was on the Company, and the Government should not be saddled with the debt merely because it was the guarantor. He kept urging the Board to arrive at a settlement with the Japanese and re-schedule the loan.

Mr. Ogami (Japanese Director) kept insisting that the overdue should be paid.

The Minutes further show that:

(i) The Chairman was of the view that the Japanese should agree to a re-scheduling, failing which the Company should raise a free loan in dollars. He argued that the constant increase in the Yen rate was adding to the Company's liabilities.

(ii) I was of the view

that the re-scheduling must be done and that the Japanese should waive the accrued interest.

(iii) Mr. Nihal Ameresekere wanted the Japanese to waive all accrued interest and part of the overdue capital instalments and to re-schedule the loan over a period of 25 to 30 years.

(iv) The discussions were in regard to payments due on the Loan Agreement, and not the Building Agreement.

The discussions at the Meeting of the Board on 20th November 1989 (Minute No. 11/89) is important. This Minute shows:

(i) The Japanese Directors stated that the lenders were not prepared to wait any further for settlement of outstandings. He pointed out that the Company had the equivalent of Rs. 53.2 Million in a foreign account and was in a position to make some payment.

(ii) Mr. Nihal Ameresekere suggested that as a first step the Japanese should agree to postponement of the current outstandings on the loan and thereafter there should be a re-scheduling on a long term basis of 25 to 30 years. It is he who suggested (as recorded in the Minutes) that negotiations should commence with the lenders and that the Ministry of Finance as guarantor should also be involved in negotiations.

(iii) The Chairman emphasised the need for a long term settlement with the lenders and meanwhile suggested making of a token payment on account of the outstandings on the loan.

(iv) I concurred that a token payment against outstanding dues be considered as a basis of goodwill to commence the negotiations.

(v) The entire discussion was in regard to the outstandings on the Loan Agreement, and not the Construction Agreement as incorrectly stated in Count No. 3.

(vi) It was decided that a Special Board Meeting be held on 27th November to consider further the take payment.

At the Board Meeting of 27th November 1989 (Minute No. 12/89)

the following decisions were made by the Board:

(i) That a proposal in writing be addressed to the lenders with the approval of the Treasury for re-scheduling of the debt.

(ii) That the lenders should send their representatives to Sri Lanka for discussions on this matter.

(iii) Meanwhile, as a matter of goodwill, a sum of Rs. 5 million be paid as a tentative measure on account of the unpaid construction costs, subject to the approval of the government directors.

However, at the next Board Meeting on 13th December 1989 (Minute No. 13/89) further discussions took place and the question of making a token payment was left open. The meeting was adjourned for 18th December 1989 at which Messrs. R. Paskaralingam and K. Shanmugalingam and Mrs. Casie Chetty of the Treasury were present by invitation. The payments due on the Loan Agreement were discussed.

Mr. Paskaralingam stated that Japan was providing substantial assistance to Sri Lanka and that nothing should be done to offend the friendly relationship between the two countries. He suggested that a discussion be held and a settlement be arrived at. The Board agreed to invite a delegation from Japan to have discussions with the Company and the Government as guarantors.

At the Board Meeting of 8th February 1990 (Minute No. 1/90) the Chairman reported that a Mission from Japan had arrived in Sri Lanka. A meeting with them was held at the Ministry of Finance on 26th January 1990 at which Secretary/Finance, himself, myself, and Mr. Ogami were present. The Chairman outlined the general discussion that took place of the various issues involved.

A letter dated 2nd February 1990 received by the Company from Secretary/Finance was tabled. This letter stated that at the discussion between the Mission and himself on 27th January 1990, the Japanese lenders (i.e. on the loan agreement) had requested a token payment of U.S. Dollars 2 Million against the out-

standing dues on or before 11th March 1990. The letter further stated that Government had decided to subscribe to shares in the Company to the value of U.S. Dollars 1 Million (Rs. 40 Million) in order to assist the Company to make this token payment. The letter requested immediate arrangements be made. The Board (including Mr. Nihal Ameresekere) resolved to allot the shares to the Secretary to the Treasury as a matter of urgency. There was no objection from any of the Directors present.

It will thus be noted as follows:

(i) The decision to make the token payment of U.S. Dollars 2 Million was made at the meeting on 27th January 1990 between Secretary/Finance (on behalf of the guarantors) and the Japanese lenders. Neither the Chairman nor myself was present at this Meeting.

(ii) The token payment was to the lenders and not to the Contractors, as incorrectly stated in Count No. 3.

(iii) The Board at its previous discussions had suggested a figure of Rs. 5 Million. The Treasury however had wanted payment of Rs. 80 Million (U.S. Dollars 2 Million).

(iv) Quite apart from myself inducing the Secretary/Finance to make this payment as alleged in Count No. 3, it is clear that the arrangements was one made between the Government and the lenders and conveyed to the Board.

A Meeting between the entire Board, the Secretary/Treasury and the Japanese Mission was held on 11th February 1990.

At the Board Meeting held on 28th February 1990 (Minute No. 3/90) the Chairman reported that further discussions had taken place with the lenders at the Treasury on 26th and 27th February. The Chairman and Mr. Ogami represented the Board. Mr. Nihal Ameresekere was present to assist the Treasury.

The Chairman reported that the lenders had expressed the opinion that re-scheduling of the loan could be agreed upon only after the token payment was made. Mr. Nihal Ameresekere reported that he had been

in the discussions with the lenders. Mr. Ogami stated that the query in regard to Room Bays and Room Keys had been clarified at that Meeting.

Mr. Nihal Ameresekere himself wanted the Board to pass a formal resolution to authorise a token payment to the lenders of U.S. Dollars 2 Million. As suggested by Mr. Nihal Ameresekere, the Board passed the resolution. All this is recorded in the Minutes. The resolution clearly states that it is a payment on the Loan account. There is no reference whatever of the payment being made to the contractors.

(Board Minute No. 3/90).

It is thus clear beyond doubt that the decision to make this token payment was against loan arrears and not the Building Contract. The decision was made by the Board as a whole. The formal resolution for it's payment was suggested by Mr. Nihal Ameresekere himself. The suggestion therefore that Mr. Cornel Perera and myself collusively induced the Secretary/Treasury to make the payment is utterly without any basis or any evidence to support the same. Mr. Nihal Ameresekere's evidence before the Commission is a fabrication.

This count is also bad for lack of adequate particulars, as stated earlier, and should be struck-out in limine.

It is noteworthy that the reasons given by the Treasury officials to the Board for the need for making of the token payment by the company (referred to above) was the need for the maintenance of good relationships between Japan and Sri Lanka. This the identical reason publicly stated by the Deputy Minister of Finance, Hon. G. L. Peiris, when the present Government entered into certain agreements with the Japanese in 1995; he gave this same reason as the motivation for the "settlement". Nevertheless, the token payment made for the same reason by the Board is made the subject matter of an allegation of impropriety against three members of the board. The director (Nihal Ameresekere) who him-

I self wanted a resolution passed by the Board to formalise the payment has turned the complainant!

I deny the allegation. There is absolutely no evidence before the commission upon which this count could have been framed.

The Annual Accounts for the year ended 31.3.1990 were approved by the Board at its meeting held on 27.11.1990. (Minute No. 12/90). They were certified and signed by the Auditors, Ford Rhodes, Thornton & Co. on behalf of the Board, the Accounts were signed by the Chairman and M/s. K. Shanmugalingam and D. Peter S. Perera, the Government nominees.

I was not present at the Board Meeting of 27.11.1990 at which the Board approved these accounts. Nor did I sign the same.

Nevertheless, I am being charged whilst none of the persons who signed the same and the Auditors who certified the same are being charged.

An examination of the Board Minutes that preceded the Board Meeting of 27.11.1990 is relevant.

At the Board Meeting of 16.10.1990 (Minute No. 9/90) the draft Audited Accounts were tabled.

They were discussed at the next meeting held on 30.10.1990. (Minute No. 10/90) The Auditors' representatives were present. Mr. Nihal Ameresekere wanted the Auditors to examine certain aspects. They requested time to do so.

Mr. Shanmugalingam informed the Board that the Treasury will consult the Auditor General on the question whether the Government Nominee Directors could certify the Accounts.

Further discussions took place at the Board Meeting held on 22.11.1990 (Minute No. 11/90) The Auditors' representatives were present.

Mr. Shanmugalingam stated that he had consulted the Auditor General on the question whether the Accounts could be certified with Notes of Explanation.

I had commented as follows :-

"Mr. Choksy commented that it would t

advisable to approve the Accounts along with the necessary Notes of Explanation and Objections."

Mr. Nihal Ameresekere stated that a Note should be added.

Mr. Ito disagreed with the suggestion made by myself and M/s. Shanmugalingam and Ameresekere that Explanatory Notes should be added.

The final decision of the Board was made at the meeting (referred to above) held on 27th November 1990 (Minute No 12/90) I was not present at this meeting. The Board had decided to approve the Accounts subject to the inclusion of the Note set-out in the Minute. The two Government Nominee Directors and the Chairman were authorised to sign the same on behalf of the Board. The Report of the Directors was also approved. The Auditors' representatives were present at this meeting also.

It is thus clear that the approval of these Accounts was a Board decision arrived at after discussion and consideration, and also with the support of the Government Nominee Directors and after the advice of the Auditor General and the Company's Auditors had been obtained. There is absolutely no evidence that I made any attempt to have these Accounts approved or adopted. There is no warrant whatever for the allegation. The contemporaneous Board Minutes referred to above clearly disprove the charge.

Furthermore, the allegation is bad in law and contrary to the provisions of natural justice and procedural fairness because no particulars whatever have been given of the alleged "discrepancies, shortcomings and irregularities" which I am supposed to have disregarded. I am entitled to full particulars of these.

Furthermore, the Commission has no jurisdiction under the Special Presidential Commissions of Inquiry Law and/or the warrant in respect of alleged "attempts" or "endeavours". The Count goes beyond the powers and jurisdiction of the Commission in law.

The Count should thus be struck out in limine.

I deny this Count.

This Count was originally based on a non-existing fact. It was subsequently amended by the Commission. Even as amended, it is based on a misconception. I have not issued any letter dated 28.2.1990 addressed to the representative of "Mitsui and Taisei Corporation".

I expressed a written opinion requested from me. This was dated 28.2.1990 and addressed to Mr. H. Ogami in his capacity as Executive Director of Hotel Developers (Lanka) Ltd., and not as representative of Mitsui? Taisei as wrongly stated in this Count.

It was my legal opinion that the two certificates issued by the Architects were in accordance with the Contractual requirements. That was a view bona fide came to. I repudiate the suggestion made in this Count that in expressing this opinion I was prompted by improper motives. The expression of my opinion was confined to the question whether the Architect's certificates were in conformity with the Construction Agreement, and if so, whether the Contractors were entitled to make a claim for payment based on the certificates. The question of whether payment should or should not be made was one for the Board to decide.

The suggestion contained in this Count that I was prompted by improper motives stands directly contradicted by what transpired at the Board Meeting when my opinion was tabled.

I refer to the Board Meeting of 28.2.1990 (Minute No: 3.90).

Mr. Ameresekere stated that in his view the Architects' certificate fell short of what is "normal practice". He added that he "wished to make certain explanations and clarifications to Mr. K. N. Choksy suggesting that the written opinion be reconsidered".

I responded that my opinion was based on letter dated 21st February 1990 addressed / me by the Executive Director and the documents furnished to me. It is recorded further that I agreed that any further matters be intimated to me to enable me to

revise my opinion, if necessary.

The fact that I immediately agreed to revise my opinion if it was found necessary on any further material furnished to me clearly demonstrates that I was acting with an open mind. However, it is noteworthy and also of importance that although Mr. Ameresekere stated that he wished to make certain explanations and clarifications to me and I agreed to go into the same, Mr. Ameresekere never placed any further material whatever before me.

Furthermore, no payments were made to the Contractors on the Building Agreement and there was no loss or damage or detriment to the Company or the Government.

Furthermore, the allegation is bad in law and contrary to the provisions of natural justice and procedural fairness because no particulars whatever have been given of the alleged "discrepancies", shortcomings and irregularities" which I am supposed to have disregarded. I am entitled to full particulars of these.

Furthermore, the Commission has no jurisdiction under the Special Presidential Commissions of Inquiry Law and/or the Warrant in respect of alleged "attempts". The allegation goes beyond the powers and jurisdiction of the Commission. The allegation should thus be struck out in limine.

The disputed Building Contract was not the only matter on which the Board sought my opinions. During the period I served as a Director the board sought my legal views as a Director on

not less than ten other matters also. I am setting out these items hereunder to dispel the false impression sought to be given to the Commission by Mr. Nihal Ameresekere that I took a particular interest in the dispute raised by him in regard to the Building. In some of these matters the Board Minutes show that Mr. Ameresekere was associated with me. No fees were charged by me.

In others, where the Treasury had an interest, the Government Nominee Directors coordinated with me. Officials of the Treasury such as M/s

Paskaralingam Shanmugalingam and Mrs. Casie Chetty used to contact me. The Board Secretaries have also attended my Chambers on occasion to discuss legal matters with me relating to the Company.

I summarise below these other ten items:-

1) First Public Issue of Shares:
Minute No: 1/87.

(It is noteworthy that this was the very first Board Meeting that I attended. I was straightforwardly called upon to render legal advice).

II) Payment of Turnover Tax by the Company:

Minutes Nos. 1/87, 2/87, 7/87, 8/87 and 13/87.

Written submissions were also prepared.

III) Insurance of Hotel Building:

Minutes Nos. 4/87, 7/87, 8/87.

In this instance also, written opinion was obtained from me.

IV) Power of Attorney to Hilton International:

Minute No. 7/87.

V) Correspondence with Mitsui:

Minutes Nos. 7/87, 18/87, 1/88 and 11/88.

Minute No. 7/87 shows that Mr. Nihal Ameresekere requested my legal opinion.

VI) Import Duty Waiver:

Minutes Nos. 9/87 and 7/88.

VII) Reconciliation of First Share Issue:

Minutes Nos. 1/88 and 2/88.

VIII) Tax Consultants Fee:

Minutes Nos. 10/88 and 12/89.

IX) Proposed Mortgage of Hotel Building:

Minutes Nos. 10/89 and 3/90.

X) Pile Driving in adjoining Site;

Minute No. 2/93.

All the above matters were attended to by me at the Board's request because I happened to be the only Lawyer member on the Board.

In regard to the dispute raised by Mr. Ameresekere on the Building Construction, events show that he made allegations against anyone who did not agree with him. When the Treasury consulted Mr. J. F. A. Soza, Mr. Ameresekere made allegations against Mr. Soza because Mr. Soza

did not agree with Mr. Ameresekere. He made allegations against Hon. Shibly Aziz, who appeared for the Company in the District Court. Also against Ford Rhodes, Thornton & Company and the Securities & Exchange Commission because they did not agree with him. He is also litigating with Ford Rhodes, Thornton & Co. over the Accounts of 31.3.1990 and has wanted them removed as Auditors.

Public events show that he is now making allegations against Hon. G. L. Peiris in connection with subsequent events relating to the set to issue, the latter being publicly accused by Mr. Ameresekere of deception.

(K. N. Choksy Colombo, 30th January 1996)

Appendix No. 01

(1) Preliminary Agreement dated 30.03.1983 entered into between Cornel & Company Ltd., and Mitsui & Company Ltd., and Taisei Corporation (P 41).

(2) Investment Agreement dated 31.01.1984 entered into by the Government, Cornel & Company Ltd., Mitsui & Company Ltd., and Taisei Corporation. (P 3)

(3) Share Transfer Agreement dated 24.02.1984, entered into between the Government and Cornel & Company Ltd.

(4) Loan Agreement. (P 34).

(5) Letter dated 24.05.1991 written by Secretary, Ministry of Finance, to Cornel L. Perera of Cornel & Company Ltd.

(6) Letter dated 24.07.1991 written by Secretary, Ministry of Finance to Mr. Cornel L. Perera of Cornel & Company Ltd

(7) Supplementary Agreement to the Investment Agreement referred to in letter dated 24.07.1991.

(8) Supplementary Agreement to the Share Transfer Agreement referred to in letter dated 24.07.1991.

(9) Draft Agreement to be entered into between R. Paskaralingam, Secretary, Ministry of Finance, and Nihal S. Ameresekere. (P 221 c)

(10) Balance Sheets of Cornel & Company Ltd., for the years ended 31.03.1984, 31.03.1989, and 31.03.1990.

(11) Return of Income of Cornel & Co., Ltd., for 1983/84 made to Commissioner of Inland Revenue.

(12) Memorandum and Articles of Association of Hotel Developers (Lanka) Ltd. (P 1)

Copies of the above documents which have not already been marked before the Commission are annexed hereto, in

File No: 2.

(K. N. Choksy
30th January,
1996.

THE ISLAND - THURSDAY 29, FEBRUARY, 1996

Charges against Choksy

By V. K. Wijeratna

On a request from the Special Presidential Commission of Inquiry probing alleged malpractices in certain government bodies, the full show cause notice issued on Mr. K. N. Choksy, a Director of Hotel Developers (Lanka) Ltd., by the commission, in connection with the Hilton probe is reproduced below.

The commission made this directive in view of the fact that the full written submission of Mr. Choksy was published in the 'Island' Sunday Edition of 4.2.96 and the Island of 5.2.96.

The Hilton matter last taken up on January 30 is due to be taken up today by the commission.

Notice Under Section 9 of the Special Presidential Commission of Inquiry Law

To: Mr. Kairshasp Nariman Choksy

You, whilst holding the office of Director of Hotel Developers (Lanka) Ltd., which was the owning company of the Colombo Hilton Hotel and the company responsible for the construction of the said Hotel by Mitsui and Taisei Corporation of Japan, did or omit to do, between 19th December 1986 and 10th

June, 1993 the following acts:-

(1) deliberately and wrongfully fail and neglect to take action to ensure that the construction of the said Hotel was in accordance with the original architectural plans dated 15.8.1983 and the schematic design plan of 1980 marked as P4 and P4A, notwithstanding the fact that these matters were specifically brought to your notice by Nihal Sri Amarasekera, a Director of the said Company,
(2) wrongfully oppose the recommendation made by the Government Nominee Director, M. T. L. Fernando to have an independent physical examination of the said Hotel carried out to ascertain whether the said Hotel had been constructed by the contractor in accordance with the original architectural plans dated 15.8.1983 and the schematic design plans of 1980 marked as P4 and P4A,
(3) notwithstanding the serious discrepancies and queries that had surfaced at the meetings of the Board of Directors of the said company and the objections raised by several Directors to the payments to be made to the contractors, col-

lusively act together with Cornel L. Perera and persuade and/or induce the Secretary, Ministry of Finance, R. Paskaralingam, to make a payment of US Dollars Two Million (US \$ 2,000,000) to Mitsui & Taisei Corporation of Japan,
(4) disregard the discrepancies, shortcomings and irregularities which were brought to the notice of the Board of Directors, and wrongfully attempt to approve as authentic the annual accounts of the said company for the year ended 31st March 1990 and endeavour to take action to adopt the accounts with the object of suppressing the aforesaid fraudulent acts and omissions,
(5) notwithstanding the serious discrepancies, shortcomings and queries that had surfaced and disregarding the objections raised at the meetings of the Board of Directors of the said company for the making of any payment to Mitsui & Taisei Corporation of Japan, issue a letter dated 28.2.1990 addressed to H. Ogami, representative of Mitsui & Taisei Corporation, inter-alia, stating that, the two certificates (of conformity) issued by the Urban Development

Authority 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" and thereby attempt to wrongfully and deliberately facilitate the making of the full payment to Mitsui & Taisei Corporation of Japan, which was detrimental to the interests of the said Company and/or the Government of Sri Lanka.

The aforesaid acts of commission and/or omission on your part were fraudulent and were detrimental to the interests of the said company and/or the government of Sri Lanka, in its capacity as the major shareholder, causing financial loss and damage to the said company and/or the government of Sri Lanka.

Having regard to the matters set out hereinabove, you are hereby required to show cause as to why you should not be found guilty of misuse or abuse of power and/or corruption and/or the commission of fraudulent acts in terms of Section 9 of the Special Presidential Commission of Inquiry Law No. 7 of 1978, as amended.

Choksy was estopped from objecting to jurisdiction – SG

By M. J. M. Zarook

Mr. K. N. Choksy, the party noticed was estopped from raising any objections, to the jurisdiction of the Special Presidential Commission, at this stage as he had inter alia 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.

Mr. Douglas Premaratne PC, Solicitor General stated in his written submissions before the special presidential commission sitting at the BMICH on Thursday.

Mr. Premaratne was tendering his written submissions, in reply to the submissions made by Mr. Choksy, which he said would apply to the submissions made by the other respondents in the Hilton hotel inquiry too.

The commission of inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (Chairman), Justice Hector S. Yapa and Justice, Ninian Jayasuriya.

In this matter Mr. Cornel Perera, Chairman and Managing Director of Hotel Developers (Lanka), Ltd, the owning company of the Hilton hotel and former directors: Mr. K. N. Choksy, Mr. F. G. N. Mendis and Mr. R. Paskaralingam, Former Secretary to the Ministry of Finance (who is absent), have been asked to show cause, why they should not be found guilty of misuse of abuse of power, of corruption or commission of fraudulent acts, in connection with the construction of the Hilton hotel.

Mr. Premaratne stated: quite apart from raising any objection to the jurisdiction of the commission Mr. Choksy 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.

With regard to the procedure adopted by the commission, it is 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.

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.

It is totally incorrect to say, that the evidence that had been placed before the Commission, has been selective and one - sided. 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 UDA, 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.

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

SPC on malpractices in public bodies

from the inquiry. Section 8 of the law specifically states that every inquiry under this Law shall be deemed to be judicial proceedings.

In a democratic country all judicial proceedings have to be held in public unless for every 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.

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.

It is very surprising, that a person of the standing of Mr. Choksy has referred to what the President Chandrika Bandarnayake 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.

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.

It is submitted that Mr. Choksy was elected to the Board of Directors of Hotel Developers (Lanka) Ltd on 19.12.86.

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?.

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. Amerasekera prior to Mr. Choksy's letter dated 08.08. '88, which stated, inter-alia, that an

independent Engineer's examination was not necessary.

Mr Premaratne also made submission on jurisdiction and the objections taken to the various counts.

Mr. Premaratne said: 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 and there is an excess of 203 Sq. metres.

It is only suffices to submit at this stage, that the floor area 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 for 192 vehicle should be 42.586 Sq. metres.

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

Mr. Douglas Premaratne PC Solicitor General with R. C. Perera Deputy Solicitor General assisted the commission.

Mr. D. S. Wijesinghe PC with Mr. S. C. Crossette Thambiah and Mr. Chula Bandara instructed by Sivananthan Associates appeared for Mr. Cornel Perera.

Mr. R. K. W. Goonesekera with Mr. W. B. C. Nandadeva instructed by Mr. M. D. de Silva appeared for Mr. F. G. N. Mendis.

Mr. Ranjit Abeysuriya PC with Mr. Neil Dias and Miss Priyadarshanee Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam, who was absent.

Mr. K. N. Choksy PC appeared on his own behalf. Mr. Godfrey Gunasekera SSP, Chief Investigating officer is also assisting the commission.

Further proceedings were put off for March 18 for written submissions on the question of jurisdiction.



Justice H.S. Yapa

Justice P.R.P. Perera

Justice F.N.D. Jayasuriya

Choksy to consider his further appearances before commission

Mr. K. N. Choksy PC, one of the parties noticed by the Special Presidential Commission of Inquiry in the Hilton Hotel probe, told the Commission when the inquiry was resumed on Thursday, that he would have to consider whether or not he should submit himself to the jurisdiction of the commission any further.

Mr. Choksy's statement was consequent upon Justice F. N. D. Jayasuriya, one of the Commissioners, making certain observations on behalf of the Commission the written submissions filed by Mr. Choksy on the previous date.

The Commission comprises Justices P. R. P. Perera, H. S. Yapa and F. N. D. Jayasuriya.

At the outset, the Solicitor General P. L. D. Premaratne, filed written submissions to the submissions filed by Messrs Choksy, Cornel Perera, F. G. N. Mendis and R. Paskaralingam, the parties noticed by the commission.

After this the Chairman indicated that the matter would be fixed in April after the vacation, on a day-to-day basis, to be continued to a finish.

Choksy then submitted that the objection to jurisdiction should be taken up first. He argued that his objection on this count is based only on documents listed by him.

S.G. objected to accepting these documents just on face value without evidence being led as some of them were not listed documents in the inquiry.

The Chairman then directed counsel on behalf of parties noticed and K. N. Choksy to make written submissions as to whether the jurisdiction matters should be first taken up. The SG too was directed to make his written submissions on 18th March 1996.

Thereafter Justice Jayasuriya made observations on several statements made by Choksy in his written submissions. Justice Jayasuriya stated.

"Choksy, you have been a Minister of Constitutional Affairs. We take it that you are an expert in constitutional affairs and law".

He then referred Choksy to Section 106 (1) of the Constitution which precludes sittings in camera save under exceptional circumstances and held it as "supreme and paramount in law". He said that the Commission therefore had no right to sit in camera.

Referring to several other statements made in Choksy's submission Justice Jayasuriya said that as a counsel concerned with the administration of justice one has an overriding duty to maintain the standards of the profession and not to mislead or deceive court".

Justice Jayasuriya added: "There is also a Rule of the Supreme Court which categorically postulates that an Attorney-at-Law should not mislead or deceive court. We strongly denounce and vehemently deprecate any attempts to dictate to the Commission, whether it takes the form of juvenile chirpings emanating from Parliamentarians hiding behind the cloak of Parliamentary privilege or intimidation or dictation from any other more powerful source".

"Mr. Choksy, we have affection, fraternal feelings and consideration for you as a member of the legal profession. However, we have to proceed on the footing that all persons are equal before the law and are entitled to equal treatment under the law and that no person however powerful, however knowledgeable, however competent is above the law".

Justice Jayasuriya then invited Mr. Choksy's response.

Mr. Choksy: "I have been accused just now of deceitful conduct and that I have uttered falsehoods in my written submissions. I categorically reject these charges.

The facts you say I have suppressed are clearly set-out at page 5 of my written submissions. They are here. There is no basis for the allegation of falsehoods and suppression. I will read them aloud".

"I have been referred to as having been Minister of Constitutional Affairs and as an M.P. what is their relevance to these proceedings? I am proud to have held these offices, and I was appointed the Minister not because I was presumed to know the Constitution but because I know it in fact".

"I maintain my submission that the earlier ex-parte evidence recorded by the Commission should have been in camera. I am entitled to make that submission, and it is correct. Even if wrong, could it be said that a submission of law made by Counsel amounts to deception?"

"The Commission referred to Article 106 of the Constitution and the English case of Scott vs. Scott. But there is express provision in the Act governing this Commission's proceedings enabling such evidence to be recorded in camera. Also, the case of Scott vs. Scott has not been followed by our Supreme Court. Your Lordships seem to be unaware of these matters. If I had been first heard on my written submissions, I would have placed the Commission in possession of these matters. This should have been done, instead of criticising me".

Chairman: "The constitution is the supreme law....."

Choksy: "Not in respect of legislation that already existed on the date the Constitution came into operation. Had it been as Your Lordship thinks, this Commission could not be functioning today".

Justice Jayasuriya: "The commission only made some observations".

Choksy: "No, you have condemned me even before the commencement of the inquiry. You have passed judgement on my conduct without hearing me. I must protest".

Justice Jayasuriya: "I must say there was no condemnation of you. It was only a reference to your statement and the duty owed by Counsel of

Court".

Choksy: "I regret I cannot accept Your Lordship's explanation. The language used shows otherwise. I have also been accused of claiming special privileges and of being a powerful person. This is unwarranted. I have appeared before the Commission on every date I have been summoned, just like any

of the other respondents. I will consider whether or not I should submit myself to the jurisdiction of this Commission any further in view of what has taken place today".

Commission was assisted by SSP Godfrey Gunasekara and Assistant Secretary S. K. P. Bambarende.

Charges Against Choksy Request Not Direction — S.P.C

The Special Presidential Commission of Inquiry probing malpractices, referring to the charge sheet against Mr. K. N. Choksy published in 'The Island' of 29.2.96 said that no directive was given to the newspaper but the commission advised and requested the newspaper to publish it, immediately on seeing the written submissions of Choksy being published in 'The Island' of 4.2.96 and 5.2.96, so that the readers would get a true picture of the charges in relation to the submissions.

This observation was made consequent to a query raised by Choksy at Thursday's sittings of the Commission as to whether it was correct or not that the Commission had directed the newspaper to carry the Charge Sheet.

Chairman: "We did not give any directive, it was only an advise or request".

Choksy: "With respect, there was no need for the Commission to make even a request. Ex-parte evidence was led before this Commission, and it received wide publicity. The charge-sheets against the Respondents were also published. Thereafter, the newspaper acted correctly in reporting the defence written submissions. No Trial Court asks a newspaper to reproduce a charge-sheet. To my mind, this is not part of a Judge's functions in the administration of justice and not fair by the persons. They are sitting in judgement over".

Chairman: "You must understand that this Commission is inquiring into matters of public importance and public interest. The public are therefore entitled to know all aspects. That is important".

Choksy: "Courts also deal daily with matters of public interest. There is no difference".

Chairman: "We have heard you sufficiently and this matter ends there".

K. N. Choksy declines to take part in proceedings

(By M. J. M. Zarook and
Madhubhashinee Dayabandara)

MR. K. N. Chosky, PC yesterday told the Special Presidential Commission sitting at the BMICH that he would not participate any further in the proceedings of the Commission.

The Commission of Inquiry into Malpractices and Irregularities in public bodies comprises Justice Priyantha Perera (Chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter Mr. Choksy and other respondents Mr. Cornel Perera, Chairman and Managing Director of Hotel Developers (Lanka) Ltd. the owning company of the Hilton Hotel and former directors Mr. F. G. N. Mendis and Mr. R. Paskaralingam former Secretary to the Ministry of Finance (who is absent) have been asked to show cause why they should not be found guilty of misuse or abuse of power of corruption or commission of fraudulent acts in connection with the construction of the Hilton Hotel.

After counsel appearing for the other respondents filed written submissions on the question of jurisdiction Mr. Choksy said that he would not be filing written submissions on that matter. He had already made certain submission on that earlier.

He said: "In response to the notice issued on me by this Commission I appeared before the Commission on several dates. As require by the commission I also filed my written submissions on 30th January 1996 denying totally the allegations against me outlining the reasons for my denial by reference to contemporaneous documents and also raising as I was lawfully entitled to do certain legal issues. I did so with a view to defending myself before the commission. I appeared before the commission on the last date also with the same purpose in mind.

Strong language

Although the stage for consideration of my written submissions had not been reached nor any clarification sought by the Commission from me therein the commission proceeded to make "observations" on my written submissions. The nature an the substance and the strong language of these "observations" made by the commission left me, as a person over whom the commission is sitting in judgment, with no alternative but to inform the commission that I would require

time to consider whether I should participate in this inquiry any further. The chairman stated that I could have time to do so.

After due consideration I have decided in view of what transpired and is recorded at pages 1 to 41 of the proceedings of the 149th Public Sitting of this Commission that I cannot in fairness to myself participate any further in these proceedings."

Mr. Douglas Premaratne PC who is assisting the commission with Mr. A. R. C. Perera, Deputy Solicitor General said he would want a short date to file his written submissions in answer on the question of jurisdiction.

He was directed to file his submissions on March 29 and oral submissions of counsel would be made on April 4.

Mr. Cornel Perera in his written submissions on the issue of jurisdiction stated:

"Written Submissions have been tendered on behalf of the respondent stating that Hotel Developers (Lanka) Ltd is not a public body within the meaning of the Special Presidential Commission of Inquiry Law No. 7 of 1978 as amended because the said Company is not "owned wholly or mainly by or on behalf of the Government" as therein defined.

The main document relied on for this submission of a lack of jurisdiction is the Share Transfer Agreement dated 24.02.1984 entered into between Cornel & Co. Ltd and the Secretary to the Ministry of Finance.

Mr. K. N. Choksy has raised the same issue of jurisdiction in his Written Submissions tendered to this Commission.

The Solicitor General has in his reply to Mr. Choksy's submissions, submitted inter alia that Mr. Choksy has 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 their finding and that he is therefore estopped from now raising any objection to the jurisdiction of the Commission.

Presumably the Solicitor General will make the same submission of estoppel and/or acquiescence in his answer to this respondent's submissions on jurisdiction.

SPC on malpractices in public bodies

It is respectfully submitted that the respondents are not precluded from raising the issue of jurisdiction at this stage for the reasons submitted by the Solicitor General. The appropriate stage for questioning the jurisdiction of this Commission was when they were called upon to answer the several charges served on them.

Patent lack of jurisdiction

In any event it is submitted that when the lack of jurisdiction is patent, it can be raised at any time.

The Commission's attention is drawn to a Judgement of the Supreme Court reported in 1977 NLR (Thambipillai et al vs Thambimuttu et al) where it was inter alia held that a patent lack of jurisdiction could not be cured by acquiescence. In a more recent Judgement reported in 1987 I SLR 350 the Supreme Court has again held that where there is patent want of Jurisdiction a party cannot by acquiescence or waiver confere jurisdiction. (Jamis vs Yapa et al).

It is submitted that the said question should be decided in limine and the inquiry into the several charges against the four respondents be proceeded with only if Your Lordships hold that the said Company is a public body as defined in the Enactment.

Attention is also invited to a further factor. The Commission is a statutory Tribunal established by Warrant issued in terms of Section 2 of Law No. 7 of 1978 by Her Excellency The President.

The Warrant cannot empower the Commission to hold any inquiry into any matter not authorised by Section 2. The scope of the Warrant and the jurisdiction of the Commission are both circumscribed by Section 2.

It accordingly becomes obligatory on the Commission in law to first ascertain before proceeding to inquiry whether or not it is acting within the scope of its authority as set out or defined or limited by Section 2.

There is the well established principle of law that a statutory body or tribunal must act within the four corners of the statute governing it. What these limitations are must therefore be first ascertained.

Written submissions were also filed on behalf of Mr. F.G.N. Mendis and Mr. R. Paskaralingam.

Mr. Douglas Seneviratne PC with Mr. A. R. C. Perera, Deputy Solicitor General assisted the commission.

Mr. D. S. Wijesinghe PC with Mr. S.C. Crossette Thambiah and Mr. Chula Bandara instructed by Sivananthan Associates appeared for Mr. Cornerl Perera.

Mr. R. K. W. Goonesekera with Mr. W.B.C. Senarath - Nandadeva instructed by Mr. M. D. de Silva appeared for Mr. F.G.N. Mendis.

Mr. Ranjit Abeysuriya PC with Mr. Neil Dias and Miss Priyadarshanee Dias instructed by Mr. N. Sambandan appeared for Mr. R. Paskaralingam, who was absent.

Mr. K. N. Choksy PC appeared on his own behalf. The Commission resumes sittings on march 21.



Justice H.S. Yapa

Justice P.R.P. Perera

Justice F.N.D. Jayasuriya

Commission probing malpractices

Solicitor General replies to Choksy

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

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 stopped 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 Amerasekera'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. Senaratne 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 had 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 reasons 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 misuse or abuse of power. It could only report to the President 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 Bandaranaike Kumaratunga 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. Amerasekera 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. Amerasekera 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. Amerasekera on 13.12.89. Mr. Amerasekera 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 this 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.

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 Echlon 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 concessory terms, Cornel & Co. Ltd. had defaulted all balance payments to the UDA and the UDA has subse-

quently having instituted legal action had accepted Cornel & Co. Ltd.'s repudiation of the said Leases. It is this very land that Cornel & Co. Ltd. under-leased 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.

DAILY NEWS - SATURDAY MARCH 30, 1996

Written submissions of state against objections

DEPUTY Solicitor General, Mr. A. R. C. Perera yesterday filed his written submissions on the preliminary objection to the jurisdiction of the Special Presidential Commission taken by the parties noticed in the Hilton case.

The Commission of Inquiry into Malpractices and Irregularities in public bodies comprises Justice Priyantha Perera (Chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

Mr. Perera submitted that the current issue was whether the preliminary objections raised in regard to the question of jurisdiction had to be decided in limine or at the end of the whole inquiry.

This matter, where the present inquiry is concerned can be distinguished from the provisions of law as illustrated in the submissions of Ramalingam Paskaralingam, namely the Section 314 and Section 315 (2) of the Code of Criminal Procedure Act, and Section 39 of the Judicature Act. All these provisions refer to situations where there is a patent lack of jurisdiction, a matter that can be treated as a pure question of law.

He submitted that Section 147 of the Civil Procedure Code has undergone judicial interpretation and the "cursus curiae" in that regard is when there are issues of mixed fact and law, then such issues cannot be taken up separate from the rest.

After citing certain judgements Mr. Perera submitted that the particular objections to jurisdiction revolve around the fact whether the Hotel Developers (Private) Limited is a "public body" within the meaning of the Special Presidential Commission of Inquiry Law. This can only be decided by reference to

a barrage of facts and cannot be done merely as a matter of law.

Therefore, it was respectfully submitted that the question of jurisdiction cannot be decided as it is so intrinsically interwoven with a mass of facts, as evidence would reveal.

These facts in turn would answer several issues arising on the allegations levelled against the respondents. Therefore it is needless to emphasise that if the matter of jurisdiction "which is a question of mixed fact and law" is decided first; and it so happens that the decision is to continue with the inquiry on the allegations, then the very same evidence has to be reconsidered in deciding the issues on allegations against the respondents; thus, making the preliminary decision a futile exercise.

The case was fixed for oral submissions on April 4. The Commission resumes sittings on April 1.

Mr. Douglas Premaratne, PC with Mr. A. R. C. Perera, Deputy Solicitor General assisted the Commission.

Mr. D. S. Wijesinghe, PC with Mr. S. C. Crossette Thambiah and Mr. Chula Bandara instructed by Sivananthan Associates appeared for Mr. Cornel Perera.

Mr. R. K. W. Goonesekera with Mr. W. B. C. Senarath - Nandadeva instructed by Mr. M. D. de Silva appeared for Mr. F. G. N. Mendis.

Mr. Ranjit Abeysuriya, PC with Mr. Neil Dias and Miss. Priyadharshanee Dias instructed by Mr. N. Sambandan appeared for Mr. R. Paskaralingam.

SPC probing malpractices in public bodies Hilton case Commission reserves order for May 6

By V. K. Wijeratne

The Special Presidential Commission of inquiry probing alleged malpractices in certain government bodies yesterday (4) reserved their order for May 6 on the preliminary objection raised in regard to the question of jurisdiction in the matter of the inquiry pertaining to the Hilton project.

They did so after listening to oral submissions by Ranjit Abeyasuriya PC counsel for R. Paskaralingam, D. S. Wijesinghe, PC, Counsel for Cornel Perera and A. R. C. Perera DSG.

Counsel for F. G. N.

Mendis had earlier indicated that no oral submissions would be made by him. K. N. Choksy PC was not present.

Commission chaired by Justice P. R. P. Perera also consists of Justices H. S. Yapa and

F. N. D. Jayasuriya. They resumed sittings at the BMICH in Colombo.

Ranjit Abesuriya said that the commission is sitting by virtue of a warrant issued by the President. "If not for this warrant the commission would not be sitting here," he said. Counsel pointed out that the warrant is ultra vires the SPC inquiry act in so far as it relates to Hotel

Developers (Lanka) Ltd., as it is not a public body. He pointed out that a public body according to the definition had to be either vested in government or wholly or mainly owned by government. "Therefore there is a legal disability for your court to go into this," he argued.

Justice Jayasuriya questioned counsel whether the jurisdiction matter was one that pertains to both matters of fact and law to which he answered that it was mixed with fact and law.

The chairman inquired as to why this matter was not raised much earlier or at the very outset.

Counsel explained that he had to do so only after his client was issued a show cause notice and remained the old adage "never trouble, trouble, till trouble, troubles you."

D. S. Wijesinghe PC cited various ways in which jurisdiction issues could arise. "Hotel Developers Lanka Ltd. not being a public body as envisaged by SPC inquiry law, it is not amenable to the judicial definition of a public body," the counsel argued.

He pointed out that according to the definition of a public body, it had to be vested in government or wholly or mainly owned by government.

In regard to the matter of fact and law Mr. Wijesinghe argued that in any matter of law there has to be a factual content. He said there was no question of pure law.

The issue of jurisdiction and the charges levelled are totally distinct and separate, the counsel pointed out. He said that they are not interwoven.

Citing case law he argued that the commission is under an obligation to decide whether HDL is a public body or not.

DSG A. R. C. Perera said that evidence so far recorded has not been cross-examined and that

those cannot therefore be accepted as facts.

He also cited case law to prove that when issues pertaining to both fact and law are involved the main inquiry cannot be separated from the matter of jurisdiction.

The commission reserved their order for May 6.

Commission was assisted by Godfrey Gunasekara SSP and Assistant Secretary S. K. P. Bambarande. It will resume on April 8.

DAILY NEWS - FRIDAY APRIL 05, 1996

Order reserved on whether jurisdiction question should be taken up first

By M. J. M. Zarook and Madhubhashinee Dayabandara

THE Special Presidential Commission sitting at the BMICH yesterday reserved its order for May 6 on the question whether the preliminary objection to jurisdiction in the Hilton Hotel matter should be taken up in *Li Limine*.

The Commission of Inquiry into Malpractices and

SPC on malpractices in public bodies

Irregularities in public bodies comprises Justice Priyantha Perera (Chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter Mr. Cornel Perera, Chairman and Managing Director of Hotel Developers (Lanka) Ltd, the owning company of the Hilton Hotel and former directors Mr. K. N. Choksy, Mr. F. G. N. Mendis and Mr. Ramalingam Paskaralingam, former Secretary to the Treasury have been asked to show cause why they should not be found guilty of misuse or abuse of power or corruption or commission of fraudulent acts

in connection with the construction of the Hilton Hotel.

Mr. D. S. Wijesinghe, PC with Mr. S. C. Crossette Thambiah and Mr. Chula Bandara instructed by Sivananthan Associates appeared for Mr. Cornel Perera.

Mr. Ranjit Abesuriya, PC with Mr. Neil Dias and Miss Priyadharshanee Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam who was absent.

Mr. R. K. W. Goonesekera with Mr. W. B. C. Senarath Nandadeva instructed by Mr. M. D. de Silva appeared for Mr. F. G. N. Mendis.

Mr. Choksy had declined to participate in the proceedings.

Mr. A. R. C. Perera, DSG assisted the Commission.

After Mr. Ranjit Abesuriya appearing for Mr. Paskaralingam and Mr. D. S. Wijesinghe on behalf of Mr. Cornel Perera made oral submissions. Mr. A. R. C. Perera, DSG replied stating inter alia that as the preliminary objection to jurisdiction involved questions of mixed facts and law it would be irregular to take up the matter in *Limine*.

The Commission reserved its order for May 6.

In limine jurisdiction in Hilton Hotel building inquiry Commission refuses and rejects in unanimous order

(By M. J. M. Zarook and
Madubhashinee Dayabandara)

AN application by the parties noticed in the Hilton Hotel building inquiry that the preliminary objection to jurisdiction be taken up in limine (at the outset) was refused and rejected by the Special Presidential Commission sitting at the BMICH in its unanimous order yesterday.

The Commission of Inquiry into Malpractices and Irregularities in public bodies comprises Justice Priyath Perera (Chairman), Justice Hector S. Yapa and Justice Ninia Jayasuriya.

In this matter Mr. Cornel Perera, Chairman and Managing Director of Hotel Developers (Lanka) Ltd, the owning company of the Hilton Hotel and former directors, Mr. K. N. Choksy, Mr. F. G. N. Mendis and Mr. R. Paskaralingam former Secretary to the Treasury (absent) have been required to show cause why they should not be found guilty of misuse or abuse of power or corruption or commission of fraudulent acts in connection with the construction of the Hilton Hotel building.

Mr. D. S. Wijesinghe, PC with Mr. S. C. Crossette Thambiah and Mr. Chula Bandara instructed by Sivananthan Associates appeared for Mr. Cornel Perera.

Mr. R. K. W. Goonesekera with Mr. W. B. C. Senerath Nandadeva instructed by Mr. M. D. de Silva appeared for Mr. F. G. N. Mendis.

Mr. Ranjit Abeyesuriya, PC with Mr. Neil Dias and Miss Priyadarshane Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam.

Mr. K. N. Choksy was absent having declined to participate in the proceedings.

Mr. A. R. C. Perera, Deputy Solicitor General assisted the Commission.

Mr. Godfrey Gunasekera, SSP is also assisting the Commission.

The Commission in its order stated:

"Learned Counsel who appeared for the four respondents jointly moved that the issue raised relating to the jurisdiction of this commission to inquire into the particular matter specified as Item 2 in the schedule to the WARRANT be tried as a preliminary question and in limine before the other issues relating to allegations, arising on this particular inquiry are tried. This issue substantially takes the following form -

(A) Having particular regard to the terms of reference set forth in the WARRANT which restrict the commission's powers to the investigation of the affairs of public bodies - is Hotel Developers (Lanka) Limited, a public body - in the meaning of the Special Presidential Commission of Inquiry Law No. 7 of 1978 as amended?

(B) If issue (A) is answered in the negative, does this Special Presidential Commission have jurisdiction, authority or power to investigate and inquire into, the affairs of Hotel Developers (Lanka) Ltd., matters relating to the Hilton Hotel project (which is owned by Hotel Developers (Lanka) Ltd.) and the acts of commission and omission by government and public bodies in connection therewith?

Learned Counsel, the Solicitor General and Mr. K. N. Choksy, PC have tendered written submissions to the Commission on this question in advance. At the hearing of oral submission, all counsels appearing for three respondents conceded that the issue is a mixed ISSUE OF FACT AND LAW. In fact, Mr. Choksy in his written submissions dated 30.1.1996 has very correctly urged that for the determination of the issue: whether or not the owning Company of the said Hotel is vested in the government or wholly or mainly owned by or on behalf of the government, "the provisions of the Investment Agreement, the Share Transfer Agreement, the contents of the connected and relevant documents and the subsequent negotiations between the government, the lenders and Cornel and Company" are decisive, highly pertinent and relevant. Having heard all learned Counsel at the stage of oral submissions, it was evident and manifest that the parties were at variance and deeply steeped in controversy over the aforesaid negotiations and the contents of the connected and related documentary evidence.

Fact and Law

In these attendant circumstances we unanimously hold that this issue is a MIXED ISSUE OF FACT AND LAW.

If the issue is one of mixed Fact and Law, the Civil Courts have consistently laid it down, that such an issue must not be tried in limine as a preliminary issue, but be postponed to the end of the inquiry or trial and tried together with all the other issues which arise at the inquiry or trial.

Recently Justice Jameel in *Storer vs. American Express* cited with approval the legal principle laid down by Justice Walter Pereira (in 4 B.N.C.6) and ruled that if an issue involves a question of FACT AND LAW, such an issue cannot be taken up separate from the rest and that it is irregular to proceed with the trial piece-meal. The learned Judge referred to the decision reported in 3 NLR 166 wherein it was emphasised that there should be ONE judgement in a case and that our Courts have followed that rule and that unless the question is a PURE ISSUE OF LAW, it is irregular to proceed with the trial piecemeal - the accepted principle being that no issue involving fact and law is ever taken up as preliminary issue. Still more recently Justice Mark Fernando dealing with an issue relating to jurisdiction succinctly remarked in the case of *Blue Diamonds vs. A. B. N. Amro Bank 1993* "the provisions of Section 147 of the Civil Procedure Code do not permit an issue of jurisdiction to be tried as a preliminary issue UNLESS two conditions are satisfied -

(A) It must be an ISSUE OF LAW (NOT OF FACT OR MIXED FACT AND LAW).

(B) Of such a nature that the entire case may be disposed of on that issue only".

Mr. D.S. Wijesinghe, learned President's Counsel submits that this Commission should determine the question now before it without recourse to the provisions of Section 147 of the Civil Procedure Code and the decisions pronounced by eminent Judges of the Supreme Court on a consideration of the principles applicable to the traditional Civil actions. On the contrary he advocates that the Commission should be guided in this matter by principles of public law and administrative law. Mr. Wijesinghe again dissents from his colleague at the bar Mr. Ranjit Abeyesuriya, PC and submits that this Commission should not take into consideration the principles of Criminal Procedure and the analogy of the law relating to a plea of *Autrefois Acquit* and *Autrefois Convict*. Mr. Abeyesuriya, has referred us to the provisions of Sections 314 and 315 of the Criminal Procedure Code and has argued that when a plea of *Autrefois Acquit* and *Autrefois Convict* is tendered in a criminal trial, the issue raised by such pleas are required by positive law to be tried and disposed off in limine, before the other issues raised by other pleas are tried out and consequently the plea of lack of jurisdiction raised at this inquiry ought to be taken up in limine and tried as a preliminary issue before proceeding to further inquiry on the other issues.

We hold there is no analogy between the plea of *Autrefois Acquit* referred to by learned counsel and the mixed issue of Law and fact raised at this particular inquiry in regard to jurisdiction. No issue of law can arise for consideration bereft of a factual foundation or setting.

Even if we are disposed to hold that the provisions of Section 147 of the Civil Procedure Code are not directly applicable to the determination of the question before this Commission, let us inquire and investigate into the rationale and principle which under pins the legal proposition that an issue of law which would go to the root of the action and finally dispose off the controversy and dispute, ought to be tried in limine and that an issue of mixed law and fact, ought never to be tried in limine but ought to be postponed to be tried with the other issues in the Case, excluding from our consideration the express provisions of Section 147 of the Civil Procedure Code.

Hypothetical situation

Let us consider a hypothetical situation to highlight this principle and its rationale. Issues of mixed fact and law surface at an inquiry; the determination of which alone may finally dispose of the inquiry. An application is fervently pressed to try these mixed issues in limine. The deciding authority accedes to the request and has decided to try the mixed issue as a preliminary issue. Evidence is led at this first inquiry on the factual aspects of the issue and deciding authority adjudicates and rules the factual position to be 'X' and consequently answers the preliminary issue relating to jurisdiction in the affirmative. Thereafter the second inquiry into the remaining issues is commenced. At this second inquiry oral and documentary evidence is again led and the additional documents which are marked become pertinent and relevant to the said mixed preliminary issue already determined. New facts elicited at the second inquiry now induce and compel the deciding authority to adjudicate that the factual position is 'Y' and therefore answer the said preliminary issue relating to jurisdiction in the negative. But the deciding authority is *functus officio* and has no jurisdiction to answer the same issue twice over in the same proceedings. The deciding authority is now quite conscious and aware that he has erred in answering the preliminary issue in the affirmative but he is powerless to correct the mistake; he relents, repents and is grievously embarrassed but he is *functus* and has no jurisdiction to answer that same issue again in the same proceedings. It is to avert such a disastrous, embarrassing and pitiful situations that it is repeatedly stressed where the issue involved is one of fact and law that it is highly irregular, irrational and imprudent to proceed with the inquiry piecemeal, but that there should be one Order or Judgement in the Case determining all the issues together and at the same time. If such a procedure is adopted, the aforesaid pitfalls arising from pre-judging will never be encountered. However if the preliminary issue is one of Law only which goes to the root of the action, the preliminary determination of that issue in limine will never produce such perilous and embarrassing situation by reason of indulging in a process of prejudgment of that particular issue. Justice H.N.G. Fernando in *Edrick de Silva vs. Chandraseva 70 NLR* in delivering the judgement in an election Petition (not a traditional civil action or cause of action), commented on the rationale behind the aforesaid proposition and observed "the law permits an issue of law to be disposed as a preliminary issue, but it does not permit the same issue to be decided more than once".

Unnecessary expense

There is another consideration which impels us to arrive at the aforesaid determination. In a situation calling for the determination of mixed issues of Law and Fact which properly arise in a case, the intermediate determination and disposal of some of these issues may inevitably lead to unnecessary delay and expense to the litigants. Justice Gratian in *Soothiretnam vs. Annamah 50 CLW 35* sounded a warning to trial judges in this connection.

Ceynor Inquiry

We now advert to a determination and decision pronounced by three Supreme Court Judges - Justice Collin Thome, Justice Parinda Ranasinghe and Justice H. D. Tambiah who together constituted another Special Presidential Commission - in an inquiry into a non-traditional civil action or cause of action relating to allegations against Anura Rajasiri Weeraratne in the Ceynor Development Foundation Inquiry, to which Order and determination, we specifically drew the direct attention of learned counsel at the commencement of oral submissions on this issue of jurisdiction. However, we regret to record that the Commission did not receive any assistance from counsel in regard to this decision and determination. This Special Presidential Commission constituted of three Supreme Court Judges ruled on the identical issue now raised before us.

It is manifest that this Special Presidential Commission in the course of its inquiry into an allegation, which certainly was not a traditional civil action or cause of action, founded its determination on the issue of jurisdiction raised in limine on the provisions of Section 147 of the Civil Procedure Code and the rationale and guiding principle underlying the said legal proposition enshrined in the aforesaid statutory provision and therefore the aforesaid contentions advanced by Mr. D. S. Wijesinghe, PC to us to overlook these provisions is erroneous, unsustainable and untenable. The rationale and principle which underpins the aforesaid legal proposition is therefore of general application and is equally relevant for the determination of jurisdictional issues and finds support in consideration of convenience, prudence, wisdom and expedition.

Single order

In conclusion we unanimously hold that the aforesaid mixed issue of FACT and LAW arising for determination upon this inquiry, should be tried with all the other relevant issues and determined in a single order.

Learned Deputy Solicitor General had submitted that the aforesaid mixed issues of FACT and LAW involves the consideration of and an adjudication on a "barrage of facts" which are interwoven and inextricably mixed up with facts relating to the allegations. On the contrary learned Counsel for the respondents argued that the facts relating to the two distinct issues are not interwoven and not inextricably mixed up and therefore could be severed and separated with facility. We would at this stage make the limited prima facie observation that some of the numerous Minute Sheets produced from official files, the memoranda submitted to the Board of Directors of HDL Ltd. and the Board Decisions contain material which are relevant for the determination of the mixed jurisdictional issue and of some of the allegations preferred against the respondent at this inquiry. We would refer to one such document in particular - The Minute Sheets produced from the Ministry of Finance maintained file - marked P. 70A and P. 70B.

In P. 70 an Assistant Secretary of the Ministry of Finance and a Director of Economic Affairs has referred to the District Court judgment refusing to set aside the earlier interim injunction issued by the District Court which prohibited the payment of any further monies to the Japanese Consortium of Contractors and to the fact that the Japanese contractors are appealing against the decision of the District Judge. She has expressed in it her view that it is reasonable to support that appeal if the Attorney General considers it proper to do so. In it, she refers to the methods of helping the Japanese Contractors and also recommends the strengthening of the position of the Government of Sri Lanka by expediting the signing of the amended Investment and Share Transfer Agreements, possibly increasing the Government owned shares to 65% in H.D.L. Limited and

providing for the appointment of more Government nominees on the Directorate. On this same Minute Sheet appears a minute inserted by Mr. Paskaralingam, the Secretary to the Treasury to the following effect - "Please discuss with Mr. Choksy and map out our strategy. The U.D.A. Director tells me that the building is in accordance with the Plan. The U.D.A. had issued a Certificate of Conformity. This must be settled please". Thus the Minute of the Assistant Secretary refers to the strengthening of the position of the Government in H.D.L. Ltd. and expediting of the signing of the aforesaid Amended Agreements which passages are clearly and demonstrably relevant to the determination of the mixed jurisdictional issue whereas the passages relating to helping the Japanese Contractors making out additional payments in defiance of the interim injunction issued by the District Court and to the discussion with Mr. Choksy and the mapping out of the strategy are highly relevant to the determination of the allegations or charges preferred against the respondents. To this extent, it appears, that the facts relating to the mixed jurisdictional issue is interwoven and mixed up with the facts relating to the aforesaid allegations preferred against the respondents.

In the circumstances we direct that the mixed issue relating to the jurisdictional question raised at this inquiry should and ought to be tried (not in limine), but together with all the other relevant issues and be decided and determined in a single order and not piecemeal. Hence the application preferred on behalf of the respondents for the mixed jurisdictional issue to be determined in limine is hereby refused and rejected".

The Commission put off the inquiry for May 16 on which date Mr. Nihal Sri Amersekera, Chartered Accountant was noticed to be present and be available for cross-examination by counsel.

Another Inquiry

Mr. S. Newton Wijepala, former Chief Government Valuer gave evidence under cross-examination by Mr. Tilak Marapana PC, senior counsel for Mr. Wijepala Mendis when the next inquiry was taken up.

In this matter Mr. Wijayapala Mendis former minister of Textiles Industries has been asked to show cause why he should not be found guilty of misuse or abuse of power in respect of a transaction involving his land at Anuradhapura, Panikkamkulam.

It was stated that he had exchanged 76 acres of his land with 76 acres of land of Mawatta division of Siringapatha estate managed on the National Livestock Development Board (NLDB), with the intention of causing wrongful gain to himself and to his daughter Manori Mendis and or wrongful loss to the Lanka Reform Commission, the NLDB and or the government of Sri Lanka.

Mr. Tilak Marapana PC with Mr. Dulinda Weerasuriya and Mr. Lalin de Silva appeared for Mr.

Wijayapala Mendis.

Mr. Douglas Premaratne PC assisted the commission. Mr. Godfray Gunasekera SSP, Chief Investigating Officer is also assisting the commission.

Mr. S. Newton Wijepala, former Chief Government Valuer, cross-examined by Mr. Tilak Marapana, PC said that on an order of the commission he valued land in question situated at Mawatta. He visited the property for the valuing purpose on August 6, 1995. He was accompanied by an Assistant Valuer.

By the time he visited the place his team of officers had prepared a full report so that he did not have any difficulty in identifying the portion of land. Witness did not enter the land but spent two or three hours in the vicinity. He said that his officers had inspected the land before he did.

The purpose of his visit was to form an opinion about the land for the purpose of valuation.

Witness was referred to a valuation report. The average net profit of Siringapatha estate in 1976 was Rs. 530,324. The acreage was 1348 of which 1293 acres were coconut. Assuming that the total income was from coconut only it gave an annual income of Rs. 410 per acre.

The report gave an agricultural value of Rs. 3948 per acre.

An acre yielded 3657 nuts per year. The profit per nut was 11 cents. On this basis the value per acre was given at Rs. 3000.

The entire estate had been valued in 1976 at Rs. 3,915,000.

Witness was referred to the valuation report prepared by the Land Reform Commission (LRC) for handing over to Mr. Wijayapala Mendis. The valuer had observed that the trees were old and the estate was poorly maintained. It yielded about 2000 nuts per acre while good coconut land yielded 15,000 nuts.

Chairman: Do you agree with these observations? - No, I do not. The rate adapted per acre was too low.

Witness said that good coconut land would yield 35,000 nuts per year, per acre. Neglected land would yield 15,000 nuts.

Witness was referred to a Central Bank report which he had used for his valuation. He had taken the price of a coconut as Rs. 1.60 in 1982 while under the copra production the wholesale price of a nut was stated as 65 cents. Witness said that he may have been wrong.

The matter will be taken up on May 21. The commission resumes sittings today.



Commission allows settlement with Japanese firms on rescheduled payments

(By Madhubhashinee Dayabandara and Manjula Fernando)

THE Special Presidential Commission sitting at the BMICH yesterday allowed an application by the state to settle the civil dispute with the Japanese firms, Mitsui and Company Ltd and Taisei Corporation over the construction of the Hilton Hotel project without prejudice to the ongoing proceedings before the Commission.

The Commission of Inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (Chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

The Commission in its order stated:

Deputy Solicitor-General A. R. C. Perera has filed a motion dated 9.5.96 together with a copy of Agreement dated 28.6.95 entered into between the Secretary, Ministry of Finance, Mitsui & Co. Ltd., Japan, Taisei Corporation, Japan, and Hotel Developers (Lanka) Ltd., and has sought a ruling from the Special Presidential Commission on the question whether this Commission would have any objection to the settlement of a civil dispute between the said parties by making payments to the Japanese parties in accordance with the Agreement.

By the said Agreement, the amounts due on the loan Agreements entered into by the Mitsui & Co. Ltd., and Taisei Corporation with Hotel Developers (Lanka) Ltd., guaranteed by the government of Sri Lanka and the amounts due on the construction agreement and the furniture & fittings and equipment agreement entered into by the aforesaid parties have been adjusted and rescheduled for payment.

We have given our very careful consideration to this application, having particular regard to the specific matters that have been referred to this Commission by her excellency the President by warrant dated February 1996.

According to the schedule to the warrant, the specific matter that has been referred to this Commission relating to Hotel Developers (Lanka) Ltd., is as follows:

"Matters relating to the Hilton Project and acts of commission and omission by the government and public bodies in connection therewith".

The Japanese firms namely, Mitsui & Co. Ltd., and Taisei Corporation are not parties noticed by this Commission to show cause and are, therefore, not "parties" to the inquiry relating to this matter presently pending before this Commission.

Having given our careful consideration to the contents of the Agreement, we are unanimously of the opinion that the settlement of this matter by making payments to Mitsui & Co. Ltd., and Taisei Corporation in the manner set out in the Agreement, would in no way prejudice the proceedings pending before this Commission relating to the Hilton Hotel project - i.e. Inquiry No. 1/95 and this settlement would in no way debar this Commission from inquiring into the matters set forth in the warrant.

In our view, no Court or Commission ought to stand in the way of parties who are desirous of settling their disputes by entering into a settlement.

It is apposite in this context to refer to the Dicta of Lord Mansfield who remarked that all men ought to be permitted to settle their disputes and differences and buy their peace without prejudice to them should the offer not succeed.

We, therefore, see no objection to this course of action being adopted by the parties to this Agreement.

Next, the inquiry into the matter of show cause notice on Mr. Ackiel Mohamed, former secretary to the Ministry of Power and Energy was taken up.

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Mr. Mohamed has been required to show cause why he should not be found guilty of misuse or abuse of power for certain acts of omission and or commission as Chairman of the divestiture committee set up for the peopulation of the Nylon 6 plant owned by the Ceylon Petroleum Corporation.

It was stated that the impugned acts resulted in 90 per cent of shares of Lanka Synthetic Fibre Company Ltd being sold to Tongyang Nylon Company Ltd of South Korea for Rs. 230 million while the Chief Government Valuer had recommended a floor price of Rs. 1200 million.

Mr. Wijesiri Padukage, Assistant Director, Ministry of Foreign Affairs examined by Mr. Ananda Wijesekera PC was referred to a telex message from the United Nations mission in New York to the secretary to the Ministry of Foreign Affairs on September 16, 1991.

The message stated that Mrs. Chandra Amarasekera reported for duty on that day to the UN mission. Mr. Wijesekera said that the purpose of this evidence was to show that Mrs. Amarasekera was out of the country from September 14, 1991.

There was previous evidence indicating that Mr. Ackiel Mohamed as the Chairman of the divestiture committee (DC) had not summoned Mrs. Amarasekera for meetings. Mr. Wijesekera said that after Mrs. Amarasekera left the country she could not be called for meetings.

Additional Solicitor General, Mr. Srinath Perera pointed out that by September 16, the DC had submitted its report and it would be function.

Mr. Wijesekera said that no time frame had been given for the DC, and the charges were general; formation of the company and other tasks still remained to be finalised.

The next witness, Mr. Tissa Marasinghe, Deputy Director, Public Enterprises Department of the Treasury produced the report of the capital restructuring committee on Ceylon Petroleum Corporation (CPC) dated June 27, 1986.

The next witness Mr. Kodippularachchige Herbert Stanley Perera, former Assistant Director (Progress) Ministry of Power and Energy examined by Mr. Wijesekera said that letters addressed to the Secretary would be taken out by the chief clerk, sent to the head of branch and then to the staff officer concerned.

A letter was addressed by name to Mr. Mohamed it would not be opened by the chief clerk but would be sent in to Mr. Mohamed directly.

Witness was referred to several documents and identified writing of then Senior Assistant Secretary, Mr. D. C. T. Jansz and Mr. Mohamed.

Cross-examined by the ASG witness said that he was not in a position to say what procedure was adopted in respect of correspondence relating to the DC.

Referred to a minute by Mr. Jansz which put up a certain draft for Mr. Mohamed's approval witness said that he could not say who had prepared the draft.

Re-examined by Mr. Wijesekera witness said that if he prepared a draft and put it up for the approval of his superior he would be responsible for it as he had drafted it.

To a question by the Chairman, the witness said that if the secretary had submitted the draft to him and he looked

through it and sent it back to the Secretary he would have marked 'resubmit'.

Cross-examined again by the ASG witness said that if the superior had dictated a letter to a senior officer and got it typed, then the superior would be responsible for it. But then the officer who prepared it would not seek for the superior's approval.

As the document Mr. Jansz had prepared was connected with the DC witness said that it would have been necessary to get the DC approval.

The matter will be taken up on June 14. The Commission resumes sittings on May 13.

Mr. Ananda Wijesekera PC with Mr. Jacob Joseph, Mr. T. Vanniasinkam, Mr. S. B. C. Halaldeen and Mr. Dharmika Hemapala instructed by Mr. Thusitha Guruge appeared for Mr. Ackiel Mohamed. Mr. Srinath Perera, ASG assisted the Commission.

DAILY NEWS - FRIDAY MAY 17, 1996

Evidence re-led in Hilton Hotel building inquiry

By Rodney Martinez and Manjula Fernando

THE evidence given by Mr. Nihal Sri Ameresekere in the Hilton Hotel building inquiry was re-led before the Special Presidential Commission of Inquiry into malpractices and corruption in public bodies when sittings were resumed yesterday.

Mr. Ameresekere was due to be cross-examined by Mr. D. S. Wijesinghe, senior counsel for Mr. Cornel Perera but when the inquiry was resumed yesterday, Mr. Wijesinghe said he would prefer to hear the evidence in chief to get what he described 'a feel of the evidence' given already.

Mr. Neil Dias, deputising for Mr. Ranjit Abeysuriya, senior counsel for Mr. R. Paskaralingam said he was endorsing the request by Mr. Wijesinghe.

The Commission allowed this request. The Chairman said that evidence of all the witnesses will have to be led. Mr. Nihal Sri Ameresekere, Chartered Accountant was examined by Deputy Solicitor-General C. R. de Silva.

The Commission of Inquiry into Malpractices and Irregularities in public bodies comprises Justice Priyantha Perera (Chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter Mr. Cornel Perera, Chairman and Managing Director of Hotel Developers (Lanka) Ltd., the owning company of the Hilton Hotel and former directors, Mr. K. N. Choksy, Mr. F. N. G. Mendis and Mr. R. Paskaralingam former Secretary to the Treasury (absent) have been required to show cause why they should not be found guilty of misuse or abuse of power or corruption or commission of fraudulent acts in connection with the construction of the Hilton Hotel building.

Mr. D. S. Wijesinghe, PC with Mr. S. C. Crossette Thambiah and Mr. Chula Bandara instructed by Vivanandan Associates appeared for Mr. Cornel Perera.

Mr. R. K. W. Goonesekera with Mr. W. B. C. Senerath Nandadeva instructed by Mr. M. D. de Silva appeared for Mr. F. G. N. Mendis.

Mr. Ranil Abeysuriya, PC with Mr. Neil Dias and Miss Priyadharshanee Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam.

Mr. K. N. Choksy was absent having declined to participate in the proceedings.

Mr. A. R. C. Perera, Deputy Solicitor-General assisted the Commission.

Mr. Godfrey Gunasekera, SSP is also assisting the Commission.

Mr. Ameresekere said he was one of the original directors of National Hotel Developers. He was a management consultant.

Hotel Developers Lanka Ltd. was inaugurated on March 1983. Originally this company was incorporated as Japan Lanka Ltd. and later changed as Hotel Lanka Developers Ltd.

There were two government directors in the Board of LMD. They were S. Rajalingam and M. T. L. Fernando. The latter was nominated by the government. They were appointed in respect of the shares held by the government.

Chairman: How many shares were held by the government? - 51 per cent.

Presently government owns 64 per cent of the shares. After December 1990 the government increased its number of directors to six out of 11. Mr. Rajalingam left and was succeeded by Mr. Randeniya.

Mr. M. T. L. Fernando resigned. Mr. Shanmugalingam replaced Mr. Rajalingam.

DSG: Who succeeded Mr. M. T. L. Fernando was it Mr. Peter Perera? - I cannot recollect. I will have to check and tell you.

Later in reply to a question by the chairman witness said it was Mr. Perera who succeeded Mr. Fernando.

Further examined by the Deputy Solicitor-General witness said the land originally belonged to the Urban Development Authority. It was leased out to Cornel and Company.

Mr. Amerasekera said that the purpose in increasing the government shares in the company was to enable the government to guarantee foreign loans. After the loans were paid back and the guarantee became extinct, the shares were to be re-transferred. The government continued to own those shares even today confirmed at a meeting of the shareholders of the company in 1990.

DSG: Do you have any documents to support that? - Yes.

Justice Jayasuriya: Was the government in building this hotel interested in promoting the tourist industry? - Yes.

Mr. Amerasekera further said that the construction of the hotel was completed in April 1987 and around October or November the same year he was asked to review the cash flow of the Board at that time. He merely compared the monthly reports given by Hilton International for the months of July, August and September 1987.

The report gave the number of rooms available as 387 but in the architectures review and building report the number of available rooms was given as 452 leaving four rooms for managerial apartments.

After completely constructing the hotel the formal opening took place in June 1987.

Further examined by the DSG witness said this hotel project was a 'turn-key' project where the constructors give an operatable hotel which is equipped and furnished.

He had raised the question of discrepancy in regard to the rooms during the Board meeting of HDL on December 30, 1987.

Asked by the Deputy Solicitor General when this loan was negotiated the witness said he believed it was in 1983 at the inception of the construction.

Deputy Solicitor General: That was the time of violence in the country? - Yes. The July '83 violence.

Witness said article 12 of the MOV made it mandatory for a foreign collaborator to be present at the Board meetings.

Q: This shows the foreigners took extra-care in having these articles, 126, 127 & 129? - Yes. There was

no Board resolution without a foreign collaborator.

Q: This may be due to the Japanese needing to secure their loan? - Yes. They had a veto right.

Q: The foreign collaborators were Mitsui Taise? - Yes.

Replying to further questions by the DSG witness said out of the 11 directors six were appointed by the government although the shares remained the same. Mr. Shanmugalingam was appointed in March '90. He said Cornel Perera was one of chief promoters and was the Chairman/Managing Director of the company from the inception.

Witness was referred to the prospectus and went on to describe details of the contract between the Hotel Developers Ltd and the Japanese.

Q: All these agreements pertained to the building of the Hilton Hotel by HDL? - Yes. The prospectus indicated the name of the company.

Q: What is the type of Hotel that was intended to be built originally? - Page 8 of the prospectus gives out the features. It briefly refers to 452 rooms with Tower concept construction going up to 22 floors, with covered car park for 400 vehicles and other features like banqueting etc... in keeping with five star Hotel status.

SPC on malpractices in public bodies

Q: So by January '84 all these agreements were signed? - Yes.

Q: To start this project profitably, was a cash flow prepared? - Yes. It was done by Hilton International. The cash flow projections were based on the number of rooms. In this case they took into account 456 rooms - leaving out 6 rooms as managers apartments - in computing the projected income.

Q: This was based on material supplied to Hilton International? - Yes.

Q: Who supplied this information? - I don't know.

Q: This would have been based on some project plan? - I believe it was based on the same 1980 plan by the Japanese architects.

Q: Who drew this plan? - KKS Japanese architects.

Commission: There were references to a contract. In addition there was preliminary agreement? - Yes. The preliminary plan was drawn on 30/3/83. Later this formed part of the investment agreement.

Q: From where was the data obtained for the plan? - There was no other plan other than the project plan. The data was taken from this plan.

Commission: Was it on this preliminary plan that the contract was handed over to Mitsui and Taise. - Yes.

One day after 31/3/83 preliminary plan Hilton International wrote and confirmed their preliminary forecast given in 1981 whilst showing the first year's average room rate to 73 US dollars from 70 dollars.

The 450 rooms were on 19 levels with each tower consisting of 228 rooms.

Q: You said there were 22 floors of them 19 to be rented out? - The others were public areas, like the lobby etc.... The room areas were confined to those 19 levels.

Commission: The rooms were located from 3rd to the 20th and 21st floor? - Yes.

Q: Did the building of the Hotel have a fixed price? - The construction agreement was specific as to this. This is called a general construction contract. Witness said it was on this basis that the component had to be paid from time to time.

Q: In short this was an order of payment, not on the work done? - Yes.

Q: In other words the construction of the building was entirely in the hands of the Japanese who were paid in terms of the agreement on a given date? - Yes. In fact these were the amounts given back to Mitsui and Taise on the loans obtained.

Q: But without checking on the work done? - No.

Commission: Was there a deadline for the comple-

tion of the Hotel? - Yes. March '84.

Witness said in October '83 the architectural plan was submitted for approval to the UDA. There was also a letter sent to the Firebrigade by the UDA forwarding these plans in January '94.

Witness said subsequently the UDA failed to produce the plans. It (the UDA) subsequently sent a letter saying they did not have a set of plans indicating approval had been granted.

Q: Does it mean that they had it for a long time and did not have it now?

Witness answering DSG said the soft opening of the Hotel was in July '87.

Q: All the queries came in later when you pointed out the discrepancies in the building project and your letters to the Board refusing to pay the Japanese? - Yes. This was in October '87 no sooner the Hotel opened.

He said he was required to review the cash flows by the Board and he merely compared the monthly report of Hilton International for July, August, September '87. Even in June '87 when the Hotel was opened profitability was based on 452 rooms.

However in the actual report I noted that all rates given by the Japanese were based on 387 rooms.

The Commission meets again at 9.30 am today.

THE ISLAND - FRIDAY 17TH MAY, 1996

Commission allows defence plea to lead Amarasekera's evidence

by Walter Nanayakara

Business and Management Consultant and former member of the Directorate of Messrs Hotel Developers' Lanka Ltd., Nihal Srinath Amarasekera (49) said Thursday that the twin tower 22 floor Hilton Hotel, which according to its original architectural design should have a minimum of 450 revenue earning rooms on completion did in fact have only 387 rooms when the hotel was formally opened in September 1984.

Amarasekera was giving evidence before the three member Special Presidential Commission probing into alleged corruption and malpractices in public institutions.

The Commission which holds its sitting in the BMICH comprises Justice Priyantha Perera (Chairman) and Appeal Court Judges. Hector Yapa and Ninian Jayasuriya.

Amarasekera made a written statement to the Commission earlier. When he appeared before the commission Thursday, Chairman Priyantha Perera asked counsel representing Chairman of the Hotel Developers whether he would cross-examine the witness on the basis of the statement.

Counsel D. S. Wijesinghe PC said the statement contained a lot of unrelated material and that he would like if the evidence in-chief of Amarasekera is led afresh before the Commission, so that Wijesinghe's client Cornel

Perera too could listen to it.

Commission: It is a statement recorded in the question and answer form. In the event of the evidence of Amarasekera being led afresh from the witness box, the Deputy Solicitor General C. R. de Silva will be asking the same questions and the witness repeating the same evidence.

Counsel: Your honour, Amarasekera has tendered a statement. We would like to listen to him giving evidence from the witness box so that we can have a 'feel' of his evidence.

Commission: The law permits the reading of evidence.

The Commission allowed the request of the defence counsel to lead the evidence of Amarasekera afresh.

Examined by Deputy Solicitor General C. R. de Silva, Amarasekera said that, the Hotel Developers' Co. Ltd., which owned the Hilton Hotel was incorporated in 1983. This company was originally called Lanka-Japan Hotel Co. Ltd., which also was an incorporated company. Lanka-Japan Hotel Co. Ltd., was dissolved to form the new company he added.

He said he was one of the original directors of the company.

He was involved in the complication of the company prospectus and memoranda and the articles of association of the company.

According to the prospectus the proposed Hotel Hilton should have 450 rooms and 22 floors.

It was to float

25,388,470 ordinary shares but this anticipated share capital was not fully subscribed.

He said that as the hotel project was to be undertaken with foreign loans, foreign lenders insisted on government guarantees. Under the Foreign Loans Act, the government could give such a guarantee only if it holds over 51 percent of the share capital of an undertaking.

He said that the land on which the Hilton Hotel is constructed originally belonged to

the Urban Development Authority (UDA). It was leased to Cornel Perera on a 99 year lease by the UDA.

Witness said the Cornel Perera was the Managing Director of the Hotel Developers' Co. Ltd., which was the main promoter of the project.

He said the Hotel Developers' Co. Ltd also transferred its 25,388,464 shares to the government in order to raise the percentage of the government share capital in the project. In addition the government also bought 40 million other shares of the company.

Compared with the lower quantum of shares subscribed to by the people the government's share rose to about 64 per cent, he said.

He said that the government appointed two Finance Ministry officials to the Board of Directory of the Hotel Developers Co. Ltd., as its representatives, he added.

Cornel Perera also leased to the company the land which he had taken on lease from the UDA.

Asked about the present status of the land witness said there was some litigation over this property.

He said that the value of the shares transferred by the company to the government was Rs. 250,897,500.

He said the hotel was to be built on a 'turn-key' basis and the main Japanese contributors

to the loan fund were Mitsui Co. Ltd., and Taisei Corporation which together contributed 12300 million yen, which was then equivalent to Rs. 1,360 million in Sri Lankan currency.

He said that in the original Board of Directors of the Hotel Developers' Co. Ltd. there were two government representatives. In 1990 September this number was increased to six. Out of the 11 Directors six were government representatives.

He said that the transfer of 250 million odd shares of the company to the Ministry of Finance was subject to the condition that the day the company had fully and finally discharged its obligations to the foreign donors under the loan agreements, the shares must be passed back to the company.

He said that the government guarantee covered both the capital and the interest accruing to it. The interest was 7.95 per cent per annum and repayments were to be made quarterly.

The negotiations for the loans took place somewhere around 1983, witness said.

He said that the Mitsui Company Ltd., and the Taisei Corporation were expected to hold five percent of the shares of the company each and the Japanese partners invited by the two companies one percent.

But in view of the low subscription the aggregate of the shareholding of the three groups rose to about 25 percent, he added.

Two representatives of the two Japanese companies were also appointed to the Board of Directors of the company. At least one of them must be present at every board meeting and no decision could be made by the Board of Directors in the absence of at least one of the Japanese representatives. This rule too was to be in force until the company fully discharged its obligations to the Japanese lenders under the loan agreement, he said.

Amarasekera said that a series of agreements were signed prior to the launching of the hotel project. They included the loan agreement of 31/1/84 between the Hotel Developers Co. Ltd., and the two Japanese firms, Mitsui Co. Ltd., and Taisei Corporation; designing and supervision agreement of 31/1/84 between the company and the two Japanese firms; land under lease agreement of 15.2.84 between Cornel Perera and the Hotel Developers Co. Ltd., agreement on furniture, fittings and equipment between Mitsui and the company dated 31/1/84; management agreement between the company and Hotel Hilton International and the guarantee agreement of 14.2.84, be-

Hilton Hotel probe

tween the government and the company.

He said that these agreements were signed for the construction of the Hilton Hotel.

The hotel was to be built on the twin tower concept with 252 rooms and 22 floors with a car park for 400 vehicles and other features necessary for a 5-star class hotel.

Witness said the parties to the investment agreement were the Government, Hotel Developers Co. Ltd., Mitsui Company and Taisei Corporation.

He said that it was anticipated to add a 3rd tower to the twin tower hotel as the second phase of development on a future date.

Witness said the architectural plans of the hotel was approved by the UDA, whose chairman was R. Pasarakalingam. The UDA wrote a letter in March 1984 to the company intimating the approval of the plans and asking three additional copies of the plans for the issue of the permit.

Witness said the plan the company submitted to the UDA for approval contained 27 pages but the approved plan had only 21 pages. They did not bear the UDA's rubber stamp. The UDA said they did not have any other plans.

Witness said he in-

formed the company about the discrepancy.

He said that construction of the hotel commenced in March 1984 and completed in April 1987. It was nominally opened in July 1987.

The hotel was declared fully open for business in September 1987.

He said that the monthly cash flow statements sent to the company by the Japanese accountants since the nominal opening of the hotel calculated the returns on the basis that the hotel had 450 revenue earning rooms.

But around September they made a mistake. The calculations based on 387 rooms rather than 450 rooms.

This discovery was made by accident. The company instructed witness to check on this. He presented a paper to the board meeting of the Hotel Developers' Co. Ltd., held on December 30, 1987. This was the start of controversy, he said.

The Commission earlier in the day decided to recall witnesses who made written statements to give evidence to enable the counsel appearing for noticed parties, to cross-examine them.



Present settlement with Japanese more beneficial to government

Hilton Hotel issue

THE settlement of the civil dispute with the Japanese Consortium in the Hilton Hotel issue was initiated by the former government, and the present government was only following that decision to settle the matter.

However the terms of the present settlement agreement was more beneficial to the Sri Lanka government, Mr. Nihal Sri Ameresekere, Business and Management Consultant said yesterday before the Special Presidential Commission sitting at the BMICH.

The Commission of Inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (Chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter Mr. Cornel Perera, Chairman and Managing Director of Hotel Developers (Lanka) Ltd, the owning company of the Hilton Hotel and former directors, Mr. K. N. Choksy, Mr. F. G. N. Mendis and Mr. R. Paskaralingam, Former Secretary to the Treasury (absent) have been required to show cause why they should not be found guilty of misuse or abuse of power or corruption or commission of fraudulent acts in connection with the construction of the Hilton Hotel building.

Mr. D. S. Wijesinghe PC with Mr. S. C. Crossette Thambiah and Mr. Chula Bandara instructed by Sivananthan Associates appeared for Mr. Cornel Perera.

Mr. R. K. W. Goonesekera with Mr. W. B. C. Senerath Nandadeva instructed by Mr. M. D. de Silva appeared for Mr. F. G. N. Mendis.

Mr. Ranjit Abeysuriya PC with Neil Dias and Miss Priyadharshanee Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam.

Mr. K. N. Choksy was absent having declined to participate in the proceedings.

Mr. A. R. C. Perera, Deputy Solicitor General, and Mr. Jayantha Jayasuriya Senior State Council assisted the Commission.

Mr. Godfrey Gunasekera, SSP is also assisting the commission.

Mendis excused

At the outset Mr. F. G. N. Mendis made on application supported by his Counsel, Mr. W. B. C. Senerath Nandadeva to dispense with his presence in Court said:

"He had no objection to evidence being led in the inquiry in his absence. However Counsel would be present on his behalf.

The Commission allowed the application, but told Mr. Mendis that when his presence was required he would be modified and he should be present.

Mr. Nihal Srinath Ameresekere, Chartered Accountant, Business and Management Consultant continuing his evidence was referred by Justice Jayasuriya to the schematic design plan prepared by the Japanese architect KKS.

In the synopsis of the layout of the hotel building there was reference to the function rooms or committee rooms which were to be situated just below the third floor.

Justice Jayasuriya: If anyone says those function rooms were on the third floor it would be incorrect? -

(By M. J. M. Zarook and Manjula Fernando)

Yes. In fact these rooms are below the third floor.

The room floors were to be from the third floor to the 20th floor and the 21st floor that would be 19 floors of rooms. In each floor of each tower there would be 12 room bays.

Altogether there would be 228 room bays or modules in each tower which would amount to 456 room bays in the two towers, which were to be put up at the start.

When the third tower which was contemplated in the second stage was constructed, there would be 684 room bays.

Witness said it was on the basis of the 456 room bays that future projections of profitability of the hotel was computed.

Cash flow reports were prepared by the Mitsui and Taisei companies. Mr. Rajalingam who was the Director of Economic Affairs, Treasury handed the documents on behalf of the Finance Ministry.

In documents P7 and P7 A the number of rooms available was stated as 456, but in P7 B the number of rooms was reduced to 452 as saleable rooms as four rooms had been taken over by management.

SPC on malpractices in public bodies

DSG: Was it reduced further? - Yes. In documents dated December 21, 1987 (P 14 and P 46) the number of rooms were reduced to 387.

When the number of saleable rooms were 456 the average room rate was 70 dollars. Later when the

number of rooms reduced to 452 the rate had been increased to 73.5 dollars.

DSG: But the profitability remain the same? – Yes. Mr. Shanmugalingam at a board meeting has confirmed that the state guarantees were given on the basis of the profitability.

The witness produces a minute of a meeting in which. Mr. Shanmugalingam had stated that the government guarantee was given on the basis of the profitability and once the number of saleable rooms were reduced it would materially affect the government's position.

Five Star

The witness was referred to a document P264 written by the Ceylon Tourist Board to Mr. Cornel Perera dated March 15, 1983.

In that letter the Tourist Board stated that it was giving 5 star approval to the Hilton Hotel on the condition that a detailed architectural drawing was submitted.

Justice Jayasuriya: This letter shows that the schematic design plan of 1980 had been submitted in 1983 also? – Yes.

Justice Jayasuriya: Therefore it would not be correct from anyone to say that the schematic plan was discarded or abandoned in 1983? – Yes.

Witness was referred to the share certificates. In 1990 government had acquired 4 million shares paying Rs. 40 million (one million dollars) to facilitate the payment of a loan of 2 million dollars to the Japanese.

In August 1990 the Secretary to the Treasury, Mr. R. Paskaralingam had moved a resolution to remove the nominees of Cornel and Co, Mr. Cornel Perera, Mr. F. G. N. Mendis and witness from the Board of HDL. In October 1990 that resolution was withdrawn.

DSG: Why was it withdrawn? – I think the Finance Ministry and the Attorney General's Department had discussions with Cornel and Co on amendments to the share transfer agreement and the investment agreement.

Witness was referred to a memo dated September 10, 1994 from Mr. A. S. Jayawardena, Secretary to the Finance Ministry to the Prime Minister, who was also the Finance Minister.

Consequent to that the Secretary, Finance had written to Mr. Cornel Perera stating that Mr. and Mrs. Cornel Perera would be removed from the Board and that UDA would cancel the lease of the Echelon land.

On September 21, 1994 the witness was appointed as an adviser to the Minister of Finance. It was a one year contract. But in relation to Hilton matters he was still assisting the ministry.

Mr. Paskaralingam had written to Cornel and Co several times asking that capital be put in.

Justice Jayasuriya: What happens if they failed to put in the capital? – The ministry had written saying they would take action.

Mr. Cornel Perera was not present at the meeting held at the ministry premises to sign the amended share transfer agreement.

A settlement was signed with the former government. Mitsui and Taisei consortium and Cornel and Company on the rescheduling of the loan.

This decision was initiated by the former government and the present government followed on the same lines.

Settlement beneficial

Witness said that the present settlement agreement with the Japanese was more beneficial to the Sri Lanka government. The confusion caused in the press and in certain circles on the matter was because of the increase of the value of the Yen.

Chairman: Why didn't the government try to settle the matter at that time? – It was I who opposed the settlement because the promissory note was to be given by the government and not by HDC.

Witness was referred to a letter of the Executive Director HDL, Mr. Naka to the Urban Development Authority about a fire which occurred in the Mitsui Taisei Consortium construction office in the Hilton site on October 18, 1985.

Justice Jayasuriya: If anyone were to state that amended architectural plans became necessary because of the fire it would be erroneous? – Yes. Because the date of the amended plan was July 15, 1985. Otherwise the amended plan also would have got burnt in the fire.

Witness said that the Executive Director Naka had said that all documents and drawings in the office got burnt consequent to that their principals in Tokyo sent them copies of the documents in October 1985.

Witness said even if the original plan had got burnt, the owner's copy of the original plan should have been at the main HDL operational office.

Chairman: In whose custody should the plan have been in the HDL office? – The Executive Director or with the General Manager or with the Managing Director.

Witness said there was no material forthcoming in the form of contemporaneous correspondence between the client, owner, the architects and the contractors on the need for amended or duplicate plans.

Justice Jayasuriya: There should be plenty of documentary proof on this issue, but so far nothing is forthcoming? – Yes.

Further proceedings were put off for May 20.

Loan reschedule was on the lines stipulated by former Govt. — Witness

by Wijitha Nakkawita

The decision made by the present President Chandrika Bandaranaike Kumaratunga to reschedule the loan given to the management of the Hilton Hotel was on the lines stipulated by the former government but was more advantageous to the government than the original offer. She made the decision in 1994 as the Prime Minister and Minister of Finance, Nihal S. Amarasekara told the Presidential Commission inquiring the malpractices and corruption in Government bodies yesterday (17).

Amarasekara a former adviser to the Ministry of Finance was continuing his evidence before the commission. Evidence was led by Deputy Solicitor General A. R. C. Perera. The Commission comprises Appeal Court Judges Hector S. Yapa, F. N. D. Jayasuriya and (Chairman) Priyantha Perera.

Examined by Deputy Solicitor General A. R. C. Perera, the witness said that the original architectural plan was for 684 rooms in three towers in the Colombo Hilton Hotel and the government had come in to the project to guarantee the loans needed for the project initiated by Hotel Developers Ltd. who in collaboration with Mitsui and Hilton Hotels International had obtained the government approval for the building of the hotel.

Q: What were the condi-

tions under which the government decided to guarantee the loans for the project?

A: Profitability of the hotel was the criterion.

Q: How many rooms did the original plan include?

A: In the first stage it was to have 456 rooms and in the second stage it was to have a total of 684 rooms.

Q: Later it was reduced to 387 rooms in 1987?

A: Yes and I pointed out discrepancies in the project plans. Government guarantee was given going on the profitability of the project but when the number of rooms was reduced the profitability was also reduced.

Witness said that the intention of the government in guaranteeing the loans was not meant to pay the loans but to enable the company to obtain loans. When the profitability declined the Japanese company called upon the government to pay the loans. In September after a meeting of the Board headed by the Deputy Secretary to the Treasury (Shanmugalingam) R. Paskaralingam, Secretary to the Finance Ministry wrote to the Attorney General recommending the liquidation of the loan.

At this stage the witness was shown a letter written by the Treasury to Cornel Perera and Company to pay up the shortfalls amounting to Rs. 85 million. The letter dated 10.8.1990 was

signed by R. Paskaralingam.

The witness vouched for the authenticity of the letter and said that Cornel and Company failed to pay the amount within the stipulated period of one year. Reminders were sent to the company and the Chairman of the company failed to come and sign the amended agreement with the Treasury. In August 1992 a settlement was agreed upon by the parties to the contract, Mitsui and Taise Companies of Japan and The Treasury and Cornel Perera and Company in Sri Lanka.

The present government following up the action taken by the former government to reschedule the loan given to the Hilton project and the course of action is consistent with the action taken by the previous government. Mrs. Chandrika Bandaranaike Kumaratunga who was the Prime Minister and Minister of Finance had made a decision at that time (1994) which was more favourable to the government than the decision made by the earlier government.

The witness said that Cornel Perera and Company had not paid the rent for the Echelon Square, the site of the hotel, to the Urban Development Authority and that the President had directed the officials to find out whether the lease of the land could not be cancelled by the UDA in

view of the fact that the dues had not been paid.

Cross examined by the Commission, the witness said that the original architectural plans of the Hilton Hotel had not been altered duly and that when he went to visit the Main Hotel Project Office, he found that the relevant file contained a minute to say that the plans had to be altered due to a fire that destroyed the plans kept in the office.

Commissioner: The fire had been reported on October 18, 1985 while the plans were altered on July 15, 1985. To say that the amendment to the plans was necessitated by the fire which destroyed the plans at the Hotel Construction project is untrue?

Witness: Yes.

Commission: Amendment of plan anterior and the fire posterior?

Witness: Yes.

The witness under further cross examination said that it was mandatory to have the architectural plans at the main construction office of the company and when the witness went there found a note in the file that the plans were destroyed by fire in 1984.

Counsel: It said the fire was in 1984?

Witness: Yes.

Asked how he came to know about the fire in 1985, the witness said that he read about it in the newspapers, but there had been no fire in 1984.

Three floors of rooms were missing - Consultant

By M. J. M. Zarook and Manjula Fernando

ACCORDING to the final certificate, the Hilton Hotel building had been completed according to construction agreement, but there was a shortfall of three floors of saleable rooms, Mr. Nihal Sri Ameresekere, Business and Management Consultant, said yesterday before the Special Presidential Commission sitting at the BMICH.

The Commission of Inquiry into Malpractices and Irregularities in public bodies comprises Justice Priyantha Perera (chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter Mr. Cornel Perera, Chairman and Managing Director of Hotel Developers (Lanka) Ltd the owning company of the Hilton Hotel and former director, Mr. K. N. Choksy, Mr. F. G. N. Mendis and Mr. R. Paskaralingam former Secretary to the Treasury (absent) have been required to show cause why they should not be found guilty of misuse or abuse of power or corruption or commission of fraudulent acts in connection with the construction of the Hilton Hotel building.

Mr. D. S. Wijesinghe PC with Mr. S. C. Crossette Thambiah and Mr. Chula Bandara instructed by Sivanathan Associates appeared for Mr. Cornel Perera.

Mr. R. K. W. Goonesekera with Mr. W. B. C. Senerath Nandadeva instructed by M. D. de Silva appeared for Mr. F. G. N. Mendis.

Mr. Ranjit Abeysuriya PC with Mr. Neil Dias and Miss Priyadarshanee Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam.

Mr. K. N. Choksy was absent having declined to participate in the proceedings.

Mr. A. R. C. Perera Deputy Solicitor General with Mr. Jayantha Jayasuriya, Senior State Counsel assisted the commission.

Mr. Godfrey Gunasekera, SSP, Chief Investigating Officer is also assisting the commission.

Mr. Nihal Srinath Ameresekere, Chartered Accountant resuming his evidence was questioned by Justice Jayasuriya who referred him to the schematic design plan (P4).

Witness said when one enters the Hilton Hotel from the main entrance one first gets into the lobby which was the first floor. The rooms were from the third floor to the 21st floor and there was the roof top making 22 floors ascending from the lobby floor. From the lobby floor one descends to the mezzanine floor, the ground floor and the basement.

Justice Jayasuriya: If a person were to say that there were 22 floors from the lobby would it be correct? - Yes.

Justice Jayasuriya: If a person were to descend from the lobby floor there would be three floors? - Yes.

Witness said if a person were to descend and ascend it would be correct to say there were 25 floors.

New Plan

Examined by Mr. A. R. C. Perera, DSG, Mr. Ameresekere was referred to his letter (P18) dated 22 July 1985 to the secretary, HDL asking that certain documents be made available to the Board. At that time there was no mention of the introduction of a new plan.

The commission at this stage examined the plans. P104 had eight sheets with an additional eight sheets and another eleven sheets totalling 27 sheets. The set of amended plans from the Municipal Assessor had 27 sheets.

Witness said after his letter, monthly reports were tabled by the constructing consortium at the board meetings.

On 30 April 1987 on completion of the hotel building the keys were received by Mr. Cornel Perera who handed them over to Hilton Hotel International Ltd. There was a photograph of the occasion. According to the construction agreement of 31-1-84 (P31) there were to be 22 storeys with 452 room bays.

In that photograph only Mr. Cornel Perera and the Executive Director were present. The other Directors were not present. According to a Board Minute of 8.6.87 the Board of Directors had been informed of the handing over of the keys to Hilton International on that day.

Witness said the final completion certificate stated that all defects had been looked into and the building completed according to the construction agreement.

Shortfall

According to the completed project there were saleable rooms only in 16 floors (4th to the 19th floor). The third floor had committee rooms and function rooms.

Chairman: There was a short fall of three floors of saleable rooms? - Yes, My Lord.

Witness was referred to the report of the panel of architects appointed of the Commission. At the stage Mr. Crossette Thambiah said he would be challenging the correctness of the architect's report.

Justice Jayasuriya: The architectural report stated the lift grid had also been constructed as another room bay? - Yes.

Justice Jayasuriya: That means considering both towers each floor has 25 room bays and in 16 floors 400 room bays? - Yes.

Ex-DST says he has been threatened

FORMER Deputy Secretary to the Treasury Mr. K. Shanmugalingam has complained to the Special Presidential Commission sitting at the BMICH that some unknown persons had come to his residence and shouted threats at him.

In this connection the Commission directed Chief Inspector R. A. Upasena of the Wellawatte police who appeared on notice to make inquiries into Mr. Shanmugalingam's complaint and also ensure that proper protection was given to him.

Chief Inspector: He has made this complaint on a future reference basis.

Chairman: Yes. But now that it has been brought to our notice he must be assured that he will not be intimidated in the future. Otherwise it will be difficult for the Commission to get witnesses to testify before us.

Mr. Shanmugalingam who is one of the parties noticed to show cause in the Nylon 6 plant inquiry is also a prospective witness in the inquiries against the Customs etc.

The Commission directed Chief Inspector Upasena to inquire into the complaint and submit a report in two weeks time.

SPC on malpractices in public bodies

Initially there were 456 room bays and after leaving four room bays for the managers apartments it decreased to 452 later it decreased to 387.

Profitability

DSG: Can you tell when this figure originally came? - From the Hilton monthly profitability reports.

Profitability was calculated by multiplying the number of rooms with 365 days of occupancy and the room rate.

DSG: Do you say that the number of room bays got reduced by the reports given by the Hilton International? - Yes. There is no other real explanation for that.

The witness had pointed out this discrepancy in December 1987 to the HDL board and afterwards discussed the matter with Mr. Randeniya and Mr. M. T. L. Fernando.

The witness said that at that point he had no suspicion about the matter he merely thought it was an error of the computation of the profitability report.

After about 4-5 months Mr. M. T. L. Fernando had requested that an Independent engineer be appointed to inspect the building and to produce a report.

According to the schematic plan the floor area occupied by the 3 towers were 51,160 square meters. It covered car park facilities for 400 vehicles.

The witness said if the schematic plan were to be changed the HDL must do the changes and the board of directors must be aware of that. But the board of directors were not aware the number of room bays had been changed to 387.

The witness being examined by Mr. Neil Dias who was appearing for Mr. Shanmugalingam said that he objects to Mr. Amerasekera presenting evidence taken from the architectural report as his own.

DSG stated that the architectural report consists of the facts the witness had already presented before the Commission.

The witness was referred to a letter written by Mr. Chocksy as a director of HDL stating that his view was that an inspection on the hotel building by a independent engineer was not necessary as on 24 and 25 of March 1988 an inspection was carried out by an independent architect.

The board directors had unanimously agreed to that.

Chairman: After raising the question why did you agree to that? - Mr. Chocksy was a much senior and I was very junior to him so I thought they had taken the right decision. I think I was timid at one time.

On December 13, 1989 the witness had submitted a memo stating that he couldn't be satisfied with the completion of the construction as they were not acceptable as payable.

The Commission resumes sittings today. This matter will be taken up on May 23.



Malpractices probe in public bodies— Hilton Hotel

'Hotel Developers Ltd. defaulted instalment payments'

by **Wijitha Nakkawita**

Hotel Developers Ltd., the company which entered into agreement with the Japanese counterpart companies for execution of the Hilton Hotel had defaulted payment of instalments under the agreement and had decided to mortgage the building of the hotel to Japanese firms even when this course of action was objected to by Dr. A. C. Randeniya and himself, Nihal S. Amarasekara former adviser to the Finance Ministry told the Presidential Commission probing corruption and malpractices in government bodies.

Amarasekara was being cross examined by Deputy Solicitor General A. R. C. Perera. The Presidential Commission comprises Appeal Court Judges, Priyantha Perera, (Chairman) and Hector S. Yapa and F. N. D. Jayasuriya, (members). The commission was hearing the Hilton Hotel

project yesterday (23) at the BMICH.

The witness said that under the agreement 600 million Yen became payable as an instalment of the loan guaranteed by the state on March 11, 1988 while the Japanese counterparts stipulated that the building of the Hilton Hotel be mortgaged to them in lieu of the outstanding instalments of the loan. At that stage the witness and Dr. Randeniya who were members of the board of management of Hotel Developers Ltd, as government nominees of the board had objected to the mortgage but their objections were not considered by the board.

Amarasekara also said that despite the objections raised by them on grounds that it was improper to mortgage the property while there was a government guarantee on the repayment of the loan, the board of directors

had agreed to include the mortgage clause in the loan rescheduling agreement with the Japanese.

Dr. Randeniya then wrote to R. Paskaralingam who had signed the loan rescheduling agreement on behalf of the state including the "obnoxious" clause, requesting the latter to cancel the clause as it was disadvantageous to the company which had a government guarantee in the repayment terms of the loan. However the Japanese had also reduced the interest rates of the loan from 7.9 percent to 6 percent in the new agreement and R. Paskaralingam after five months wrote to Cornell Perera, Chairman of the company directing him to have the mortgage clause deleted from the loan repayment agreement. The Japanese thereafter agreed to delete the clause.

Earlier in the cross examination the wit-

ness said that the board of directors had decided to make the payment of dues after a final inspection of the completed building on an opinion expressed by K. N. Choksy that final certificate issued by architects was to be accepted for the purpose of the payment without accepting the proposal to have an independent engineer make a physical check of the completed building before the payment was made.

The board including Cornell Perera Chairman, had decided to accept the final certificate by the architects without having an independent engineer inspect the building.

The witness also said that some of the objections he had made at the board meetings had not been recorded in the minutes of the board meetings while the objection raised by Dr. Randeniya had not been taken into by the board of directors.

'Objected to hotel being mortgaged to Japanese'

By Norton Weerasinghe and Manjula Fernando

Mr. Nihal Sri Ameresekere, Business and Management Consultant told the Special Presidential Commission probing malpractices and corruption in public bodies yesterday that he and Dr. A. C. Randeni, another director of Hotel Developers Limited objected to the hotel being mortgaged to the Japanese when they found it difficult to pay monies due to the Japanese.

"We took up the position that we were opposed to a mortgage while a government guarantee was also there" It had to be one or the other, he said.

Mr. Ameresekere was continuing his evidence at the inquiry into the Hotel Hilton matter.

The Commission of Inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (Chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter Mr. Cornel Perera, Chairman and Managing Director of Hotel Developers (Lanka) Ltd, the owning company of the Hilton Hotel and former directors, Mr. K. N. Choksy, Mr. F. G. N. Mendis and Mr. R. Paskaralingam, Former Secretary to the Treasury (absent) have been required to show cause why they should not be found guilty of misuse or abuse of power or corruption or commission of fraudulent acts in connection with the construction of the Hilton Hotel building.

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Mr. Ranjit Abeysuriya PC with Neil Dias and Miss Priyadharshanee Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam.

Mr. K. N. Choksy was absent having declined to participate in the proceedings.

Mr. A. R. C. Perera, Deputy Solicitor General, and Mr. Jayantha Jayasuriya Senior State Counsel assisted the Commission.

Mr. Godfrey Gunasekera, SSP is also assisting the commission.

Mr. Ameresekere said in answer to Justice Jayasuriya that a luxury apartment on top of a hotel building for human habitation is called a penthouse.

In the building of Hotel Hilton the machine room is located on the 21st floor while the elevator was located on the 22nd floor.

According to the schematic design plan on one floor in both towers there are 25 room bays. This was made by making the elevator grid in each floor as another room

bay. Otherwise it would have been only 24 room bays.

In the report of the panel of architects appointed by the commission has stated the schematic plan shows the machine room as a part of the 19th floor. In general architectural practice the lift houses, machine rooms and roof slabs are not counted as the total number of stories.

Justice Jayasuriya: Below the roof there are concrete slabs and the lift rooms are housed there? Yes.

Justice Jayasuriya: The architect says it cannot be considered a floor? Yes

Witness was also questioned at length on the elevations of some of the floors as given in the plan.

Justice Jayasuriya remarked that the elevations on the different floors as given in the plans would enable the commission to find out whether the panel of architects is correct.

Shown P163 (Sheet No. A 19) witness said in answer to further questions by Justice Jayasuriya that there were a lot of entries in what was called the revision column. But no entries are made in P104 (Sheet No.19). The description of the amendment is not shown. There is only one entry on top.

Justice Jayasuriya: So there is a disparity in the two plans? Yes.

Mr. Ameresekere said that both plans had been seen and approved by the Urban Development Authority. Both approvals have been given on the same day (19-4-86).

Justice Jayasuriya: Have you got anything to say about it.

Mr. Ameresekera: It is questionable.

Justice Jayasuriya: It is the plans on which we will have to depend on to decide this issue to go into a lot of things.

Mr. Crossette Thambiah: At the end of this exercise we will be as competent in architecture as we have now been in valuation.

Justice Jayasuriya: We have to go into these meticulously.

Mr. Crossette Thambiah: What is important is to do this with an open mind without assuming there was a fraud. If take the bits and pieces with an open mind you will see that basically the plans were the same with minor amendments.

Justice Jayasuriya: Who was the founder chairman of the UDA?

Mr. Ameresekera: I believe it was Mr. Paskaralingam who was the chairman of the UDA from 1983 to 1988. Later he become Secretary to the Treasury., Mr. Ameresekera answering questions by the Deputy Solicitor-General A. R. C. Perera said the final certificate had been issued on August 25 1988 after 5 months after the final inspection was carried out March 24 and 25, 1988. Site meetings which were held after the site inspections were done were chaired by Mr. Cornell Perera.

On August 8, 1988 Mr. K. N. Choksy had given an

opinion as requested by the board that an inspection done by an independent engineer was unnecessary as March 24 and 25 1988 an inspection had already been carried out by an independent architect.

DSG: On 12/8/1988 the board took a decision not to have an independent inspection? - Yes.

Q: And the final certificate has been issued on August 25 1988. That was after the board decision had been taken? - Yes.

After the final certificate was signed the witness had filed an objection in November 1989.

Chairman: Why did you wait till November, why didn't you act earlier? - The question of construction arose in November when the payment of the retention money came up.

The HDL had defaulted the payment of two instalments of the loan including the retention payment and some part of the construction.

The Japanese had postponed the defaulted payment until March 11, 1990, and the board had accepted the decision as there had not been any choice. The witness said there was no money to pay even on March 11, 1990 unless the government paid.

From July 31, 1989 the interest rate was reduced from 7.95% to 6%.

Mr. Amerasekera said that he objected to the payment after the final certificate in December 1989. Before that there was an attempt to mortgage the hotel to the Japanese.

Chairman: Why did you not object to this prior to December, 1989?

Mr. Amerasker: It is only at this time the question of paying the retention money came up. Up to that what had to be paid was considered as loans under a loan agreement. It was only in December that the question of paying arose.

The attempt to mortgage the hotel was made when it was found that HDL was not having enough money and defaulted in payment of two instalments of the loan and some parts of the construction payment which was not out of the loan grant but was to be loaned out of the public issue money. So in July 1989, the Japanese proposed by agreement to postpone all these default payments till March 11, 1990.

Mr. Amerasekera said that when it was proposed by the board to mortgage the hotel, Dr. A. C. Randani and he objected. Dr. Randeni even threatened to resign if that was done with a government guarantee also being there.

Dr. Randeni lodge his protest to Mr. Paskaralingam and later the mortgage clause was removed with the two Japanese companies, Mr. Cornel Perera, and Mr. Paskaralingam agreeing to remove the mortgage clause.

The inquiry will be taken upon May 27th, the commission meets today.

Found out only after payment was demanded ...

DAILY NEWS - TUESDAY MAY 28, 1996

Hilton not built as per original plan

- Nihal Sri Amerasekera

By M.J.M. Zarook and Manjula Fernando

IF THE Hilton Hotel had been mortgaged to the Japanese contractors as had been suggested the hotel would have gone to the Japanese as the owning company was not in a position to redeem the loan, Mr. Nihal Sri Amerasekera, Business and Management Consultant said before the Special Presidential Commission sitting at the BMICH yesterday.

He, therefore was opposed to a mortgage because a state guarantee of the loans had already been given.

The commissioner of inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (Chairman), Justice Hector S. Yapa, and Justice Ninian Jayasuriya.

In this matter Mr. Cornel Perera, Chairman and Managing Director of Hotel Developers (Lanka) Ltd. the owning company of Hilton Hotel and former directors, Mr. K.N. Choksy, Mr. F.G.N. Mendis, and Mr. R. Paskaralingam, former Secretary to the Treasury (absent) have been required to show cause why they should not be found guilty of misuse or abuse of power or corruption or commission of fraudulent acts in connection with the construction of the Hilton Hotel building.

Mr. D.S. Wijesinghe PC with Mr. S.C. Crossette Thambiah and Mr. Chula Bandara instructed by Sivanathan Associates appeared for Mr. Cornel Perera.

Mr. R.K.W. Goonesekera with Mr. W.B.C. Senarath Nandadeva, instructed by Mr. M.D. de Silva appeared for Mr. F.G.N. Mendis.

Mr. Ranjith Abeyasuriya PC with Neil Dias and Miss Priyadharshanee Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam. Mr. K.N. Choksy was absent having declined to participate in the proceedings.

Mr. A.R.C. Perera, Deputy Solicitor General and Mr. Jayantha Jayasuriya Senior State Council assisted the commission.

Mr. Godfrey Gunasekera, SSP is also assisting the commission.

Mr. Nihal Amerasekera examined by Mr. A.R.C. Perera, Deputy Solicitor General said he and Dr Randeni objected to the mortgage clause in the draft at the July 17, 1989 board meeting. Witness was not present at the next meeting on August 9 and at the meeting on Sept 7, 1989, he had pointed out that his objections had not been recorded in the minutes. The chairman had said it was not necessary as the agreements would be tabled in the next meeting.

At the board meeting held on November 6, 1989 Dr. Randeni and witness had pointed out that the mortgage clause had been included while their objections existed. Dr. Randeni had threatened he would resign if they included a mortgage clause when a state guarantee had already been given.

The same day (November 6) Dr. Randeni had written to Mr. Paskaralingam stating their objections on certain clauses as they were not in the interest of the government.

The agreement on the deletion of the mortgage clause was set up on November 20, 1989 but the deletion was effected on May 1990.

Mr. Amersekera said he refused to make the payments to the Japanese until certain documents were produced to back up the completion certificate.

Witness said that his position was that he needed further clarification to approve the payment of the balance money to the architects.

Witness referred to the responsibilities and duties of the architect according to the supplies contract.

Witness said he came to know of the substitution of the plans on 28 February 1990 and it was confirmed on March 1.

He brought this to the notice of the Board of Directors on March 7.

Justice Jayasuriya: Was the Japanese representative present when you raised this matter? – Yes, the Japanese director Ogami. The Managing Director, Mr. Cornel Perera was also present.

Chairman: What was the reaction of the Board to this disclosure? – Silence, My Lord.

Justice Jayasuriya: Did Mr. Ogami say anything? – No, My Lord.

Justice Jayasuriya: Did Mr. Cornel Perera say anything? – No, My Lord.

Witness said that with so many doubts in his mind when the mortgage question came up he was definitely against it.

DSG: What do you think the consequences would have been if the mortgage went through? – The Hotel would have gone to the Japanese if the loans were not paid. At that time the company was not in a position to redeem the mortgage.

Justice Yapa: Then why did the other directors want to go ahead with the mortgage. Were they ill advised? – I don't know My Lord. But the answer is related to what happened in February and March 1990.

Chairman: Who initiated this idea of mortgage? – The Japanese.

Chairman: Do you know why the Japanese wanted to further secure their commitment when there was a state guarantee? – On March 11 all the payments became due as they were bunched together. The Japanese wrote on March 12 saying they would declare HDL defaulted and demand payment from the government on the guarantee.

Witness was referred to a meeting between two representatives of Mitsui Taisei and Mr. Cornel Perera, Mr. K. N. Choksy and Mr. Ogami of HDL on 26 January 1990 in connection with the payments.

DSG: Did the board of HDL give permission to Mr. Cornel Perera and other directors to meet the Mitsui Taisei representatives? – They informed the Board of the meeting later.

DSG: Was Mr. Choksy a Member of Parliament at that time? – I think he was in 1990.

Witness said on agreement was reached to pay US dollars two million to the Japanese. Witness however wanted a finality to be reached on rescheduling of the loans before payment was made.

Justice Jayasuriya: At that time was there a District Court injunctions preventing any payment to the Japanese? – No. This was before the injunction.

Witness was referred to a letter of Mr. K. N. Choksy to Mr. Ogami on the memorandum sent by witness with regard to the completion certificate Mr. Choksy had stated that these certificates are in accordance with the contract and that there was no need for a further inspection of the building.

Mr. Crossette Thambiah said this was on opinion expressed by Mr. Choksy and not a certificate issued by him.

DSG: Are you defending Mr. Choksy or whom?

Mr. Crossette Thambiah: I am defending my client you don't have to make insinuations.

On March 1, 1990 the Japanese sent letters demanding full payment. On March 12, 1990 immediately after the due date of the postponed payment (March 11, 1990) the Japanese declared HDL a defaulter and demanded the payment from the government on the guarantee.

Only after the Japanese demanded payment from the government witness found out the building was not constructed according to the original plan.

The witness said he did not know on what plan the building has been constructed.

In March 1990 a payment of US dollars two million was made to the Japanese. The government subscribed one million dollars.

Mr. Choksy was elected in the annual share holders meeting to represent the public share holders but all directors had to be primarily responsible to the company, the witness said answering a question raised by the commission.

To protect the government interest the secretary to the treasury had six directors on the board, from 1990. Earlier the government had two directors.

Witness was referred to P86 written by Secretary, Minister of Finance dated 2 February 1990 requesting all directors of HDL to a meeting with the Secretary on February 16. Representatives of Mitsui Taisei were also present.

The issue of the outstanding payments to the Japanese was raised and a committee consisting of Mr. K. Shanmugalingam DST Mr. V. M. Y. Casiechetty and witness was appointed to discuss the matter with the Japanese representatives.

Further proceedings were put off for May 30. The Commission will resume sittings today.

Business Consultant says he refused to certify accounts for Hilton

(By M. J. M. Zarook and Manjula Fernando)

MR. Nihal Sri Amerasekera, Business and Management Consultant said yesterday before the Special Presidential Commission sitting at the BMICH that he objected to the accounts of the Hilton Hotel Project for the year ending March 1990 being appeared as there were several discrepancies in the project.

The Commission of Inquiry into Malpractices and Irregularities in public bodies comprises Justice Priyantha Perera (Chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter Mr. Cornel Perera, Managing Director of Hotel Developers (Lanka) Ltd. the owning company of the Hilton Hotel and former directors, Mr. K.N. Choksy, Mr. F. G. N. Mendis and Mr. R. Paskaralingam, former Secretary to the Treasury (absent) have been required to show cause why they should not be found guilty of misuse or abuse of power or corruption or commission of fraudulent acts in connection with the construction of the Hilton Hotel building.

Mr. D. S. Wijesinghe, PC with Mr. S. C. Crossette Thambiah and Mr. Chula Bandara instructed by Sivanathan Associates appeared for Mr. Cornel Perera.

Mr. R. K. W. Gunasekera with Mr. W. B. C. Senarath Nandadeva instructed by Mr. M. D. de Silva appeared for Mr. F. G. N. Mendis.

Mr. Ranjit Abesuriya, PC with Mr. Neil Dias and Miss Priyadharshanee Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam.

Mr. K. N. Choksy was absent having declined to participate in the proceedings.

Mr. A. R. C. Perera, Deputy Solicitor General and Mr. Jayantha Jayasuriya, Senior State Counsel assisted the Commission.

Mr. Godfrey Guansekera, SSP is also assisting the Commission.

Mr. Nihal Amerasekera, Chartered Accountant continuing his evidence said after the District Court issued enjoining order in November 1990 he objected and rejected the accounts pertaining to the financial year beginning April 1, 1989 and ending March 31, 1990.

He said prior to that the substitution of the plans the discrepancy of the room numbers and shortage of the floors and car park space had also been disclosed to the board.

Before the accounts were submitted to the auditors the HDL and VOA had admitted that the original architectural plan was missing.

In the memorandum dated April 4, 1990 the witness had asked for arbitration.

On March 1, 1990 Mitsui demanded payment of 3.978

billion yen amounting to Rs. 1,219 million. Witness referred to his memorandum (P107) dated 11-1-90 by which he requested that Mr. Cornel Perera, Mr. Choksy and Mr. F. G. N. Mendis and Mitsui Taisee the defendants in his District Court case should not sit at the board meeting as there was a conflict of interest.

The board by its minute P109 stated that there was no conflict of interest. Witness said that at a board meeting he refused to certify the accounts as all documents including vouchers had not been submitted.

Witness said in the light of several discrepancies including the number of rooms and the substituted plans he had reason to doubt the authenticity of the accounts and asked for the vouchers. The Hilton Hotel project was a turnkey project and he had to be satisfied that what was handed over to the owners (HDC) was what was ordered or envisaged in the agreement.

Justice Yapa: You wanted the accounts rejected. If your position was accepted what would have happened? - This would not have gone so far, and the matter would have got resolved in the board. Mr. Amerasekera to questions by the Commission said the auditors had the right to make inquiries and probe the accounts.

SPC on malpractices in public bodies

On November 27, 1990 the board finally approved the accounts after amendments at the board meeting. On November 22 where the auditors were also present the witness had objected to the annual accounts and stated that the balance sheet was also not correct.

Mitsui had written a letter on the same day to Mr. Ito, an Executive Director of the HDL stating their objections to the auditors report.

Witness said he wrote to Mr. Paskaralingam several letters complaining among other things about the shortcomings in the annual report.

At this stage Mr. Neil Dias, counsel for Mr. Paskaralingam intimated to court that there was nothing in the documents to show that Mr. Paskaralingam had received the letters.

Commission to Mr. Amerasekera: Did you send them by registered post? - No My Lord. I sent them by ordinary post. And sometimes I handed them over to them personally.

Mr. Dias said that Mr. Paskaralingam had not agreed to the physical inspection of the Hilton Hotel building because inter alia the Japanese had the veto power and Mr.

Amarasekera was a signatory to the clause which gave the power of veto to the Japanese.

Justice Jayasuriya: Now you are giving evidence. You should get Mr. Paskaralingam to give evidence. He is trotting about the globe meeting Counsel in Singapore and elsewhere. Why can't he come here and make his position clear!

The witness referred to the DC action he filed in 1990. His lawyers had sent two letters to the auditors. When he originally filed the action he had not included the auditors as a party. But later when the company said the auditors had to be called upon to inquire into the accounts the witness had included them too.

As soon as the witness filed the action he had received, a call from Mrs. Casiechetty saying that Mr. Paskaralingam

said her the President wanted the witness to withdraw the action.

But later, when he met Mr. Paskaralingam at the London airport, while he was on a business trip Mr. Paskaralingam had asked the witness to stand firm with the action, if there was a fraud.

He had said, he did not know of a phone call, and it must be done by someone else.

Subsequently the witness had met Minister Ranjan Wijeratne to discuss the matter and the minister had raised it during cabinet proceedings on November 14, 1990.

The witness said according to the investment agreement before any amendments been done they should have got the written approval of the HDL. But the amendments have not been submitted to the Board.

The Commission resumes sittings on Monday.

Malpractices probe in public bodies

THE ISLAND - TUESDAY 4TH JUNE, 1996

Hotel was bankrupt though the accounts showed a surplus — Witness

by Wijitha Nakkawita

Though the accounts of the Hilton Hotel project showed a surplus assets over liabilities for the period of 1990-91 the company by the usual standards of accepted company accountability was bankrupt, Nihal S. Amarasekera former adviser to the Ministry of Finance told the Presidential Commission inquiring into anomalies and corruption in public sector bodies on May 31.

Amarasekera who was continuing his evidence before the commission was answering questions from Deputy Solicitor General G. Srinath Perera. The commission comprises Appeal Court Judges Priyantha Perera (Chairman), Hector D. Yapa and F. N. D. Jayasuriya.

The witness said that R. Paskaralingam, then Secretary to the Treasury had conveyed to him through Director External Resources of the Ministry of Finance that late President R. Premadasa

had wanted the witness to withdraw the court action he had filed in the District Court contesting the payment of dues to the Japanese consortium of contractors.

He had then faxed the copies of the court application to America where Paskaralingam had been on his way to a meeting of the IMF. Later he had met Paskaralingam at the London airport where he was told that the witness should stand firm if there had been a fraud in the transactions of the company.

Referring to the accounts of the company for the period 1.4 1990 to 31.3.1991 he said that accounts presented to the meeting of the board of directors of the company Hotel Developers Ltd. showed that the assets stood at Rs. 227 million while the liabilities were shown as standing at Rs. 55 million.

The witness could not

accept the accounts as correct as the company in this period had owed the Japanese consortium 900 billion Yen in 1990 and about 521 million rupees in 1991.

According to a case heard in Britain the Judge had held that an auditor had to go fully deep into the accounts of a corporate body if the auditor felt that the accounts were presented in a questionable manner. In the context of the liabilities not being reflected in the accounts for this period the witness rejected the accounts presented at the board meeting.

The witness also said that the original plans for the Colombo Hilton was for a five star hotel and the prospectus also declared that it was a five star hotel with swimming pool, recreational area and 452 guest rooms in addition to the other areas of service in the hotel, but he had learnt much later that the original plan including the

pool and recreational area etc. were not being constructed though he was a member of the board of directors of the company.

Answering a question from the commission the witness said that he took full responsibility for his inability to have found out that the construction of the hotel was being executed much less than in the original specifications shown in the plans and the prospectus.

The witness also said that he was pursuing the matter now since he did not find discrepancies in the project implementation at the beginning.

The company solicitors wrote to the Chartered Institute of Accountants alleging that he had been negligent of his duties, requesting that he should be removed from the Institute's Associateship. The institute considering the allegations had come to the decision that his Associate Membership could not be cancelled.

Japanese Architect's statements and plans to be excluded

Neither he nor his lawyers present

By M. J. M. Zarook

The Special Presidential Commission sitting at the BMICH has made order that the statement given by Mr. Kenzo Watanabi, Japanese architect and the plans submitted by him *inter alia* in the Hilton Hotel inquiry would be excluded from the consideration of the Commission as neither he nor his pleaders had appeared before the Commission since the recommencement of the inquiry.

SPC on malpractices in public bodies

The Commission which had been noting the absence of Mr. Watanabi and his lawyers on everyday of the inquiry, when appearances were being marked, recorded on Tuesday that Kenzo Watanabi architect who was added as a respondent on his own motion to be added as a party to assist the commission had been

absent since the inquiry recommenced and evidence De Novo was led.

His pleaders, Mr. L. C. Seneviratne PC, Mr. J. C. Boange and the Managing Partner of Messrs Mather and Romanathon, Mr. S. D. Yogendra have also been absent and have not participated in the inquiry and assisted the commission in terms of Watanabi's assurances and representations made to the commission.

In the circumstances his statement made to the investigating unit, his statement of his case and the unauthenticated and uncertified plans tendered by him which were neither transparencies non blue prints would be excluded from the consideration of the Commission until he appears before the Commission and participates in the inquiry.

[Em]The Commission of Inquiry into Malpractices and Irregularities in public bodies comprises Justice Priyantha Perera (Chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

DAILY NEWS - MONDAY JUNE 10, 1996

Consultant agrees to inspect Hilton building from bottom to top

By M. J. M. Zarook and Manjula S. Fernando

Mr. Nihal Sri Ameresekere, Business and Management Consultant, the person on whose complaint mainly the Hilton Hotel inquiry was initiated, yesterday agreed to a suggestion by counsel for Mr. Cornel Perera, one of the 'respondents', that he inspects the Hilton Hotel building from the c. park to the roof top and make his observations on which he would be questioned on the next date.

Mr. Ameresekere: Would the commission also be pleased to examine the building.

Chairman: We needn't. That is why we appointed a panel of architects to examine the building!

The Commission of Inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (Chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter Mr. Cornel Perera, Managing Director of Hotel Developers (Lanka) Ltd, the owning company of the Hilton Hotel and former directors, Mr. K. N. Choksy, Mr. F. G. N. Mendis and R. R. Paskaralingam, Former Secretary to the Treasury (absent) have been required to show cause why they should not be found guilty of misuse or abuse of power or corruption or commission of fraudulent acts in connection with the construction of the Hilton Hotel building.

Mr. D. S. Wijesinghe PC with Mr. S. C. Crossette Thambiah and Mr. Chula Bandara instructed by Sivanathan Associates appeared for Mr. Cornel Perera.

Mr. R. K. W. Goonesekera with Mr. W. B. C. Senerath Nandadeva instructed by Mr. M. D. de Silva appeared for Mr. F. G. N. Mendis.

Mr. Ranjit Abeyesuriya PC with Neil Dias and Miss Priyadarshanee Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam.

Mr. K. N. Choksy was absent having declined to participate in the proceedings.

Mr. A. R. C. Perera, Deputy Solicitor General, and Mr. Jayantha Jayasuriya Senior State Counsel assisted the Commission.

Mr. Godfrey Gunasekera, SSP is also assisting the commission.

At the outset Mr. Nihal Sri Ameresekere, Chartered Accountant questioned by Justice Jayasuriya was referred to document CP3 (area analysis sheet).

The schematic design plan (P4 and P4a) also contained an area analysis sheet. When he was shown CP3 he was not shown any other drawings.

Witness was questioned on the plans P104 and P163. Both had been approved by the UDA on the same date, April 29, 1986. According to P104 the elevation at the 19th floor was 72.7 metres.

Witness was referred to P163 at pages which showed the machine tool room which was also called the penthouse floor. The elevation given there was 72.5 metres. In P104 the height of the first machine room was not given.

Witness said that on those documents it was clear that the 19th floor was at a height of 72.7 or 72.5 metres. The machine tool room was either on the 19th floor or below.

Justice Jayasuriya: If anyone were to say that the machine tool room was above the 19th floor would you accept it? – No.

Mr. Amereskere, cross-examined by Mr. S. C. Crossette Thambiah, Counsel for Mr. Cornel Perera said when he examined the plans he did not take into account the number of floors. He only looked for the number of rooms. According to what he knew there should have been 19 floors with guest rooms but the plans showed only 17 floors with guest rooms.

Witness was referred to P17 the plan which he had submitted to the Commission.

Witness said he was still a director of the Hilton Hotel. UP to now he had not examined the floors from the bottom to the top.

Counsel: Would you be able to do it before the next date? – Yes. I will do it.

SPC on malpractices in public bodies

Counsel requested Mr. Amereskere to examine certain features of the building from the car park, lobby floor, third floor upwards to the 19th floor and above to the roof top on which he would question him on the next date.

Mr. Amereskere said he would like to take an architect with him.

Counsel: You might take any number of architects but we want to know what you have observed and not what the architects say.

Mr. Amereskere: Would the commission be pleased to examine the building?

Commission: That is why we appointed the panel of architects!

Counsel: It is amazing, my lords, no two people seem to agree on the number of floors!

The witness had been a director of Cornel and Company Ltd from January 1984 to August '85.

He was referred to an artist's impression of the completed three towers of the hotel building done by KKS architects. Mr. Amereskere said subject to his position that from the third floor to the 21st floor should consist of guest rooms. The plans tallied with the architect's impression.

Witness was referred to the letter (P264) from the chairman of the Ceylon Tourist Board dated 15.3.83 to

Mr. Cornel Perera. The letter referred to approval being given to a 750 room luxury hotel subject to certain conditions.

Counsel: How did this 750 room concept occur when even if the three towers were built it would have only 684 rooms? – This was the original idea of Hilton International in their agreement in January 1980, but it was changed.

Witness said the Tourist Board documents referred to 356 rooms, 350 rooms and 452 rooms.

Justice Jayasuriya: Unfortunately the architectural plans were not sent. That is the mystery. If we have the original plan then all this mystery will be solved!

Witness was referred to P41 the preliminary agreement which spoke of constructing an international 5 star class hotel with 452 bays.

Counsel: This does not talk of any further bays for managers? – The letter of 31.3.83 mentions...

Counsel: I am asking you, Mr. Amereskere, has this hotel been constructed according to KKS design as depicted in document P4? – It is not in accordance with the total configuration shown in P4.

In 1983 the company's first name was Lanka Japan Hotels Ltd. The directors were Mr. Cornel Perera, Mr.

Radhakrishnan and witness. In October 1983 they changed the name to Hotel Developers (Lanka) Ltd.

Witness was referred to a building application by J. D. Rasaputra of Hotel Developers (Lanka) Ltd in October 1983.

Witness was referred to an application by Mr. Cornel Perera to the UDA specifying the details of the hotel to be constructed. The application referred to 20 floors plus two penthouse floors containing 452 room modules and covered car park for 202 vehicles. The height of the building was 65.8 metres.

The witness was then referred to the duplicate copies of the bound volumes of the original contract drawings of KKS. The drawings were signed by Mr. Yusho Shiboto, the president of the KKS.

Mr. Thambiah said they were the original set of plans submitted by the architects (KKS) in October '83 when the contract was signed.

Justice Jayasuriya: Why didn't you forward these at the board meetings when Mr. Amereskere raised the question? – We asked him to examine these bound volumes.

According to these plans the hotel has parking facilities for 196 cars.

Commission: Witness, were these plans ever put before the board? – Not to my knowledge, my lord. When we asked for the original plans the company said they were destroyed by the fire.

Chairman: Did they ever ask you to examine these plans? – Yes, my lord, Mr. Ogami asked me to examine these bound volumes, but my lord we asked for the

Hilton has 453 room bays

— Management Consultant

By M. J. M. Zarook and Manjula S. Fernando

Altogether there were 453 room bays in the Hilton Hotel with 398 keys, Mr. Nihal Sri Ameresekere, Business and Management Consultant said yesterday before the Special Presidential Commission sitting at the BMICH.

He was being cross-examined on the bound book containing civil and architectural plans (CP7) by Mr. S. C. Crossette Thambiah counsel for Mr. Cornel Perera, one of the respondents.

Mr. Ameresekera said that some of the room bays in each floor were minus some space which had been allocated for the staircase.

Justice Jayasuriya: All this is on the assumption that CP7 is a true and authenticated copy of the architectural plan of 1983 which was approved in 1984? — Yes, My Lord.

The commission of inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter Mr. Cornel Perera, Managing Director of Hotel Developers (Lanka) Ltd, the owning company of the Hilton Hotel and former directors, Mr. K. N. Choksy, Mr. F. G. N. Mendis and Mr. R. Paskaralingam, former Secretary to the Treasury (absent) have been required to show cause why they should not be found guilty of misuse or abuse of power or corruption or commission of fraudulent acts in connection with the construction of the Hilton Hotel building.

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Mr. A. R. C. Perera, Deputy Solicitor General, and Mr. Jayantha Jayasuriya Senior State Counsel assisted the commission.

Mr. Godfrey Gunasekera, SSP, is also assisting the commission.

Mr. Nihal Ameresekere cross-examined by Mr. Thambiah was referred to the bound book of contract drawings (CP7) of the Hilton Hotel. Counsel detailing the set of plans said only a relocation of certain room bays which were not considered as major amendments had been done to the plans and they were also marked in red ink in the amended plan.

Justice Jayasuriya: Even if there is a change of directions it should normally go through the client.

Counsel: Yes, my Lord, but even if it had done by the architects surely the client would not have opposed, since it will be for their good.

Counsel: said no alterations of the contract requirement had been done and the financial amendments were also not affected.

The witness said according to the cash flow reports the number of saleable rooms had been dropped from 452 to 387. He pointed out that it would surely affect the income.

Chairman: If the things Mr. Ameresekera says are true there has been a fraud?

Counsel: Yes. If what he says is true. However if one looks at this case without any preconceived motion of fraud then it will be clear that all the documents are consistent with there being no fraud.

Justice Jayasuriya: But we must probe the matter!

Counsel: Yes. But Mr. Ameresekere jumped the gun. He said two floors are missing...

Mr. Ameresekere: I asked them to controvert my allegations and no one did.

Witness was referred to the plan sheet in respect of the 19th floor. According to the plan there was a five bay suite. There was also a 2 bay suite and 5 single bay suites.

To a question by Justice Jayasuriya, witness said the elevation was given at the 19th floor as 72.70 metres. One tower had 12 bays and the other tower had 14 bays totalling 26 bays in the 19th floor subject to one suite having a one and a half bay area.

Witness was referred to the number of keys in respect of the 19th floor. The five bay suite had one key and the two bay suite had another key. Altogether there were 17 entities with 17 keys.

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Justice Jayasuriya: But we are interested in the number of room bays. There should be 452 room bays!

Counsel: Yes, but not 452 keys. According to the plan there would be only 387 keys.

Counsel said there were only to be 17 guest room floors and not 19. The 19 floor guest room allegation was a canard.

The commission raised questions on the missing plan.

Justice Jayasuriya: According to architectural practice the approved plan is kept in a safe place. Only the working plans are kept in the site. Why was that not done?

Counsel: The UDA had directed that the approved plan should be kept at the site for inspection. It was that approved plan with the seal of the UDA that went up in flames.

Counsel said if the contractors had tried to take away two basements and three floors, that would have been a fraud of the highest magnitude. But nothing of the sort had happened.

Witness said the contract document and the architectural plans were tabled...

Witness was referred to the 18th floor. There were 12 bays in one tower and 13 bays in the bigger tower. In

respect of them there were 5 keys and 9 keys respectively. Witness was referred to the 4th to 17th floors. Each floor had 12 bays in one tower and 15 bays in other tower subject to half a bay being given to the staircase.

The number of keys were 11 keys and 14 keys respectively. Therefore the number of room bays in 4 to 17 floors were 27 x 14 totalling 378 rooms and the number of keys were 350.

In the 3rd floor there were 12 room bays in one tower and 12 room bays in the other. There were 24 bays altogether with 17 keys.

Altogether there were 453 room bays minus the space allocated for the staircase and 398 keys.

Justice Jayasuriya: This is on the assumption that CP7 is a true and authenticated copy of the architectural plan of 1983 which was approved in 1984? - Yes, My Lord.

The original architectural plan on which the contract was signed was done in 1983.

Questioned by Justice Jayasuriya witness was referred to document P101 dated 14.5.90. He had written this to Mr. Paskaralingam in which he had referred to 20 floors from the ground floor and two mechanical floors on top.

Further proceedings were adjourned for June 13. The commission resumes sittings today.

Malpractises probe in public bodies — Hilton Hotel

THE ISLAND - TUESDAY 11TH JUNE, 1996

Ground floor counted as one of the floors — Counsel

by Wijitha Nakkawita

The architects of Hilton Hotel, Colombo had taken the ground floor of the building to be one of the floors so that the total number of floors should be counted as twenty. Crosette Thambiah Counsel for Cornel Perera, Chairman Hotel Developers Ltd., told the Commission inquiring into malpractises and corruption in government bodies, yesterday (10).

The Counsel made this observation while examining witness Nihal S. Amarasekara who

continued his evidence from the previous day of hearing, regarding the Colombo Hilton Hotel project.

Commission comprises Justice Priyantha Perera (Chairman) and High Court Judges Hector D. Yapa and F. N. D. Jayasuriya. Deputy Solicitor General Srinath Perera is assisting the commission.

Amarasekara under cross examination by Counsel Crosette Thambiah said that the manual of the Hilton Hotel said that it had 388 room keys not counting

the six committee rooms and six room bays set apart for the manager. He also said that rooms were in floor 3 to floor 19 and Penthouse floor above the nineteenth floor.

It was at this stage that the Counsel Crosette Thambiah told the Commission that the architects had taken the ground floor also as one of the floors of the building in their design plans.

The Counsel was producing detailed plans of the building floor by floor in his cross examination of the witness and taking up the position on that the witness Nihal S.

Amarasekara was incorrect in his position that the number of floors and the rooms in the original agreement between the company Hotel Developers Ltd., and the Japanese Consortium of builders had not been properly understood by the witness in the first instance.

The Counsel also submitted to the commission that if there was discrepancy in the execution of the building it should have been pointed out at the beginning of the project.

Elevation of third and fourth floors was the same according to plan

- Management Consultant

(By M. J. M. Zarook)

BUSINESS and Management Consultant, Mr. Nihal Sri Ameresekera was cross-examined on the plans relating to the Hilton Hotel building when the inquiry resumed before the Special Presidential Commission sitting at the BMICH yesterday.

The Commission of Inquiry into Malpractices and Irregularities in public bodies comprises Justice Priyatha Perera (Chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter Mr. Cornel Perera, Managing Director of Hotel Developers (Lanka) Ltd, the owning company of the Hilton Hotel and former directors, Mr. K. N. Choksy, Mr. F. G. N. Mendis and Mr. R. Paskaralingam, former Secretary to the Treasury (absent) have been required to show cause why they should not be found guilty of misuse or abuse of power or corruption or commission of fraudulent acts in connection with the construction of the Hilton Hotel building.

Mr. D. S. Wijesinghe, PC with Mr. S. C. Crossette Thambiah and Mr. Chula Bandara instructed by Sivanathan Associates appeared for Mr. Cornel Perera.

Mr. R. K. W. Goonesekera with Mr. W. B. C. Senarat Nandadeva instructed by Mr. M. D. de Silva appeared for Mr. F. G. N. Mendis.

Mr. Ranjit Abeysuriya, PC with Neil Dias and Miss Priyadharshani Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam.

Mr. K. N. Choksy was absent having declined to participate in the proceedings.

Mr. A. R. C. Perera, Deputy Solicitor General and Mr. Jayantha Jayasuriya, Senior State Counsel assisted the Commission.

Mr. Godfrey Gunasekera, SSP is also assisting the Commission.

At the outset Mr. Nihal Sri Ameresekera, Chartered Accountant questioned by Justice Jayasuriya was referred to the letter sent by him to Mr. Paskaralingam (P101) and a report attached to it (P101A) and to certain annexures.

Witness said that according to the retired Supreme Court Judge who was appointed to inquire into the matter P101A and the annexures were not among the documents forwarded to him.

Witness was referred to submissions of counsel for Mr. Cornel Perera who had said that the original plan had gone up in smoke in the fire.

According to the report of Mitsui Toisei Consortium P11A the fire had taken place on 18.10.85. The amended architectural plan P104 which was produced before the Commission by Mr. Cornel Perera was dated 15.7.85.

The so called amended or substituted plan was anterior to the fire that had occurred on 18.10.85.

Justice Jayasuriya: Representations had been made by the architects and the contractors to the ministry about the fire? - Yes.

Witness said there was an entry in P35 which said the original plan had got burned in a fire in 1984. Witness was referred to P16 a letter-written by Mrs. C. Weerakoon of HDC into the UDA asking for approval to submit an amended plan. There was no reference in that letter to the fire. Those amendments were sought by the architects.

Justice Jayasuriya: Are you aware of any documents which stated that the amendments emanated or originated from Hilton International Ltd, USA? - Yes.

Witness was referred to the so called amended or substituted plan of 1985 (P104).

Justice Jayasuriya: Was that plan tabled before the Board of Directors? - No.

Justice Jayasuriya: Was the original plan of 1983 tabled before the board? - Yes.

Justice Jayasuriya: When did you first come to know that the so called amended or substituted plan had been forwarded to the UDA? - In 1990.

Witness was referred to the plan (P104) and the black bound book CP7.

In that plan (P104) the elevation of the 3rd floor was given as 24.5 metres.

In the CP7 the elevation of the 4th floor was given as 24.5 metres.

Justice Jayasuriya: Can that ever happen. Can the 3rd floor and the 4th floor be at the same elevation? - No. My Lord.

Justice Jayasuriya: So there is intrinsic incompatibility as manifested in CP7? - Yes.

Justice Jayasuriya: Has counsel for Mr. Cornel Perera ever made an explanation about that? - No. My Lord.

Justice Jayasuriya: We hope he will look into the matter.

Mr. Crossette Thambiah: Nothing turns on it My Lord. It is totally irrelevant and in fact I have no intention of dealing with it. I have no explanation. It might be a mistake. But please don't put it on me. My position is that it is not relevant. My presentation only deals with the number of floors.

Witness was referred to the elevation of the machine room (No.1) which was 72.7 metres.

The 19th floor was given as 72.7 metres.

Justice Jayasuriya: Therefore could the machine room be on the 20th floor? - No.

The chairman referred the witness to CP7Q which referred to the 4th to the 17th floor consisting of 14 floors.

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Chairman: On the last occasion you conceded that 27 room bays into 14 floors would amount to 378 room bays - Yes.

Witness said that according to P4 the square area of a specimen room bay would be 33 sq. metres.

According to CP7 there were 20 type A room bays. The area of each was 29.87 sq. metres and the total area was 597.4 sq. metres.

Witness was referred to type B room bays (which were two in number) each of 31.75 sq. metres totalling 63.50 sq. metres. Witness was also referred to type C rooms.

Mr. Amerasekera cross-examined by Mr. Crossette Thambiah, Counsel for Mr. Cornel Perera was referred to CP7Q.

Mr. Crossette Thambiah said it was too late now to quibble about half a bay. According to the amended plan and the plan in CP7 what was shown in CP7 was what was proposed by the architects. Witness was questioned on the plan drawings. If the two large rooms along with the staircase were taken as occupying two rooms bays then there would be 27 bays. "But you cannot put 452

rooms in 17 floors when they should go into 19 floors unless there is some jugglery," Mr. Amerasekera said.

Witness said according to the chart provided by KKS after his query there were 25 bays counting the fire escape in the 18th floor.

Referred to the 19th floor witness said there were 26 bays according to the chart. Referred to CP7s witness said there were 12 room bays if the staircase were ignored and 8 and 6 rooms bays totalling 26 rooms bays according to the architects.

Witness was referred to the 3rd floor in CP7. In the chart there were eleven bays and a 5 room manager's apartment.

Justice Jayasuriya: Is it 5 and three quarter?

Counsel: Usually it is 6 bays with the staircase but it has been given as a 5 roomed apartment.

Counsel: Mr. Amerasekera we have gone through an exercise to reconcile the chart of KKS with CP7!

Witness was referred to the elevation as shown in CP7 and in the plan from the ground floor to the top of the 19th floor. The height was given as 68.5 metres. Only in the middle tower there was the machine room which was also used as a storage PH1 (Penthouse 1) started at the beginning of the machine room and the flat roof was named PH2 (Penthouse 2), witness said.

Further proceedings were adjourned for June 18.

Malpractices probe in public bodies — Hilton Hotel

THE ISLAND - WEDNESDAY 19TH JUNE, 1996

Amended plan of hotel was different to the copy with UDA

by Wijitha Nakkawita

The amended plan of the Hilton Hotel indicating Lobby and Mezzanine floors, 19 other floors and two penthouse floors with the permit issued by the UDA was different to the copy with the stamp and markings of the UDA filed in the UDA, witness before the Presidential Commission inquiring corruption and malpractices in government bodies, said yesterday (18).

He said that the amended plan submitted by the company Hotel Developers Ltd. was approved by the UDA on 29.4.96 after making

certain clarifications and requests for additional copies of the documents but the two copies, one sent to the company and the one that was kept in the file of the UDA were not the same. He was responding to questions from Counsel Crossette Thambiah appearing for Cornel Perera, Chairman, Hotel Developers Ltd.

The commission comprises Justices Priyantha Perera, (Chairman), Hector S. Yapa and F. N. D. Jayasuriya. Deputy Solicitor General A. R. C. Perera is assisting the commission.

Counsel Crossette Thambiah placed plans of the hotel before the commission with the amendments made to the plans in 1985-86 and pointed out that the alterations were done on the request of the management. Asked by the commission whether the term "management" referred to the Hilton International Company, counsel said that he believed it to be so and would call for the relevant information and make a clarification on the matter.

Asked by the commission whether the witness was aware of the

amendments to building plans, he said that though he was a member of the board of directors he did not know that the amendment to plans were being done. He also said that the amendments were not placed before the board of directors.

It was only after he had called for details from the architects that he became aware of the amendments as they had sent him a chart containing details of the plan amendments.

The Commission resumes sittings on June 20th at 9.30 a.m. at the BMICH.

Shortfall of 42 room bays in Hilton Hotel

By M. J. M. Zarook and
Manjula S. Fernando

- Management Consultant

THERE was a shortfall of 42 room bays between the 4th and 17th floors when the specimen size room bay was taken into account, Mr. Nihal Sri Amerasekera, Business and Management Accountant said before the Special Presidential Commission sitting at the BMICH yesterday.

He was answering questions posed by the Commission when the Hilton Hotel inquiry was resumed before the Commission of Inquiry into malpractices and irregularities in public bodies comprising Justice Priyantha Perera (Chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter Mr. Cornel Perera, Managing Director of Hotel Developers (Lanka) Ltd. the owning company of the Hilton Hotel and former directors Mr. K. N. Choksy, Mr. F.G.N. Mendis and Mr. R. Paskaralingam, former Secretary to the Treasury (absent) have been required to show cause why they should not be found guilty of misuse or abuse of power or corruption or commission of fraudulent acts in connection with the construction of the Hilton Hotel building.

Mr. D. S. Wijesinghe PC with Mr. S.C. Crossette Thambiah and Mr. Chula Bandara instructed by Sivananthan Associates appeared for Mr. Cornel Perera.

Mr. R. K. W. Goonesekera with Mr. W. B. C. Senerat Nandadeva instructed by Mr. M. D. de Silva appeared for Mr. F. G. N. Mendis.

Mr. Ranjith Abeyesuriya PC with Neil Dias and Miss Priyadharshani Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam.

Mr. K. N. Choksy was absent having declined to participate in the proceedings.

Mr. A. R. C. Perera, Deputy Solicitor General, and Mr. Jayantha Jayasuriya Senior State Counsel assisted the commission.

Mr. Godfrey Gunasekera, SSP, is also assisting the commission.

Mr. L. C. Seneviratne PC with Mr. J. C. Boange, Ms Menaka Munasinghe and Mr. S. D. Yogendra instructed by Messrs Mather and Ramanathan appeared for the intervenient party, Messrs KKS architects.

Mr. Nihal Amerasekera questioned on document CP 7Q by the Commission said there were five types of room bays on this floor. Type A room bay had 29.87 sq metres and there were 20 of this type. There

were two, type B room bays which had 32.92 sq met. Type C was 28.75 sq met. Type D - 49.73 sq met and Type E - 51.13 sq met. There was one room bay of each type.

According to plan, the total floor area come to $(29.87 \times 20) + (32.92 \times 2) + 28.75 + 49.73 + 51.13 - 792.85$ sq met without the internal wall.

The specimen room bay should have 33 square metres when 792.85 was divided by 33, the number of standard size room bays would be 24.02.

Type A, B and C were smaller than the specimen size while C D and E which was only one room each was larger than the specimen room bay.

Chairman: What was the shortfall that you discovered? - The difference between 378 and 336 which is 42.

Witness was referred to P 104. There were 19 A type room bays. The total area of the room bays was 567.53 sq metres.

In Type B there were 2 room bays of 32.92 sq. metres totalling 65.84 sq met. In Type C there were 2 rooms of 29.87 sq met and 31.52 totalling 61.39 sq met. In Type D there was one of 49.48 sq met. In Type E there was one of 50.78 sq met.

The total area was 795.02 sq metres without the internal wall and dividing it by 33 there were 24.09 room bays.

Therefore in 24 floors there would be 336 room bays without the bathroom wall.

The shortfall here was 42.

Witness was directed to compare P104 which was the amended architectural plan produced by Mr. Cornel Perera with CP7Q in the black bound book.

The total floor area in CP 7 Q was 792.85 sq metres. The total area in P104 was 795.02 sq metres. There were disparities and divergences between CP7Q and P104.

Justice Jayasuriya: In as much as there are difference and divergences, CP7 Q cannot be a true and authentic copy of the architectural plan of 1983? - Yes. It cannot be., Witness was referred to a document which stated that the fire at the Hilton Hotel site had occurred in 1984 when in fact the fire had taken place on 18-10-85.

Mr. Amerasekera, cross-examined by Mr. Crossette Thambiah Counsel for Mr. Cornel Perera was referred to the 3rd floor in CP7P which was referred to as 3-12. In P104 that room was referred to as 3-11 type B.

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Mr. Thambiah said it was clear that the amended plan was not a facsimile of the original.

Witness: They have redrawn a set of plans.

Witness was referred to the letter from Mrs. Weerakoon who had signed as Chief Engineer HDL to the Director Development, UDA dated 8 August 1985 requiring minor architectural amendments as suggested by the Hilton management.

Justice Jayasuriya: Is she a qualified engineer? - I don't know, My Lord.

The UDA replied on 13 August 1985 asking that amended plans be forwarded with the alterations marked in red.

By annexure dated 12 September 1985 from KKS a list of amendments had been sent to UDA by Mrs. Weerakoon. The list of amendments had also been sent earlier dated July 15, 1985.

Witness was questioned on the handwritten amendments to the plan.

Witness was referred to the letter dated 28 March 1986 (P276) from Mrs. Weerakoon to the Director Development UDA "enclosing 29 amended drawings."

The witness was referred to the Development document submitted by the UDA to the HDL where set of conditions have been given for the approval of the plan. Under the condition number three the UDA had requested the copy of the approved plan to be kept at the construction site for inspection.

Mr. Thambiah said the P163 and the P104 both were same set of plans. P104 was the set of plans that had been sent to the HDL while P163 was kept in UDA. They bore the same reference number and date of the UDA stamp. But the witness pointed out some discrepancies, in the rubber stamps of P163 and P104.

Mr. Thambiah detailing the amendments that had been done in the plans said since the amendments were very slight they had thought it was not necessary to put them before the board.

The commission resumes sittings today and this matter will be taken up on June 20.

DAILY NEWS - FRIDAY JUNE 21, 1996

Cornel's plan cannot be accepted

- Management Consultant

By M. J. M. Zarook and Manjula S. Fernando

MR. Nihal Sri Ameresekera, Management Consultant said yesterday before the Special Presidential Commission sitting at the BMICH that he would not accept that the plan submitted by Mr. Cornel Perera (CP7) was a copy of the original plan or that P104 was the amended plan.

He had many reasons for rejecting them.

The commission of the inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter Mr. Cornel Perera, Managing Director of Hotel Developers (Lanka) Ltd, the owning company of the Hilton Hotel and former directors, Mr. K. N. Choksy, Mr. F. G. N. Mendis and Mr. R. Paskaralingam, former Secretary to the Treasury (absent) have been required to show cause why they should not be found guilty of misuse or abuse of power or corruption or commission of fraudulent acts in connection with the construction of the Hilton Hotel building.

Mr. D. S. Wijesinghe PC with Mr. S. C. Crossette Thambiah and Mr. Chula Bandara instructed by Sivanathan Associates appeared for Mr. Cornel Perera.

Mr. R. K. W. Goonesekera with Mr. W. B. C. Senarath Nandadeva instructed by Mr. M. D. de Silva appeared for Mr. F. G. N. Mendis.

Mr. Ranjit Abeyasuriya PC with Neil Dias and Miss Priyadarshani Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam.

Mr. K. N. Choksy was absent having declined to participate in the proceedings.

Mr. A. R. Perera, Deputy Solicitor General and Mr. Jayantha Jayasuriya Senior State Counsel assisted the commission.

Mr. Godfrey Gunasekera, SSP is also assisting the commission.

Mr. L. C. Seneviratne PC with Mr. J. C. Boange, Ms Menaka Munasinghe and Mr. S. D. Yogendra instructed by Messrs Mather and Ramanathan appeared for Kanku Kikaku Sekkeisha architects.

Mr. Nihal Sri Ameresekera questioned by Justice Jayasuriya was referred to the pages 94-96 of P272 which was the building application submitted to the UDA by HDL. The part that had to be filled by the UDA had not been completed. The space left for the chairman of the UDA's signature had been also left blank.

According to this document the application had not been approved by the UDA.

Justice Jayasuriya: In the plans P104 and P163 a frank denoting approval has not been made. This caused you consternation and shock? - Yes.

Witness was referred to CP7P which related to sheet No. A19 and P104 sheet No. A19.

The elevation given in both the sheets for the 3rd floor was 24.5 metres while the 17th floor elevation was given as 66.5 metres.

In CP7Q the elevation given for the 4th floor was 24.5.

Justice Jayasuriya: If you were the planning authority would you give approval to such a plan? - No. Both floors have the same elevation.

According to clause 3 of the document CP5 a suggestion had been made to change the name of Lanka Hotel Japan Ltd to Hotel Developers (Lanka) Ltd. The proposal was to have been taken up at an extraordinary meeting of the shareholders to be held on October 4, 1984. But there was no reference to such a meeting in the documents.

Witness was referred to the building application P270 which was acknowledged by the UDA on 19.10.87.

Justice Jayasuriya: I am putting it to you that application had been preferred on 13.10.87? - I am not aware. There is no date only the acknowledgement is given.

Witness said there was some tipexing on that document over which the name of Cornel and Co. appeared. The name of applicant was Hotel Developers (Lanka) Ltd. The receipt had been issued to HDL and not to Cornel and Company.

Mr. Ameresekere was cross-examined by Mr. S. C. Crossette Thambiah, counsel for Mr. Cornel Perera and referred to the amendments given by the architects KKS in 16A and 270C.

Witness said he wished to say at the outset that he did not accept that CP7 was a copy of the original plan or that P104 was the amended plan.

He also did not accept that 16A and 270C contained the list of amendments.

Chairman: What are the reasons for your saying so? - Let me take CP7 and P104 the two plans. First I shall refer to the list of amendments which did not mention that there was any change in the elevation. There was no reference to two penthouse floors.

There was also no amendments shown below ground level and there was no reference to reduction of two guest room floors.

As for CP7 (A28) the 3rd floor elevation is +21. Sheet A19 which gives the elevation as 24.5 is contradicting to A28.

Witness said 66.5 - 24.5 would equal 42. If that was divided by 2.9 there would be 14 1/2 floors.

Therefore the 17th floor should be 61.8 and not 65+ as stated in A20. A22 referred to the 19th floor which was given as 72.7 but the real elevation was 67.8.

If 66.5-24.5 was divided by 3 there would be 14 floors.

The summary sheets A20, A21 and A23 with regard to the elevation belonged to the original plan (the schematic design plan of 1980 A4) and not to the amended plan.

Mr. Thambiah then referred to the changes that had been done to the second floor. He said that the plan which was submitted in July 86 was merely a sketch and the witness was only relying on this sketch.

He said that in 1985 the management decided to do certain changes and they were all minor changes.

Chairman: Doesn't the cumulative effect of all the amendments amount to something substantial? - With respect, My Lord there was nothing substantial. I would say those changes were necessary.

Chairman: The whole thing is the mysterious disap-

pearance of the original plan!

Justice Jayasuriya: Who would have benefited by that? - The motivation can come both ways My Lord. If somebody wants to maintain this canard that there was a fraud and not pay the Japanese they could have been interested.

Chairman: The biggest problem to the commission is that all the plans that should have been with the various authorities are missing?

SPC on malpractices in public bodies

Counsel: That is the most remarkable thing, My Lords. But even in a criminal case can you put it all on the person who prepared the plan.

Chairman: Who would have benefited most from this?

Counsel: Shall I answer that frankly - the government. The government of the day was in a bad position and unable to pay.

Chairman: But surely the government did not build this in order to deprive the Japanese?

Counsel: At that time they never thought it won't be viable.

Mr. Neil Dias: This is one of the effects of the open economy!

Mr. Ameresekere at this stage said he wished to make some comments as a reference had been made to him.

He had been actively associated with Akio Kato who was the man behind the Hilton Hotel project. He was the person involved in the preparation of the profitability projections based on the schematic architectural plans which envisaged 456 rooms in 19 floors and car parking area for 400 vehicles.

According to the construction agreement there were 22 floors. But at most from the ground floor, if the roof top was taken into account there would be only 20 floors.

With reference to the allegation of fraud, witness said he would quote what Mr. Cornel Perera, the respondent himself had said in his affidavit to the District Court.

"I further plead that as the Supreme Court has already observed that prima facie fraud has been established and in any event, in all probabilities the alleged fraud said to have been committed by Mitsui and Taisei will be established in the action and in that event, the HDL will not have to make any payment to Mitsui and Taisei and the guarantee given by the government can be set aside or cancelled.

Mr. Cornel Perera had also stated in his affidavit that the Supreme Court had already observed that prima facie fraud had been established on the part of Mitsui and Taisei and that in all probabilities the fraud committed by Mitsui and Taisei would be established in the case instituted by Mr. Nihal Ameresekere.

Witness said those were the same averments he had made in his plaint.

Mr. Thambiah referred to the amendments that had been done in the plan of the third floor and the typical plan of the fourth to the seventeenth floors.

Justice Jayasuriya: There is no changes shown to the room bays of the 4-17 floors in this amended plan? - Yes. My Lord. No changes shown.

Further proceedings were put off for today.

Note

THE Special Presidential Commission's order of June 5 in respect of the plans and statements submitted by Mr. Kenzo Watanabe of Konkō Kikaku Sekkeisha, architects in connection with the Hilton Hotel inquiry will stand.

The commission stated yesterday that the representatives of KKS and Yoshio Shibati Japanese architects had been absent on all days.

Mr. J. C. Boange with Ms. Menaka Munasinghe instructed by Messrs Mather and Romonalhon have marked their appearance for them.

In the circumstances till the intervenient parties appear before the commission and assits the commission, the earlier order made by the commission to exclude the plans and statements submitted by KKS would stand. But counsel could appear and represent the parties.

THE ISLAND - FRIDAY 21ST JUNE, 1996

Affidavit produced in Hilton Probe

by Wijitha Nakkawita

Nihal S. Amarasekara continuing his evidence before the Presidential Commission Inquiring Malpractices and Corruption in government bodies yesterday produced an affidavit filed by Cornel Perera, before courts in 1995 alleging that there was a fraud in the execution of the building of the Hilton Hotel Colombo in 1995.

The witness was being cross examined by S. C. Crosette

Thambiah attorney for Cornel Perera Chairman of Hotel Developers Ltd.

The Commission comprises Justices Priyanth Perera (Chairman), F. N. D. Jayasuriya and Hector S. Yapa. Deputy Solicitor General A. R. C. Perera is assisting the Commission.

The Counsel for Cornel Perera submitted to the commission that the adjustments in the building had been done with the knowledge of the managment as it

was the Hilton International which had requested the amendments to the original plan.

The witness said that he had brought up the differences in the building that was being constructed by the Japanese consortium of builders and that he found that the amendment to plan had reduced the number of floors in the building which should have been 22 floors with the car park to accommodate 400 cars. But the

subsequent number of parks in the constructed car park was only 140.

Counsel Crosette Thambiah presented detailed sets of plans giving adjustments to the floors which he held as 17. The original plan with the UDA as well as the other copies of plans were missing and if there was anyone who profited from a fraud in the construction of the hotel, it would have been the previous government, the counsel observed.

Commission:

A mysterious disappearance of plans of 1983. The greatest problem is that all copies of plans have disappeared.

It was at this stage that Nihal S. Amarasekara produced the Affidavit filed by Cornel Perera in courts in 1995 alleging that there had been a fraud in the execution of the Hilton Building.

The Commission resumes sittings on 21-6-95 (today) at 9.00 a.m. at the BMICH.

DAILY NEWS - FRIDAY JUNE 21, 1996

Bid for fresh affidavit rejected



R. Paskaralingam

AN application to file a fresh affidavit on behalf of Mr. R. Paskaralingam former Secretary to the Treasury (who is stated to be in the United Kingdom at present) was refused by the Special Presidential Commission sitting at the BMICH yesterday.

In this matter Mr. Paskaralingam has been directed to show cause why he should not be found guilty of misuse or abuse of power for issuing a letter of intent and subsequently entering into a contract to purchase 1,500 bus chassis and body kits from Messrs Ashok Leyland of

Madras for Rs. 43,700,000 without obtaining cabinet approval inter alia.

The Commission of Inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

Mr. Ranjit Abeysuriya PC with Mr. Neil Dias and Miss Priyadarshanee Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam.

Mr. Douglas Premaratne PC assisted the commission.

The chairman told Mr. Ranjit Abeysuriya that they had given careful consideration to the application to file a fresh affidavit on behalf of Mr. Paskaralingam but regretted that they had to refuse the application.

Reasons for this order would be given on June 24.

The inquiry was put off for July 5 for oral submissions.

DAILY NEWS - TUESDAY JUNE 25, 1996

Paskaralingam has defied court proceedings - SPC

No reliable evidence to justify his absence

By M.J.M. Zarook

MR. PASKARALINGAM has not appeared before this commission as directed and has acted in defiance of the process issued by this commission.

There is also no reliable material placed before this commission to justify his non appearance, the special presidential commission sitting at the BMICH stated giving reasons for refusing an application to file fresh affidavit on behalf of Mr. Paskaralingam.

In this matter Mr. Paskaralingam has been directed to show cause why he should not be found guilty of misuse or abuse of power for issuing a letter of intent and subsequently entering into a contract to purchase 1,500 bus chassis and body kits from Messrs Ashok Leyland of Madras for Rs. 43,700,000 without obtaining cabinet approval inter alia.

The Commission of Inquiry into malpractices and

irregularities in public bodies comprises Justice Priyantha Perera (chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

Mr. Ranjit Abeysuriya PC with Mr. Neil Dias and Miss Priyadarshanee Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam.

Mr. Douglas Premaratne PC assisted the commission.

The commission, in its order stated: Mr. Ranjit Abeysuriya, P.C. was permitted to represent Mr. Paskaralingam in absentia in terms of Section 16 of the Special Presidential Commissions of Inquiry Law No. 7 of 1978, as amended. In terms of this Section, every person whose conduct is the subject of an inquiry under this law or is a person who is in any way implicated or concerned in the matter under inquiry,

The roof top also was counted as a floor—Counsel

By M. J. M. Zaror and Manjula S. Fernando

THE architects counted the ground floor and the rooftop also as floors in their computation, Mr. S. C. Crossette Thambiah counsel for Mr. Cornel Perera, one of the parties noticed stated before the Special Presidential Commission sitting at the BMICH on Friday.

He made this submission when he was cross-examining Mr. Nihal Ameresekera, Business and Management Accountant on the plans and drawings in respect of the Hilton Hotel.

The commission of the inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter Mr. Cornel Perera, Managing Director of Hotel Developers (Lanka) Ltd, the owning company of the Hilton Hotel and former directors, Mr. K. N. Choksy, Mr. F. G. N. Mendis and Mr. R. Paskaralingam, former Secretary to the Treasury (absent) have been required to show cause why they should not be found guilty of misuse or abuse of power or corruption or commission of fraudulent acts in connection with the construction of the Hilton Hotel building.

Mr. D. S. Wijesinghe PC with Mr. S. C. Crossette Thambiah and Mr. Chula Bandara instructed by Sivathan Associates appeared for Mr. Cornel Perera.

Mr. R. K. W. Goonesekera with Mr. W. B. C. Senarat Nandadeva instructed by Mr. M. D. de Silva appeared for Mr. F. G. N. Mendis.

Mr. Ranjit Abeyesuriya PC with Neil Dias and Miss Priyadharshani Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam.

Mr. K. N. Choksy was absent having declined to participate in the proceedings.

Mr. A. R. Perera, Deputy Solicitor General and Mr. Jayantha Jayasuriya Senior State Counsel assisted the commission.

Mr. Godfrey Gunasekera, SSP is also assisting the commission.

Mr. L. C. Seneviratne PC with Mr. J. C. Boange, Ms Menaka Munasinghe and Mr. S. D. Yogendra instructed by Messrs Mather and Ramanathan appeared for Kanku Kikaku Sekkeisha architects.

At the outset Mr. Nihal Sri Ameresekera, Chartered Accountant questioned by Justice Jayasuriya was referred to an interim submission and a statement made by counsel for Mr. Cornel Perera.

In that submission Mr. Crossette Thambiah mentioned that the shortfall in storeys and the short fall in rooms was a canard that was propagated by several parties including the government of the day for their own purpose.

Mr. Thambiah: I did not say the canard was propagated by the government. I said in answer to a question by the Commission as to who would have had a motive, that the government of the day would also have had a motive to propagate the canard.

Justice Jayasuriya referred to page 4 for the document P109, proceedings of the board meeting of HDL on October 16, 1990.

At the board meeting Mr. Shanmugalingam had raised the question whether Mr. Ameresekera was acting in support of the government. Mr. Cornel Perera had commented that the government had no hand in it and his conduct had severely embarrassed the government. Mr. Perera had further said that the blessings of the government were with them.

According to Mrs. Casiechetty the President had wanted the witness to withdraw the charges in the district court. He said he was acting independently, on his own when he filed the case in the district court.

Mr. Ameresekera was cross-examined by Mr. Crossette Thambiah.

At this stage the chairman complimented Mr. Thambiah for the enormous amounts of work done by him in this case.

The chairman said he was reminded as a law student of the Bandaranaike Assassination case when Justice T. S. Fernando told Mr. Weeramantry who was appearing for the accused Somarama that counsel had not yet been born to defend this accused. But Mr. Weeramantry had done a lot of work for the defence in the same way Mr. Thambiah was being so exact in his work.

The chairman said (in lighter vein) that he was not however drawing on analogy between Somarama's case and this case for Mr. Thambiah was doing his work ably.

Witness was referred to the amendments in CP7S(A22). He said what was shown as two bays in the amended plan was one bay earlier. And that went right down the building.

Witness was referred to the penthouse floor plans and

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elevator machine room.

Mr. Thambiah said that the flat roof on top was the 22nd floor.

Chairman: But can you describe the flat roof as a floor?

Counsel: That is what the architects have described to the client. They have offered the flat roof as a floor. Even the ground floor has been counted as a floor.

Mr. Thambiah said even the sacrosanct document as the contract agreement did not have the plans attached.

Justice Jayasuriya: The clients should have looked into the matter. The directors too should have. They could not have depended on the Attorney General alone.

Justice Jayasuriya: When your climb from the 19th floor to the machine room how many steps have you to climb? – I did not count. But when one climbs to the next floor there is an open space (a gap) of about 4 feet between the machine room and the floor to arrest the noise.

Witness was referred to P104 the alleged amended plan of 1985 and sheet A08.

Justice Jayasuriya: In that plan at the extreme right corner there is a revision column where the amendments should come. You find there: elevation 6.5 to 6.1? – Yes.

Justice Jayasuriya: In the plan shown to you by counsel for Mr. Cornel Perera that amendment is not there? – Yes.

Justice Jayasuriya: That can only be explained by the architects. That is why the presence of Kenzo Watanabi and Yoshio Shibota is necessary.

Mr. Thambiah said that from the ground floor to the third floor the height was 14.5 metres.

Justice Jayasuriya: But the height of the ground floor has not been taken.

Counsel: That should be taken as zero plus the height of floor slab.

Mr. Thambiah calculated the height of each floor and said the height from the ground floor was 65.5 according to his calculation but the architects had given 65.8.

Justice Jayasuriya said that there was a discrepancy in the elevation of the floors but counsel had insisted earlier that it was irrelevant and he was not concerned with the elevation as stated in the plans.

Mr. Thambiah said that he agreed with Justice Jayasuriya that the elevation was also a matter to be considered.

Further proceedings were adjourned for today.

DAILY NEWS - TUESDAY JUNE 25, 1996

Impossible to have 14 1/2 floors

**By M. J. M. Zarook and
Manjula S. Fernando**

– Management Consultant

IT was an inherent, intrinsic impossibility to have 14 1/2 floors or that the 3rd and 4th floors should be at the same elevation, Mr. Nihal Amersekere, Business and Management Consultant said before the Special Presidential Commission sitting at the BMICH yesterday.

He was answering questions at the outset by Justice Ninian Jayasuriya.

The commission of the inquiry into malpractices and irregularities in public bodies comprises Justice Priyatha Perera (chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter Mr. Cornel Perera, Managing Director of Hotel Developers (Lanka) Ltd, the owning company of the Hilton Hotel and former directors, Mr. K. N. Choksy, Mr. F. G. N. Mendis and Mr. R. Paskaralingam, former Secretary to the Treasury (absent) have been required to show cause why they should not be found guilty of misuse or abuse of power or corruption or commission of fraudulent acts in connection with the construction of the Hilton Hotel building.

Mr. D. S. Wijesinghe PC with Mr. S. C. Crossette Thambiah and Mr. Chula Bandara instructed by Sivanathan Associates appeared for Mr. Cornel Perera.

Mr. R. K. W. Goonesekera with Mr. W. B. C. Senarat Nandadeva instructed by Mr. M. D. de Silva appeared for Mr. F. G. N. Mendis.

Mr. Ranjith Abeysuriya PC with Neil Dias and Miss Priyadharshani Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam.

Mr. K. N. Choksy was absent having declined to participate in the proceedings.

Mr. A. R. Perera, Deputy Solicitor General and Mr. Jayantha Jayasuriya Senior State Counsel assisted the commission.

Mr. Godfrey Gunasekera, SSP is also assisting the commission.

Mr. L. C. Seneviratne PC with Mr. J. C. Boange, Ms. Menaka Munasinghe and Mr. S. D. Yogendra instructed by Messrs Mather and Ramanathan appeared for Kanko Kikaku Sekkeisha architects.

At the outset Mr. Nihal Sri Amersekere, Chartered Accountant questioned by Justice Jayasuriya was referred to the building application (P270). Under the heading details of rooms there was mention of Type A guest rooms of 23.64 sq. metres. The top measurements was given as 3.65 x 5.65 metres, bottom measurements were 1.56 x 2.40 metres.

The total area was given as 23.64 sq. metres. After a visual examination of the relevant sheet (A20) witness had found that the top measurements were 3.7 x 5.5 while the bottom measurements were 2.8 x 3.4.

In this computation he obtained 29.87 sq. metres as the area for a Type A guest rooms.

Witness said that counsel for Mr. Cornel Perera had suggested that the number of rooms from the third floor to the penthouse floor aggregated to a total of 453 room bays.

When Mr. Thambiah cross-examined Mr. Amersekere he had suggested there were 378 room bays from 4th to 17th floors. The measurement of a room bay in the plan was 23.64 sq. met.

Justice Jayasuriya: According to this "total measurement" the total number of room bays from 4th to 17th floor will exceed 378 considerably. So the 378 is inconsistent with what the counsel said.

Witness said that the bathroom, the cupboards and the passage had also been taken into account.

Justice Jayasuriya: Can a sq. area of 1.56 x 2.40 accommodate a bath room, the two cupboards and the bathroom passage?

Witness said it was a physical impossibility.

Witness was referred to the plan in respect of the 4th to the alleged 17th floor. There were 14 floors. The 4th floor was at a height of 24.54 while the 17th floor was at 66.5. The height between them would be 42 metres.

Justice Jayasuriya: In the cross examination you were referred to the sheets A 28 and A 29 of CP7. What is the height of each floor from 4th - 17th floor? - 2.9 metres.

Justice Jayasuriya: What is the difference between 4th - 17th floors? - 42 metres.

When you divide the difference 42 by 2.9 the answer should be the number of floors. But the answer is 14.5.

Justice Jayasuriya said that the number of floors had to be either 14 or 15 but it can never be 14 and a half.

Justice Jayasuriya: So in the calculations there is an inherent intrinsic impossibility? - Yes My Lord.

Witness was referred to CP7 the plans submitted by Mr. Cornel Perera.

He said CP7 was presented as a true and authentic copy of the architectural plan of 1983. On the figures given CP7 could not be a true and authentic copy.

In CP7 the elevation of the 3rd floor was given as 24.5. In the 20th sheet which referred to the 4th to 17th floor the 4th floor elevation was given as 24.5 metres.

Justice Jayasuriya: Can the 3rd and 4th floors have the same elevation? - No.

Justice Jayasuriya: This is an inherent intrinsic impossibility? - Yes, My Lord.

Witness said CP7 could not be a true and authentic copy of the original plan of 1983. He had rejected it at the outset.

Witness was referred to the schematic design plan P4B (enlarged copy).

The height of the room floors commencing from the 3rd floor was given as 3 metres.

The difference between CP7 and P4B with regard to height of each room was .1 metre (3.9 ins).

In P4B the height of the 3rd floor was 24.5 m. In CP7 also the height of the 3rd floor was 24.5 m. The height between the 3rd floor and the 4th floor was 3m. The height between the other floors from the 4th floor also 3m respectively. At the 17th floor the height was 66.5 metres. The same figure was given in CP7. The 18th floor was given as 69.5 in both. The 19th floor was 72.5m.

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Justice Jayasuriya: Does that figure sound true in your mind? - Yes. It is in CP7 as the height of the

penthouse floor.

Justice Jayasuriya: Now in this exercise we have found that some of the elevations given in P4B correspond with figures given in CP7 but some of the other figures have not been included? - Yes, My Lord.

Justice Jayasuriya: That means the schematic plan was not fully ignored? - No.

Mr. Ameresekere described what in normal terms was considered a story.

We have all been brought up with a knowledge of British culture.

But Japanese culture is different. Witness said counsel had said the ground floor and the roof top also should be considered as floors.

At this stage Mr. Crossette Thambiah said that was the position of the Japanese architects.

Justice Jayasuriya (to witness): The Japanese have bowled a googly. But you thought it was a leg break and tried to handle it. You must remember as the client: Caveat Emptor!

Witness: Did the Japanese really count like that. What I wish to say is that the Japanese did not count the roof top.

Witness was referred to the preliminary agreement P41 dated 30.3.83. This was when the deal was finalised.

Mr. Ameresekere was cross-examined by Mr. S. C. Crossette Thambiah counsel for Mr. Cornel Perera and referred to P4 the schematic design with a three tower drawing on the front page. He had gone through the sheets. There was an alternative plan too proposed.

Witness was referred to the plans sent by the UDA at the request of the ministry of finance. There were 21 sheets but there were no markings on them to indicate the UDA approval had been given.

Mr. Thambiah: Having noted that fact, did you go through those 21 sheets? - No.

The witness had taken photo copies of P103 before they were returned.

Mr. Thambiah: Is it also correct that till your cross-examination took place you didn't study the set of plans in the bound volume? - No.

Mr. Thambiah said when examining both sets he had noted that the CP7 and P103 are the same set of plans with the same contents and same A markings although they bore different dates.

In CP7 every page had been stamped on August 7, 1983, but in CP7D beside the August date June 3, '82 was written in hand. In P103 there were two dates, one stamped and one handwritten. The date in the Rubber stamp depicted June 29, 1983 and beneath, June 3, '82 was written in hand.

The witness asked to do a visual comparison of CP7 and P103 by Mr. Thambiah, said except for the dates the format visually tallied with each other.

According to the A31 of P103 and CP7-AA the plans of the wall section (1) total height was 71.150 metres from the ground floor to the top of the elevator machine room.

The commission resumes sittings today.

Witness does not agree that Japanese wanted to build only 406 rooms

By M. J. M. Zarook and
Manjula S. Fernando

MR. Nihal Sri Ameresekere, Business and Management Consultant said yesterday before the Special Presidential Commission sitting at the BMICH that he did not agree with the defence contention that the Japanese were to build only 406 saleable rooms while putting up 452 room bays.

Mr. Ameresekere was being cross-examined by Mr. S. C. Crossette Thambiah, counsel for Mr. Cornel Perera in the Hilton Hotel inquiry.

The commission of the inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter Mr. Cornel Perera, Managing Director of Hotel Developers (Lanka) Ltd, the owning company of the Hilton Hotel and former directors, Mr. K. N. Choksy, Mr. F. G. N. Mendis and Mr. R. Paskaralingam, former Secretary to the Treasury (absent) have been required to show cause why they should not be found guilty of misuse or abuse of power or corruption or commission of fraudulent acts in connection with the construction of the Hilton Hotel building.

Mr. D. S. Wijesinghe PC with Mr. S. C. Crossette Thambiah and Mr. Chula Bandara instructed by Sivanathan Associates appeared for Mr. Cornel Perera.

Mr. R. K. W. Goonesekera with Mr. W. B. C. Senarat Nandadeva instructed by Mr. M. D. de Silva appeared for Mr. F. G. N. Mendis.

Mr. Ranjit Abeysuriya PC with Neil Dias and Miss Priyadharshani Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam.

Mr. K. N. Choksy was absent having declined to participate in the proceedings.

Mr. A. R. C. Perera, Deputy Solicitor General and Mr. Jayantha Jayasuriya Senior State Counsel assisted the commission.

Mr. Godfrey Gunasekera, SSP is also assisting the commission.

Mr. L. C. Seneviratne PC with Mr. J. C. Boange, Ms Menaka Munasinghe and Mr. S. D. Yogendra instructed by Messrs Mather and Ramanathan appeared for Kanko Kikaku Sekkeisha architects.

At the outset the chairman asked Mr. Crossette Thambiah whether any purpose would be served by cross-examining the witness, Mr. Ameresekere on the building plans as the Japanese architects were coming to give evidence and relevant matters could be elicited from them.

Mr. Crossette Thambiah: I only wanted his visual comparison...

Chairman: But we can't place much reliance on his opinion. I don't want to stifle your cross-examination, but we wanted to indicate our minds to the matter. It will be a very useful exercise to cross-examine Mr. Ameresekere on the various documents.

Justice Jayasuriya: Because the architects would be able to give evidence on the plans more competently!

Mr. Crossette Thambiah counsel for Mr. Cornel Perera said the deal was finalised with the preliminary agreement in March 1983.

The building application was submitted to the UDA on October 14, '83.

Mr. Nihal Sri Ameresekere cross-examined by Mr. Thambiah said he could recollect seeing the bound volumes at the signing ceremony. He said he couldn't exactly say whether they were dark blue or black.

He was then referred to a rigifoam board depicting a cross-section of the Hilton Hotel building.

In that the 4th - 17th floor was described as guest rooms and the 3rd floor as the meeting room while the top floor was described as the machine room.

The witness said he could not recollect seeing the rigifoam board during the signing ceremony.

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Witness was questioned on the investment agreement (P3).

Justice Jayasuriya: Article 4 provides for the letter of guarantee from the government? - Yes. My Lord.

Witness said that when he got the bound copy of the agreement the investment agreement (Exhibit A1) was not attached to it nor the plans.

Witness was referred to the design and supervision contract (P33). In Article 2 there was a reference to Exhibit B, Article 3 referred to Exhibit C and Article 4 referred to appendix D.

Witness was referred to the loan agreement and to the construction agreement (P31). The agreement referred to drawings and technical specifications attached here. But there were no drawings on specifications attached to the contract. Witness was referred to the bound volumes of contract drawings of civil and architecture etc for Hilton International to be built in Colombo.

He said he was not sure whether they were the same volumes that were exhibited at the signing of the agreement at the Oberoi Hotel. At that time he

thought the cover of the volumes was a deep blue while what was produced here was black.

Witness was referred to the management agreement (P 166). Article 1 (2) referred to the building of approximately 406 guest rooms plus other facilities which were in keeping with Hilton Hotels worldwide.

Counsel; This management agreement reflects what the Japanese always contended that there would be 452 room bays but only 406 saleable units or keys.

Witness: I won't agree with that.

Justice Jayasuriya (to Counsel); But are the 452 room bays of the same specifications?

13Counsel: That is a different matter. The fact that there is not a scrap of paper to show why the contractors deviated from the original design warrants this commission. But when the agreement was signed the plans of the proposed building was available.

Chairman: You submit that during the process of construction they reduced the height of the walls. So expenditure would have been less. Shouldn't that have been brought to the notice of the Board?

Counsel: They did. On the 7th of January 1984.

Mr A.R.C. Perera DSG: What the architects can do and any others can do have been laid down in black and white. What the defence counsel has to face is the charge that the building has not been built according to the original architectural plan and design. Fraud is something that the judges will comment on a generality of things.

Justice Yapa: Mr. Thambiah, the expenditure that was to be made on the hotel was finalised when the preliminary agreement was signed? – Yes. But we do not know precisely. My Lord. But we now know that by June '82 the architects were drawing plans that were not in conformity with the schematic design of July 1980 in so far as they had deleted the three

basement levels and two of the guest floors in the plans prepared for June '82.

Commenting on Mr. Thambiah's suggestion that there were going to be only 406 saleable guest units as mentioned in the management agreement (P166) the witness said he couldn't accept that suggestion.

He referred to several documents to support his position, his affidavits (P167) and P168 a copy of the original management agreement.

All the other agreements including the preliminary agreement had 452 room bays.

At the board meeting on January 7, '84 the very next day the agreement had been sent. Mr. Cornel Perera had disclosed there were 452 rooms.

The witness said that he did not jump the gun but gave them enough time to explain and in the end he went to the district court.

Referring to the obligation of the architects in the Designer and Supervision agreement, Mr. Thambiah pointed out to clause B 11 which authorise the architects to do minor changes of the work.

Justice Jayasuriya referring to the article 6-12 of the same document where the architects were asked to keep a copy of the UDA approved plan.

Justice Jayasuriya: It did not get burned in the fire?

Mr. Thambiah: No, My Lord. They have submitted it to the commission.

Justice Jayasuriya: That is not an architectural plan and some sheets are missing in the set of plans they submitted.

When referred to the valuation of the hotel building Justice Jayasuriya said that the fact there was a big difference between the original lease and the under lease was very relevant.

The original lease was 316 million while the under lease was 250 million.

This matter will be taken up tomorrow.



Justice H.S. Yapa

Justice P.R.P. Perera

Justice F.N.D. Jayasuriya

Board of Directors lax when agreement was signed

By Wijitha Nakkawita

The Board of Directors of Hotel Developers Ltd., had been remiss when the agreement was signed to execute the building for the Colombo Hilton Hotel, Chairman of the Presidential Commission, inquiring malpractices and corruption in government bodies noted, when counsel for Cornel Perera, Chairman of the company made submissions regarding the discrepancies of the building from the original plan yesterday (June 25).

The Chairman Justice Priyantha Perera made the obser-

vation when the counsel submitted that the plans were produced to the Board of Directors at the signing of the agreement with the company in 1984.

The Commission comprises Justice Priyantha Perera (Chairman), Justice Hector S. Yapa and Justice F. N. D. Jayasuriya (Commissioners). S. C. Crossette Thambiah appeared for Cornel Perera while Deputy Solicitor General A. R. C. Perera assisted the Commission.

The counsel for Cornel Perera further submitted that the al-

terations were in place in an amended plan which was made available to the local company and the number of saleable rooms were reduced to 387 from 452 and these included suites which were more than one room combined to constitute a suite. There was a drawing of the building that had the reduced number of rooms depicted in it and this was reproduced in the prospectus of the hotel published by the local company.

The witness under cross examination, Nihal S. Amarasekara, former adviser to the Ministry of

Finance said that he could not agree that it was correct to amend the plan to reduce the number of saleable rooms as that was not the agreement.

The profitability of the hotel depended on the number of saleable rooms though more than one room could be joined to constitute a suite which would cost the guests more than the average charges for two rooms added together. Since the question of profitability arose when the number of rooms had been reduced he had queried the correctness of the amended building

plan though he had not been able to check everything during the period the prospectus was printed as there were only 20 working days in which to get through a lot of matters that went into printing the prospectus.

The Commission observed that the original agreement was the most important and if amendments were to be made it should be at the request of the client who should write to the contractor who in turn should address the architects to have the amendments in place after such a request.

The Commission resumes inquiry on 27.6.96 at the BMICH.

DAILY NEWS - FRIDAY JUNE 28, 1996

Consortium director responsible for suppressing plan - Consultant

By M. J. M. Zarook and Manjula S. Fernando

Mr. Akira Nika, the representative of the Japanese consortium of Mitsui-Taisei who was the executive director in charge of building operations was responsible for destroying the original architectural plans of the Hilton Hotel project, Mr. Nihal Sri Amerasekera, Business and Management Consultant said before the Special Presidential Commission sitting at the BMICH yesterday.

The plans were in Mr. Nika's custody as executive director, he said.

Mr. Amerasekera was giving evidence under cross-examination by Mr. Crossette Thambiah, Counsel for Mr. Cornel Perera in the Hilton Hotel Inquiry.

The commission of the inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter Mr. Cornel Perera, Managing Director of Hotel Developers (Lanka) Ltd, the owning company of the Hilton Hotel and former directors, Mr. K. N. Choksy, Mr. F. G. N. Mendis and Mr. R. Paskaralingam, former Secretary to the Treasury (absent) have been required to show cause why they should not be

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Mr. Ranjith Abeyseriya PC with Neil Dias and Miss Priyadarshani Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam.

Mr. K. N. Choksy was absent having declined to participate in the proceedings.

Mr. A. R. Perera, Deputy Solicitor General and Mr. Jayantha Jayasuriya Senior State Counsel assisted the commission.

Mr. Godfrey Gunasekera, SSP is also assisting the commission.

Mr. L. C. Seneviratne PC with Mr. J. C. Boange, Ms. Menaka Munasinghe and Mr. S. D. Yogendra instructed by Messrs Mather and Ramanathan appeared for Kanko Kikaku Sekkeisha architects.

At the outset the chairman reminded counsel appearing for the state that the written submissions for the state had not yet been submitted to the commission. Counsel

requested for a fresh date and given July 5 as the final date.

At the previous proceeding Mr. Thambiah explained there was some reference to the bottom measurement of 1.56 X 2.40 in A04 of the P270. Justice Jayasuriya pointed out in document A04 there was no such reference to that Mr. Thambiah admitted he made a mistake and said what he relied on that document for the total floor area.

Mr. Thambiah cross-examined Mr. Nihal Sri Ameresekera, referred to two lists from the UDA to Cornel and Company of the lands given for the Hotel and recreation area (Sports complex).

A first payment of Rs. 20.7 million had to be made as the first instalment (the balance was to be paid in 33 annual instalments).

Witness was referred to indenture No. 41. An initial payment of Rs. 6.63 million was made and the balance Rs. 26 million was to be paid in 33 annual instalments.

Witness was referred to P9, letter dated 23.3.84 which was a building application.

Plans were approved by letter. Witness was referred to the letter dated 18.4.84 where Chief Engineer Weerakoon forwarded two sets of plans and requested the building permit.

Witness was referred to a Board minute of 18.5.84 which referred to Mr. Akira Nako representative of the Japanese consortium being nominated as executive working Director who would be in charge of all financial and building operational matters of Hilton Hotel.

Mr. N. S. Ameresekera and Mr. Radhakrishnan would assist him.

His District Court case went up to the Supreme Court. In those submissions he had recited through his counsel the alleged wrong doings of Mr. Naka, Mr. Ogami, Mr. Cornel Perera and Mr. Choksy.

He had said that Mr. Naka was responsible for suppressing and or destroying the original architectural plan which was in his custody as the executive director of the defendant company.

Counsel: Do you stand by that allegation? - Yes.

At this stage Mr. A. R. C. Perera, DSG made an application to have the entire document marked as he wanted to know what the allegations were against the others.

Chairman: When you made your allegations against Mr. Naka what was the basis of your knowledge? - He was the executive director and he was in-charge of the building operations.

Witness was referred to P106 where the date of commencement of the building construction was given as 21-12-84.

He said the ground breaking ceremony was in March 1984.

Counsel: How do you reconcile that with this minute that the company had not been handed over the land for construction as it was still being occupied and that it would be given in June? - The ground breaking was in part of the land that was not occupied.

Mr. Thambiah then referred to the advertisement of the pile driving ceremony which appeared in the *Daily News* of November 3, 1984.

According to the board minute of May 30, 1985 the draft of the interior design agreement was submitted to the board. The witness had not been present at the meeting.

The agreement had been signed on July 17, 1985. Mr. Cornel Perera and Mr. Radhakrishnan had signed on behalf of Cornel and Co.

The interior design agreement referred to a total number of 395 guest rooms and other facilities and 38,855 sq. met. of total floor area.

All the agreements regarding the constructions were signed on January 31, 1984.

Witness was referred to the fire and the Mitsui Taisei report on the fire. The OIC Fort police had also given a report on the fire.

Justice Jayasuriya: The report had been typed on a sophisticated typewriter and the name of the OIC had been left to be filled in ink!

Mr. Crossette Thambiah referred to the differences in elevation etc.

At this stage Justice Jayasuriya observed that the presence of the Japanese architect was absolutely necessary to explain the several discrepancies that have come up.

Counsel referred to the fire in which the plans too had been destroyed.

SPC on malpractices in public bodies

Counsel: When the approved plan came from the UDA with the letter P9 it would have been the responsibility of Mr. Naka to have kept it in safe custody? - Yes. He was the executive director.

Justice Jayasuriya: Who signed the letters to the Ministry of Finance, Mr. Paskaralingam the UDA etc.? Some were signed by Mr. Cornel Perera and some by Mr. Chula Bandara.

The building application to the UDA was signed by Mr. Cornel Perera while the covering letter was signed by Mr. Rasaputram.

Witness was referred to his report to Mr. Paskaralingam P101 dated 14-5-90.

Witness was referred to the stereotyped application form for any building construction.

Justice Jayasuriya: Has there been an application in the appropriate official form for erection, re-erection or alteration when the amended plan was forwarded? - No. I have not seen such an application.

Witness was referred to his written submissions when

Justice Jayasuriya: I know that it is only a copy of the plan that should be at the safe. When it is said that the original plan was kept at the working site it startles me!

Rs. 5 million had been paid to the UDA in August '83 and Rs. 21 million later.

In the quarterly progress report for the period April 1, '86 to April 30, '87 the number of rooms approved and the number of rooms to be constructed were given as 452. The date of commencement of construction was given as November 1, '84. The report was signed by Mr. Naka.

When witness was referred to the presentation book offered to the directors of the HDL by KKS which described the outline of the project with some pictures of

the hotel and referred to 39,647 sq. mt. of total floor area and 388 guest rooms. The witness said he was never presented with a copy.

Mr. Thambiah said the number 388 must have been by someone at the time it was presented.

In building application the number of storeys were mentioned as 20 plus 2 penthouse machine rooms.

The witness said there was only one machine room and they had counted the roof of the 1st penthouse as the 2nd penthouse. He said the walls of the 1st penthouse were slightly mounted but even so it cannot be counted as another penthouse or another floor.

The Commission resumed sittings today.

THE ISLAND - MONDAY 01ST JULY, 1996

"Original plans of Hilton Hotel were suppressed or destroyed"

Malpractices in public bodies

by V. Varathasuntharam

Chartered Accountant and Management Consultant Nihal Srinath Amarasekera told the Special Presidential Commission on Thursday that his position was that the original architectural plans relating to Hilton Hotel were suppressed or destroyed while they were in the custody of Mr. Akira Naka, Executive Director.

He was testifying before the Special Presidential Commission probing into the malpractices in public bodies under cross examination by Mr. Crossette Tambiah.

The Commission comprises Justice Priyantha Perera (Chairman), Justice Hector S. Yapa and Justice F. N. D. Jayasuriya.

SC Crossette Tambiah with S. Jayasundara instructed by Sivananthan Associates appeared for Cornel Perera.

President's Counsel L. C. Seneviratne with S. Dondangu, S. D. Yogendra, instructed by Mather and Ramanathan appeared for the Japanese architects. Deputy Solicitor General A. R. C. Perera appeared for the Attorney General.

Counsel: Tambiah: Minutes of the Board Meeting of May 18, 1984, referred to the nomination of Mr. Akira Naka as Executive Director?

Witness: Yes.

Counsel: In that minute the Chairman informed that Akira Naka had been nominated by Mitsui Co. Ltd. to be a full time Director of the company, as such to be in charge of financial and operational matters of the company? - Yes.

Counsel: It further stated that however since Mr. Naka is presently not conversant with such matters, Mr. N. S. Amarasekera and Mr. N. Rathakrishnan were requested to assist Mr. Naka in his duties? - Yes.

Counsel: It further stated that in terms of the Investment Agreement, it is the duty of the company to provide Mr. Naka with an office, a furnished residence and a vehicle for his use? - Yes.

Counsel: It further stated that he had made arrangements to obtain a house on lease at a monthly rental of Rs. 12,500? - Yes.

Counsel: It further stated that the Chairman reported that the Urban Development Authority had still not

handed over vacant possession of the Echelon Square premises to the company? - Yes.

Counsel: It further stated that the construction in turn had not been able to clear the site for construction to commence work by the contractors? - Yes.

Counsel: The minutes further stated that the Chairman reported that negotiations were going on with police authorities who are occupying part of the premises and with other governmental authorities for speedy clearance of the site? - Yes.

Counsel: It further stated that the Chairman reported that it was expected that the site would be handed over to the company at the end of June? - Yes.

Justice Jayasuriya: What was the lease rent of the land? - It was a 99-year lease to be paid over 33 yearly instalments.

Counsel: Would it be correct to say that when the approved plan came from the UDA, it would have been Mr. Naka's responsibility to keep it in safe custody? - Yes.

Justice Jayasuriya: Who signed the building application? - It was Mr. Cornel Perera and not Mr. Naka.

Counsel: The covering letter forwarding the application was signed by Mr. Rajaputhra? - Yes.

Counsel: There is a UDA file minute dated March 23, 1984 saying "Plans Approved"? - Yes.

Counsel: The letter dated August 18, 1984 by the Chief Engineer to the UDA forwards two more plans and request the issue of a building permit? - Yes.

Justice Jayasuriya: In the application for building, there is a specification as to whether the application is for erection, re-erection or alteration? - Yes.

Justice Jayasuriya: Even if application is made to alter the building this specification has to be filled? - Yes.

Justice Jayasuriya: Was there any application in the stereotyped official form submitted by Hotel Developers Ltd. setting out whether it was for alteration? - No. I believe the owner has to sign it.

Counsel: Were you able to discover the plan? - No.

Counsel: In your District Court case which ultimately went to the Supreme Court, your counsel submitted comprehensive submissions? - Yes.

Counsel: In those submissions, it was stated that the original architectural plans were suppressed and or destroyed while they had been in the custody of Mr. Naka? - yes.

Justice Jayasuriya: Counsel made the submissions on your instructions? Yes.

Mr. Tambiah: You maintain that position even today? - Yes.

Chairman: When you gave such instructions to your Counsel what was the basis of your knowledge? - Because he was the Executive Director.

Commission: Is it your position therefore that the plans were in his custody? - It ought to have been in his custody.

Counsel: The Quarterly Progress Report dated December 31, 1984 signed by Naka stated that the number of approved rooms was 452 and that the number of rooms under construction was 452? - Yes.

Counsel: The report stated that the date of the commencement of construction was December 21, 1984? - Yes.

Counsel: After a discussion, the draft Interior Design Agreement

was approved by the Board? - Yes.

Counsel: This agreement referred to a total of approximately 395 guest rooms and other facilities? - Yes.

Justice Jayasuriya (to Counsel): You are more familiar with the facts than anyone else!

Chairman: We are astonished!

Counsel: There is a report by Mitsui regarding the fire? - Yes.

Justice Jayasuriya: This fire is an interesting feature!

Counsel: There is a report by OIC, Fort Police to the Electrical Superintendent regarding

the fire on the very same day? - Yes.

Justice Jayasuriya: The format of the report is interesting!

Counsel: On October 30, 1985, Mr. Naka wrote a letter to the Chairman, Tourist Board? - Yes.

Counsel: In that letter, Mr. Nako reported "all drawings and documents got burnt"? - Yes.

Justice Jayasuriya: Known Architectural and construction procedure is that only the copy of the plan is kept in the site? - Yes.

Justice Jayasuriya: In this instance the fact that the original plan, the sacrosanct, was kept in

the site starts me!

Counsel: The contract document did not cover the recreation? - Yes.

Counsel: The Japanese were good enough to do it even though it was not in the agreement and even though the Directors failed to take note of. This was the lethargy of the Directors.

Counsel: Is it correct to say that when legal issues came up at the Board Meeting, Mr. Choksy's views were sought? - It was an informal thing that the company had its own lawyers.

Chairman: Counsel wants to know whether the Board had recourse to Mr. Choksy when legal matters were discussed? - Yes, we get his views.

Chairman: Mr. Choksy is a lawyer of eminence? - Yes.

Counsel: You knew Mr. Choksy very well? - Yes.

Counsel: Is it correct to say that it was you who introduced Mr. Choksy to Mr. Cornel Perera? - Possibly so.

Justice Jayasuriya: Whom did you come to know first? It is difficult to say that.

Counsel: When there was a problem of

Japanese being given a concession, Mr. Choksy gave an opinion? - Yes.

Counsel: At that time Mr. Choksy was only a lawyer. He had nothing to do with the hotel? - Yes.

Counsel: It was when you went through the reports that you came across the discrepancy about the rooms? - Yes. In fact I was not looking for it.

Sittings adjourned at this stage.

DAILY NEWS - FRIDAY JULY 05, 1996

Mitsui referred to serious financial problems of Hilton project

By M. J. M. Zarook and Manjula S. Fernando

The Japanese contractors Mitsui Taisei had in October 1987 referred to the serious financial problems faced by Hotel Developers (Lanka) Ltd., the owning company of Hilton Hotel, Mr. Nihal Sri Ameresekera, Business and Managment Consultant stated before the Special Presidential Commission sitting at the BMICH yesterday

The commission of the inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter Mr. Cornel Perera, Managing Director of Hotel Developers (Lanka) Ltd., the owning company of the Hilton Hotel and former directors. Mr. K. N. Choksy, Mr. F. G. N. Mendis and Mr. R. Paskaralingam, former Secretary to the Treasury (absent) have been required to show cause why they should not be found guilty of misuse or abuse of power or corruption or commission of fraudulent acts in connection with the construction of the Hilton Hotel building.

Mr. D. S. Wijesinghe PC with Mr. S. C. Crossette Thambiah and Mr. Chula Bandara instructed by Sivanathan Associates appeared for Mr. Cornel Perera.

Mr. R. K. W. Goonesekera with Mr. W. B. C. Senarat Nandaveva instructed by Mr. M. D. de Silva appeared for Mr. F. G. N. Mendis.

Mr. Ranjith Abeyasuriya PC with Mr. Neil Dias and Miss Priyadharshani Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam.

Mr. K. N. Choksy was absent having declined to participate in the proceedings.

Mr. A. R. C. Perera, Deputy Solicitor General and Mr. Jayantha Jayasuriya Senior State Counsel assisted the commission.

Mr. Godfrey Gunasekera, SSP is also assisting the commission.

Mr. L. C. Seneviratne PC with Mr. J. C. Boange, Ms. Menaka Munasinghe and Mr. S. D. Yogendra instructed by Messrs Mather and Ramanathan appeared for Konko Kikaku Sekkeisha, architects.

Mr. Nihal Sri Ameresekere Chartered Accountant cross-examined by Mr. S. C. Crossette Thambiah was referred to the ceremony in connection with the handing over of the Hotel to the company on 30 April 1987. On the day before (29th) there was a board meeting about the ceremony and he may have been invited on that day for the ceremony. But he wasn't sure.

Counsel: Did it occur to you at that time to check whether the furniture and fittings were in places as stated in Exhibit A? - Specially at that time I didn't give my mind to it.

Chairman: At that time you had no suspicious on these matters? - No, My Lord. I got to know about it only in December.

Counsel: So if none of the directors thought if fit to query about the furniture etc., would it be correct to blame the chairman for it? - Not the chairman but as Managing Director he has to see that every thing is correct. All the directors are responsible.

According to the Board minute of April 29, 87 the chairman of HDL had invited the board of directors to the handing over ceremony.

Counsel: Would you still insist on blaming the chairman for attending the handing over ceremony without notice to and or approval and or authority of the Board of directors? - At the ceremony only Mr. Ogaini and Mr. Cornel Perera were present.

Counsel: Do you doubt the board minutes? - I can't recollect being notified. If we had been informed how was it all the directors were not present.

Mr. Ameresekere said that according to the Board minutes what Mr. Thambiah said was correct.

Witness was referred to a letter CP 26 dated 15 October 87 written by Mitsui Taisei to HDL.

Witness said in the letter, the consortium set out in detail the financial problems facing the company. The first item referred to was the shortfall of Rs. 85 million on the first public issue of shares. That shortfall was to be met by Cornel and Company but the problem had remained unresolved to date.

The letter stated that at the request of HDL the contractor continued to proceed with the construction work using contractor's own money remitted from Japan.

After referring to a number of items, the letter stated that under those circumstances "we are of the opinion that the government is not only in the position of the guarantor of the loan but is also the 51 per cent shareholder of HDL and HDL should work more closely with the government to offer some assistance to HDL in order not to let HDL die".

Counsel: In the light of the letter you could say the company faced a serious financial problem? - Yes.

Witness said the Board discussed the letter on 12 November '87. According to the minutes the whole Board was present and also the representative of Mitsui Taisei. It was decided to defer a decision on the matters raised by the consortium for another date.

Witness was referred to several Board meetings on the matter where restructuring of the share capital, a second public issue of shares etc were suggested to overcome the problem.

SPC on malpractices in public bodies

Witness was referred to his report (notes for discus-

sion) P28 where he had raised the question of disparity in the rooms. He did not accept that there were 452 rooms and made his projections for sales and profit on the basis of 387 rooms.

Witness was referred to the draft of his reply to Mitsui Taisei.

The witness who referred to the board meeting on October 15, 87 where the Board reviewed the draft made by the witness and suggested. The final draft should be made by the Chairman and the Executive Director.

Counsel pointed out that the witness's letter and the final draft that was sent to Mitsui and Taisei referred only to the fact of the discrepancy of room boys. He had not queried the discrepancy.

Counsel: Why didn't you query the matter in the letter? - I wanted clarification. I didn't want to jump the gun.

The witness said he queried Mr. Ogami Arally, but didn't submit in the letter because he wanted more clarification.

At one point counsel said it was fully his client's idea to construct a five star hotel in Sri Lanka and without him the Hilton wouldn't have come to existence.

The witness was referred to the telex sent by Mitsui & Taisei in reply to the letter of HDL. The telex said the original 452 room boys were already there even though it had only 387 keys.

Counsel: I'm putting it to you that when the telex came, you and the Board accepted what it said? - No.

Counsel: My lord not a single letter was sent in reply to this telex.

The witness said even the two paragraphs in the telex the counsel referred to contradicted each other.

Counsel: The telex said the original 452 was there. Why didn't you check it at the time. You could have gone to the hotel and clarified it yourself? - No. I'm not a professional architect. That's why we asked for an independent inspection.

At a point when witness referred to Mr. M. T. L. Fernando's request for an independent inspection of the hotel building, counsel said he would come to that point later. He said he wanted to proceed in chronological sequence.

The Chairman then praised Mr. Tambiah saying that he was scoring slowly but steadily.

The commission resumes sittings today.

Paskaralingam tried to safeguard govt interest in Hilton Hotel project, says Chairman

(By M. J. M. Zarook
and Manjula S. Fernando)

By March 1990 HDL the owning company of the Hilton Hotel project owed the Japanese consortium of Mitsui Taisei 3,978 million yen (Rs. 1,219 million) and HDL was not in a position to pay.

On behalf of the government, Mr. R. Paskaralingam, Secretary to the Treasury was gravely concerned that the government would be called upon to pay on the government guarantee, Mr. Ranjit Abeysuriya PC, senior counsel for Mr. Paskaralingam said before the Special Presidential Commission sitting at the BMICH yesterday.

Mr. Abeysuriya was at that stage cross-examining Mr. Nihal Sri Ameresekere, Business and Management Consultant.

The commission of the inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter Mr. Cornel Perera, Managing Director of Hotel Developers (Lanka) Ltd., the owning company of the Hilton Hotel and former directors. Mr. K. N. Choksy, Mr. F. G. N. Mendis and Mr. R. Paskaralingam, former Secretary to the Treasury (absent) have been required to show cause why they should not be found guilty of misuse or abuse of power or corruption or commission of fraudulent acts in connection with the construction of the Hilton Hotel building.

Mr. D. S. Wijesinghe PC with Mr. S. C. Crossette Thambiah and Mr. Chula Bandara instructed by Sivanathan Associates appeared for Mr. Cornel Perera.

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Mr. Ranjit Abeysuriya PC with Mr. Neil Dias and Miss Priyadharshani Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam.

Mr. K. N. Choksy was absent having declined to participate in the proceedings.

Mr. A. R. C. Perera, Deputy Solicitor General and Mr. Jayantha, Jayasuriya Senior State Counsel assisted the commission.

Mr. Godfrey Gunasekera SSP Chief Investigating Officer is also assisting the commission.

Mr. L. C. Seneviratne PC with Mr. J. C. Boange, Ms. Menaka Munasinghe, Ms. Fernando and S. D. Yogendra instructed by Messrs. Mather and Ramanathan appeared for Kanko Kikaku Sekkeisha Architects.

Mr. Nihal Sri Ameresekere, Chartered Accountant cross-examined by Mr. Ranjit Abeysuriya PC Senior Counsel for Mr. R. Paskaralingam said that by the end of 1989 and the beginning of 1990 it was found that Hotel Developers

(Lanka) Ltd. was unable to meet its financial commitments on the loans taken from Mitsui and Taisei Consortium. This assured the proportion of a financial crisis.

Counsel: By the end of March 1990 it was essential that payments be made to Mitsui-Taisei on the loans taken? - Yes.

Counsel: In fact HDL had to devise a survival plan? - Yes, restructuring of the debt ...

By March 1990 Mitsui Taisei was insisting on a token payment of 2 million US dollars.

At that time there was Rs. 85 million unsubscribed shares.

Justice Jayasuriya: Who had agreed to subscribe to those shares? - Cornel and company.

Cornel and Co. however had not subscribed to the shares.

Justice Jayasuriya observed that if they had subscribed to the shares at that point it would have helped them to tide over the immediate financial crisis the company was in.

Subsequently the government had subscribed to those shares and accordingly the percentage of the shares owned by the government rose to 64%. Again the government had met with the immediate shortfall.

Witness said that unless the payment was made Mitsui Taisei were not even willing to talk of rescheduling the debts. Government had guaranteed the loans.

SPC on malpractices in public bodies

Counsel: On behalf of the government, Mr. Paskaralingam would have been gravely concerned that the government would have been called upon to pay Mitsui Taisei on the government guarantee? - Yes.

Counsel: If the government did not pay on its guarantee it would have caused on international cross default? - Yes.

Counsel: Were you also of the same view as Mr. Paskaralingam? - I conceded it would create cross defaults but I objected to any payment being made before the discrepancies of the rooms were looked into. My position was that the token payment should be part and parcel of the rescheduling.

Witness said the Japanese Consortium was however insisting on the token payment before talking of rescheduling.

Counsel: In fact far from opposing the payment you proposed a resolution that HDL should make the token payment to the Japanese? - I pointed out that there was no board resolution to pay and that there should be a resolution. I didn't move the resolution but it was a Board resolution and I participated in it. My position was that the payment should be a part of the debt rescheduling ...

Chairman: You need not repeat. What you have said has been taken down in black and white. Please don't think we

are absent minded professors. So there is no need to repeat!

The witness was referred to the board minute of February 28, 1990 where he had suggested a formal resolution must be made in regard to the payment.

At the meeting Mr. Choksy, Mr. Cornel Perera, the Japanese executive director and the witness were present.

Counsel: Did any one of them oppose making the payment of 2 million dollars? – No one of them opposed.

Counsel said Mr. Paskaralingam was faced with the financial crisis in regard to the loan agreement.

Chairman: Mr. Paskaralingam had tried to safeguard the government interest?

Counsel: Yes, My Lord.

Justice Jayasuriya: He had arrived at the scene very much later!

Justice Yapa: Mr. Abeysuriya, is it your position that if Mr. Paskaralingam did not step in it would have been disastrous for the country? – Yes, My Lord.

Witness said that the Hilton Hotel project was conceived with great expectations as it would have been beneficial to the country to have a hotel of an international chain in Colombo, and the then President, Mr. J. R. Jayewardene gave his support for it.

Witness said that both Mitsui and Taisei were famed construction companies of international repute.

He had no reservation at all in awarding the construction of the Colombo Hilton to Mitsui Company and Toisei Corporation.

Witness was referred to the finances necessary for the construction. There were various options considered, but the funds that materialised was the loan given by the contractors themselves to HDL.

The witness was referred to the loan agreement.

Counsel said that previous to that there was another agreement called preliminary agreement. The price of the contract was mentioned there as 11,952 million yen. That was the amount that had to be paid for constructing the hotel.

Counsel: But the loan agreement mentioned 12,300 million yen? – The loan agreement included furniture, equipment and architects fees.

The witness said the loan was a composite loan. Part of the loan consisted of the Japanese share capital and a part financed by the public issue.

The Japanese had invested Rs/ 124.4 million in the hotel.

According to the loan agreement the loan was to come to effect on January 31, 1984. The loan furnished 12,300 million yen (i.e. Rs. 1367 million).

Mitsui and Company had supplied 6273 million yen while Taisei Corporation supplied 6027 million yen totalling to 12,300 million yen.

The loan was to be paid in instalments. The first instalment was to be made on January 21, 84 and the others were to be made in 11 instalments in three month intervals. All the money was to be paid by 1987.

Money was deposited by the Japanese and they paid themselves with that money.

Witness said that within the space of 33 months HDL got 12.3 billion yen from Mitsui Toisei. The loan was on an interest of 7.95 percent to be compounded quarterly.

Witness was referred to the terms of the loan agreement. The instalments on the principal was to be paid five years after commencement of hotel operation.

The first payment of interest was due six months after the commencement of hotel operations in March 1988 (200 million yen). The second payment which was due in six months was deferred by another six months for 11 March 1989 (800 million yen). This was not paid.

By September 1989 HDL had incurred an obligation to pay 1,500 million yen.

The payments were postponed for 11 March 1990 by which time 2,300 million yen would have been due. In July 1989 after a discussion the interest rate was reduced to 6 per cent.

The amount demanded by the Japanese in March 1990 was 3,978 million yen (Rs. 1,219 million).

DAILY NEWS - MONDAY JULY 08, 1996

At start income projections based on 452 rooms

A continuation of Friday's proceedings of the Hilton Hotel probe.

In 1992 the first payment of capital instalments would also have to begin. At that stage HDL was not in a position to pay.

In 1983 when the hotel project began he thought it would be a viable project.

Justice Jayasuriya: At the start income projections was based on 452- rooms:- Yes, My Lord.

Justice Jayasuriya: If the rooms come down to 386 then your assessment of income would go wrong - It would come down.

Witness said of the first public issue of shares they had expected that Rs 119 million would have been subscribed. But only Rs 34 million worth was subscribed leaving a strict fall of Rs 85 million.

Other reasons for the financial position of HDC was the insurgency, decline of tourists arrival, variation of the yen value.

Mr. Paskaralingam was appointed as the Secretary to the Treasury in February 1989 after Mr. Premadasa became president.

Counsel: In regard to this Hilton project can you remember when you first met Mr. Paskaralingam -At this moment I cannot recollect. But I can remember him attending a board meeting in December 89.

The witness was referred to the document P53, a letter that bore Mr. Paskaralingam's signature. It described the decision of the government to facilitate the token payment of Rs 80 million by subscribing more shares worth 40 million.

Affidavit of Paskaralingam bad in law says AG

The Supreme Court yesterday fixed for October 31 arguments into a preliminary objection raised by the Attorney-General to an affidavit submitted by former Secretary to the Treasury, Mr. R. Paskaralingam to the Presidential Commission inquiring into alleged malpractices in public bodies.

Attorney-General Sarath Silva PC told court that the affidavit was bad in law.

The bench comprised Chief Justice G.P. S. de Silva and Justices Ramanathan and Wijetunga.

The Special Presidential Commission headed by Justice Priyantha Perera inquiring into alleged malpractices in public

bodies had issued notice on Mr. R. Paskaralingam, former Secretary to the Treasury who is now out of the island to appear before the Commission. Mr. Paskaralingam did not appear before the Commission but had submitted an affidavit to the Commission. This was rejected.

He then filed an application in the Court of Appeal seeking a writ of mandamus directing the Commission to accept his affidavit.

Mr. Paskaralingam had cited Justices Priyantha Perera, Hector S Yapa and F. N. D. Jayasuriya as respondents and also prayed that the application be referred to the Supreme Court under the Special

Presidential Commissions Act.

When the matter was taken up in the Supreme Court yesterday Mr. Sarath N. Silva PC Attorney General raising a preliminary objection submitted that this application was a significant one. The Affidavit started as "I Ramalingam Paskaralingam of ... Temple Road London and make serious allegations but the affidavit has been signed in Colombo by one K. Sinnathamby Attorney at Law, Colombo".

The Attorney General submitted that this affidavit is bad in Law. Now the petitioner wanted to amend the affidavit the AG submitted that a petition can be amended but

not an affidavit. The Court cannot proceed with this application. The petitioner should go before the Court of Appeal with a fresh application and come to the Supreme Court, the AG said.

He also said that the amended application was not been properly constituted in the Court of Appeal. This application should be rejected because the Court of Appeal has not referred a valid application to this Court. The petitioner should start the journey again, the Attorney General added.

Mr. Shibly Aziz PC Senior Counsel for the Petitioner Mr. Paskaralingam submitted that there is an error in the original

application and the present application is a fresh one.

He said that the petitioner admits the contents of both applications. He objected to the preliminary objection raised by the Attorney General.

The Court fixed the argument regarding the preliminary objection for October 31.

Mr. Faiz Musthapa PC with Mr. Sanjeewa Jayawardane, Mr. S. Senanayake and Miss Nathasa Balendra appeared for the petitioner Mr. Paskaralingam.

Mr. Sarath N. Silva PC Attorney-General with Mr. K. Kamalabasayson PC, Additional Solicitor General and Mr. Uditha Igalahewa State Counsel appeared for the respondents.

THE ISLAND - FRIDAY 13TH SEPTEMBER, 1996

I was neither an economist nor a financier — Witness

by V. K. Wijeratna
Answering Senior Counsel for former Secretary to the Treasury R. Paskaralingam (absent party) in the Hilton Inquiry, now before the Special Presidential Commission of Inquiry probing alleged malpractices in certain government bodies, Hotel Developers Director Nihal Srinath Amarasekara told the commission yesterday (12) that he was neither an economist nor a financier.

Ranjith Abeyesuriya PC was cross examining witness relating to the post he held at the Ministry of Finance.

"I was an adviser to the Ministry of Finance," witness stated.

Counsel: Was it a verbal appointment?

Witness: I got a letter of appointment.

Referring to the post that Dr. Lal Jayawardana held, counsel asked witness whether it did not occur to him whether he was a misfit.

At this point chairman said that he had been appointed by the government and that the witness could not say why he had been chosen to be appointed.

However, in March 95 when the witness originally came before the commission, he spelt out the qualifications and experience he possessed.

Commission of inquiry chaired by Justice

P. R. P. Perera resumed sittings at the BMICH in Colombo. The other members of the commission are justices H. S. Yapa and F. N. D. Jayasuriya.

R. Paskaralingam has been asked to show cause for alleged misuse or abuse of power in his capacity as Secretary, Treasury in terms of section 9 of the SPC inquiry Law No. 7 of 1978.

Answering Justice Jayasuriya, witness explained that a room-bay was 33 square meters. He said he needed a physical measurement of the room area before payment could be made. He stated that Mr. Choksy has said that; it was

unnecessary and that payment could be made.

Counsel maintained that his client had nothing whatsoever to do in regard to the state guarantees, prior to 1989. He stressed that when guarantees were initiated Mr. Paskaralingam was not the Secretary to the Treasury.

Counsel explained that a debt rescheduling agreement was signed in 1989 which gave Hotel Developers Ltd. the owning company of Colombo Hilton some breathing space to settle debts.

Ranjith Abeyesuriya pointed out that by May '90 the Japanese made it clear that they may have to enforce the guarantee, if no payments were

made.

Witness admitted that invocation of the guarantee would have disastrous consequences to the country's international image.

Counsel then referred to a letter dated 28 May 90 sent by Mr. Paskaralingam to the Attorney General explaining the severe liquidity problems of HDL and the difficulty of paying back debt in the foreseeable future.

He asked Attorney General whether it was feasible to liquidate the company and wished to know what were its implications.

Explaining a note Mr. Paskaralingam had made to Ms. Cassie

Japanese contractors agreed to writing off interest etc after he filed action

(By M. J. M. Zarook
and Manjula Fernando)

ALTHOUGH there were proposals initiated by the Ministry of Finance to reschedule the debts payable to the Japanese contractors, the Japanese agreed to writing off accrued interest, reduce the capital etc only after he filed action in the District Court, Mr. Nihal Sri Amersekera Business and Management Consultant said before the Special Presidential Commission sitting at the BMICH yesterday.

The Commission of Inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter, Mr. Cornel Perera, Chairman and Managing Director of Hotel Developers (Lanka) Ltd, the owning company of the Hilton Hotel and former directors, Mr. K. N. Choksy, Mr. F. G. N. Mendis and Mr. R. Paskaralingam, former Secretary to the Treasury (absent) have been required to show cause why they should not be found guilty of misuse or abuse of power or corruption or commission of fraudulent acts in connection with the construction of the Hilton Hotel building.

Mr. D. S. Wijesinghe PC with Mr. S. C. Crossette Thambiah and Mr. Chula Bandara instructed by Messrs Sivananthan Associates appeared for Mr. Cornel Perera.

Mr. R. K. W. Goonesekera with Mr. W. B. C. Senerath Nandadeva instructed by Mr. M. D. de Silva appeared for Mr. F. G. N. Mendis.

Mr. Ranjit Abesuriya PC with Mr. Neil Dias and Miss Priyadarshani Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam.

Mr. K. N. Choksy was absent having declined to participate in the proceedings.

Mr. J. C. Boange with Mr. S. D. Yogendra instructed by Messrs Mather and Ramanathan appeared for Kanko Kikaku Sikkeisha, Yozo Shibata Associates, architects.

Mr. A. R. C. Perera Deputy Solicitor General with Mr. Vijitha Malalgoda Senior State Counsel and Mr. Jayantha Jayasuriya State Counsel assisted the commission.

Mr. Godfrey Gunasekera SSP is also assisting the commission.

At the outset Mr. Nihal Sri Amersekera, Char-

- Management Consultant

tered Accountant was questioned by Justice Jayasuriya on the project plan and schematic plan.

Q: Is there a specimen room boy spelt out in the schematic plan? - Yes. The dimensions are given and the area is 33 sq. metres.

Q: If the total room area is divided by the area of the room boy the number of standard size room boys would be given? - Yes.

Witness was referred to the memorandum (p47). In the memorandum he had stated the completion certificate did not contain certain particulars. The documentation was inadequate.

The witness said that the completion certificate did not concern the specification of the completed hotel and he wanted a physical inspection to be carried out before making the balance payment.

Justice Jayasuriya: Mr. Choksy has said that the balance payment can be made on the completion certificate? - Yes, but I objected.

Justice Jayasuriya: When was the hotel built? - In April '87 and the opening ceremony was in July '87.

Justice Jayasuriya: You had put up a note of the discussion before the board of directors on 12 December '87. Who were the government directors at the time? - The government directors on the Board at that time were M. T. L. Fernando and possibly Dr. Randeni or Peter Perera.

Cross-examined by Mr. Ranjit Abesuriya PC. Senior Counsel for Mr. Paskaralingam, Mr. Amersekera said that although the government had given it guarantees in 1984, Mr. Paskaralingam had no duties to perform in connection with the guarantees until January 1989 when he was appointed Secretary to Treasury.

Chairman: You agree that it was only in 1989 that Mr. Paskaralingam had anything to do with the government guarantee? - Yes.

Witness said that in July 1989 there was a debt rescheduling agreement which give HDC time to tide over the severe financial crisis which HDC was in.

**SPC on malpractices
in public bodies**

In March 1990 too HDC was unable to pay their

debt to the Japanese. In February 1990 government put in some money to HDC to enable it to make token payment to the Japanese contractors who were insisting on some payment first to postpone the main payment.

Witness was referred to the letter addressed to the Attorney General by Mr. Paskaralingam in which he had emphasised the severe liquidity problem facing HDC. Mr. Paskaralingam had said there was no way to solve the problem in the foreseeable future.

The question that Mr. Paskaralingam posed to the AG was whether it was feasible to liquidate the company and what steps should be taken.

Counsel: This is other indication of Mr. Paskaralingam's concern for the company problem!

Witness was referred to a letter dated August 10, 1990 from Mr. Paskaralingam to Mr. Cornel Perera. Witness was referred to the investment agreement signed in 1984 where it had been stated that there would be an issue of shares to the public and whatever shares that were not purchased by the public would have to be bought by Cornel and Company. The issue of shares did not get a good response from the public. In the letter of 10-8-90 Mr. Paskaralingam had reminded Cornel and Company of their obligation to buy the unsold shares amounting to Rs. 83 million.

Counsel: This would have lessened the possibility of the government guarantees being invoked? - No. This money would have been used to meet the balance construction costs.

Counsel: However the Japanese would have been happy that some money had come in? - Yes.

Counsel: Between April and September 1992 Mr. Paskaralingam has initiated a process of settlement with the Japanese and HDC? - At the time the interim injunction was in force.

Counsel: Mr. Paskaralingam has been concerned about bringing a finality to the matter in dispute!

Witness was referred to his letter to Mr. Paskaralingam informing him of a discussion his lawyers had with officials of the Attorney General's Dept. and officials of the Ministry of Finance relating to the matter of the litigation.

Witness was referred to the discussions initiated by Mr. Paskaralingam to settle the litigation filed by him (witness).

In August 1992 he was informed that the Japanese had agreed to write off all the accrued interest and reduce the capital by 30 percent and reduce future interest by one percent.

Counsel: This proposal was initiated by officials of the Ministry of Finance? - Yes. I was also there in the discussions.

But the Japanese did not agree.

Witness said before he filed action in September 1990 there were discussions about wiping out all accrued interest etc. but the Japanese did not agree. They agreed to the proposals only in August 1992 after he filed action. Mr. Paskaralingam himself participated at some of the discussions in this connection with the Attorney General and others.

Witness was referred to a document dated 17 September 1992 which contained a summary of the discussions held between the Japanese contractors and Treasury officials. One topic was the debt rescheduling agreement.

Counsel: If a new rescheduling agreement gets into place the need for the Japanese to invoke the government guarantees would recede? - Yes. Unless there was default in the payment.

Counsel: In the context of the financial position of the company this rescheduling agreement was very beneficial - in fact essential? - Yes. To enable payment to be made witness referred to a letter dated 25-3-1992 from Mitsui and Taisei to Cornel Perera with copy to Secretary Ministry of Finance.

When the witness filed the case in the district court in Sept. '90 talks were going on with the Japanese to come to a settlement.

Mr. Abey Suriya said the on going talks came to an abrupt halt when the case was filed.

The witness said it was meant to halt the talks. The talks were called off not because of the enjoining order but because of the allegations made by the witness.

Chairman: The witness's position is that the talks were called off because the Japanese feared the enjoining order.

The witness admitted that Mr. Paskaralingam played a key role in resolving the matter.

In September 1990 shortly after the case was filed the witness occasionally met Mr. Paskaralingam while on a tour. The witness had been waiting to meet him because Mrs. Casiechetty had informed Mr. Paskaralingam wanted him to withdraw the case.

However when he met Mr. Paskaralingam, he had told witness to stand firm if it were a fraud.

In a minute in November 1991 Mr. Paskaralingam had stated that Mr. Amerasekera was trying to get the company delisted from the stock exchange.

Chairman: Was that your ambition? I made a complaint to the securities and exchange commission. I was hoping an inquiry to be carried out. I wanted the matter to be investigated. After the inquiry it might be delisted.

Mr. Abey Suriya said that once the company was delisted the consequences would be disastrous.

The witness said that once the company was liquidated as suggested by Mr. Paskaralingam it would certainly be delisted from the stock exchange.

Mr. Paskaralingam had mentioned in the minute P 206 that he was informed by the Additional Solicitor General that the retired supreme court judge had decided the allegations made by the witness were groundless.

Mr. Abeyseriya said that Mr. Paskaralingam did not oppose the charges made by the witness.

Mr. Abeyseriya inquired whether the witness was appointed as an Advisor to the treasury without any expertise in the field because he was making a big noise regarding the Hilton matter.

Mr. Abeyseriya said that the government of Sri Lanka had a heart to resolve the problem at the time.

Chairman: But later the government had a change of heart and decided to back the Japanese. That is the witness's allegation.

Further proceedings were adjourned for today.

DAILY NEWS - SATURDAY SEPTEMBER 14, 1996

Japanese wanted promissory note from govt to settle debts - Witness

By M. J. M. Zarook and Manjula Fernando

THE Japanese consortium had insisted on the promissory note being given by the government (the guarantor) and not by the company (HDL). That was what stalled the earlier negotiations for a settlement, Mr. Nihal Sri Amersekere Business and Management Consultant said yesterday before the Special Presidential Commission sitting at the BMICH.

The Commission of Inquiry into malpractices and irregularities in public bodies comprises Justice Priyantha Perera (chairman), Justice Hector S. Yapa and Justice Ninian Jayasuriya.

In this matter, Mr. Cornel Perera, Chairman and Managing Director of Hotel Developers (Lanka) Ltd the owning company of the Hilton Hotel and former directors, Mr. K. N. Choksy, Mr. F. G. N. Mendis and Mr. R. Paskaralingam, former Secretary to the Treasury (absent) have been required to show cause why they should not be found guilty of misuse or abuse of power or corruption or commission of fraudulent acts in connection with the construction of the Hilton Hotel building.

Mr. D. S. Wijesinghe PC with Mr. S. C. Crossette Thambiah and Mr. Chula Bandara instructed by Messrs Nvananthan Associates appeared for Mr. Cornel Perera.

Mr. R. K. W. Goonesekera with Mr. W. B. C. Senerath Nandadeva instructed by Mr. M. D. de Silva appeared for Mr. F. G. N. Mendis.

Mr. Ranjit Abeyseriya PC with Mr. Neil Dias and Miss Priyadarshani Dias instructed by Mr. N. Sambandan appeared for Mr. Paskaralingam.

Mr. K. N. Choksy was absent having declined to participate in the proceedings.

Mr. J. C. Boange with Mr. S. D. Yogendra instructed by Messrs Mather and Ramanathan appeared for Kanko Kikaku Sikkeisha, Yozo Shibata Associates, architects.

Mr. A. R. C. Perera Deputy Solicitor General with Mr. Vijith Malalgoda Senior State Counsel and Mr. Jayantha Jayasuriya State Counsel assisted the commission.

Mr. Godfrey Gunasekera SSP is also assisting the commission.

Mr. Nihal Sri Amersekere cross examined by Mr. Ranjit Abeyseriya counsel for Mr. Paskaralingam said that his lawyers had informed the Attorney-General that under the circumstances of fraud, the government guarantee was null and void.

A copy of the letter had been sent to Mrs. Casiechetty the Treasury.

Change of the government took place in 1994 and the succeeding Attorney General had not taken the position that government guarantee was null and void, Mr. Abeyseriya observed.

Mr. Paskaralingam had directed a minute (P219) to Mrs. Casiechetty asking that a study be made of the text of Mr. Amersekera's letter to Attorney General. He had said the Japanese ambassador had told him that the Japanese aid would be affected by their position.

After the enjoining order the interim injunction was issued in October 1991 and then the Japanese appealed against the order in the Court of Appeal.

The Attorney General had appeared for the HDL, the 4th defendant (ASG) in the Supreme Court in support to the appeal by the Japanese.

The Court of Appeal granted the appeal and the interim injunction was set aside.

Secretary to the President had written to Mr. Paskaralingam (in December 90) asking to study the implications of the enjoining order made by the District Court.

Witness said he had not filed action against the state. So he preferred that the government should stand aloof.

The Attorney General informed him that the state would not oppose his action. But in 1991 the Ministry of Finance had contacted the Attorney General to support

the defendants. The President himself had directed the Secretary, Ministry of Finance to map out a strategy as to the government's stand on the litigation. The AG had decided to oppose the injunction.

Counsel: In those circumstances it would be fanciful to expect Mr. Paskaralingam to flout the advice of the AG and act on his own? - Yes, My Lord.

SPC on malpractices in public bodies

Witness was referred to his request in January 1992 to Mr. Paskaralingam for permission to allow a physical inspection of the Hilton Hotel building by Mr. Shelton Wijeyeratne, architect.

Mr. Paskaralingam was not at that time a member of the Board of Directors of HDL though he was the Secretary, Treasury and the government owned 64 per cent of the company.

Counsel: Mr. Paskaralingam had no authority to give you permission? - I don't know about that. He was Secretary, Treasury and there were six government nominees on the Board.

Witness referred to a letter by Mr. Paskaralingam recommending the six nominees which the President had approved.

Mr. Paskaralingam had written to witness saying that he had no authority to grant permission for a physical inspection.

Witness then filed an application in the District Court asking for a commission to inspect. The Additional Solicitor General at the time, Mr. Shibly Aziz opposed the application on behalf of the government and the District Judge rejected his application on the basis it was premature.

Chairman: Mr. Abeyesuriya, what is the point you are making here? - That Mr. Paskaralingam cannot be faulted when the AG too had taken the view that no permission should be granted. As a public official he cannot go against the advice of the Attorney General.

Witness was referred to the unsold shares that were expected to be bought up by Cornel and Company. Mr. Paskaralingam had asked Cornels to fulfil their obligation to buy the shares valued at Rs. 85 million.

Witness said that money would have gone to meet the balance construction costs.

Counsel: The Board can decide what to do with the money? - Yes. But the Japanese directors had to concur.

The witness was referred to the minute P51 dated 16 February '90. Mr. Paskaralingam had sent a telex to the Japanese consortium that the government expected at least a 30% reduction of the outstanding amount.

Mr. Abeyesuriya: Mr. Paskaralingam had taken the initiative to write off the accrued interest and 30 percent of the capital which amounted to 30 million dollars and the balance to be paid in 12 years. This was long before witness filed action.

Mr. Paskaralingam had always encouraged him with his litigation and he was very concerned and supportive of him. He said that he was shocked when he saw the minute of Mr. Paskaralingam requesting him to have discussions on the matter with Mr. Choksy who was one of the defendants.

Witness said he had nothing against Mr. Paskaralingam. "I had a good relationship with Mr. Paskaralingam. He has given me a fine testimonial. In fact he was one of the first persons to congratulate me from London on my appointment as Advisor to the Ministry of Finance.

Chairman: Did he impress you as a very efficient public servant? - Yes, My Lord. He took decisions very fast.

Witness said Mr. Paskaralingam was cooperative with him on his case. He was not obstructive. In fact Mr. Paskaralingam had often said: "This fellow Choksy only is obstructing us."

Witness said earlier the Japanese had insisted on the promissory note being given by the guarantor - the government. That was what stalled the agreement. However, now under the present dispensation, the Japanese had agreed to take the promissory note from the company. And that was how the present agreement was reached with the Japanese.

Mr. Abeyesuriya: If these allegations are proved then the present agreement will be vitiated.

Chairman: That's a civil dispute. We don't have to be concerned about that?

Mr. Abeyesuriya: The negotiations were suspended at the request of the Japanese because of the cases filed by you? - The negotiations were suspended, but I'm not aware of the Japanese request.

Mr. Abeyesuriya: Mr. Amereskere, you were insisting that no payment should be made until necessary documents were produced? - Yes.

Then you filed a case in the district court.

Q: You went to the District Court in the honest belief that you would succeed in the action? - Yes.

Q: If you were confident of success why did you have discussion with the Japanese? - The Japanese government had a stake in this project.

Q: I am suggesting to you that your action was merely a speculative one. You did not have faith in your case? - I refute that.

After the present government took office they wanted a settlement with the Japanese. The witness had participated in the talks between the government and the Japanese.

Mr. Abeyesuriya: In 1995 6.9 million rupees were paid to you by the Treasury for costs incurred even before the agreement was signed.

The witness said that the government gained ten billion rupees by the agreement. After the June '95

agreement the government exempted you from 3 civil cases against you. In one action filed by the People's Bank he was one of the defendants after being a guarantor for a loan taken by Sun Cornel Company where 60 percent of the shares were owned by the Cornel & Company.

The witness said he signed by virtue of being a director

of the company. Mr. Cornel Perera, is another defendant in the case.

The witness said he received compensation for his expenditures on six years of court proceedings. He said he submitted all the vouchers for the payments and he had insisted that his accounts be checked and audited.

Further proceedings were adjourned for Monday.

THE ISLAND - SATURDAY 14TH SEPTEMBER, 1996

Malpractices probe in govt. bodies

'I got on very well with Pasky'

by V. K. Wijeratna

Senior Counsel for former Secretary to the Treasury, Ranjit Abeysuriya PC yesterday told witness Nihal Sri Amarasekera at the Presidential Commission inquiring into acts of malpractices in Government Departments that though he had levelled allegations against so many persons, no accusation had he made against Mr. Paskaralingam.

Replying witness he stated that he got on very well with Mr. Paskaralingam and had the best of working relations with him.

"In fact Mr. Paskaralingam wished me well in my new post of adviser to the Ministry of Finance, from London", the witness added.

Special Presidential Commission of inquiry probing alleged malpractices in certain government bodies resumed sittings yesterday at the BMICH in Colombo and took up the Hilton Hotel inquiry in which R. Paskaralingam has been asked to show cause as to why he should not be found guilty of misuse or abuse of power and or corruption and or the commission of fraudulent acts in terms of Sec-

tion 1 of the SPC Inquiry Law.

Commission chaired by Justice P. R. P. Perera also consists of Justices H. S. Yapa and F. N. D. Jayasuriya.

Ranjit Abeysuriya submitted that however high an official was, he had to abide by the advice of the Attorney General, who was the principal law officer of the country.

He, thereafter, cited many instances where his client sought the advice of Attorney General in the matters arising out of the Hilton deal.

Counsel maintained that Mr. Paskaralingam could not have acted on his own and just torn off the state guarantees.

Counsel submitted "Paskaralingam was not a member of the Board of Directors of HDL. He was not even a shareholder of the company", counsel stated.

He said Mr. Paskaralingam was merely representing the government as Secretary to the Treasury.

Witness: He could have directed that a physical examination of the building be done.

Counsel stated that Mr. Paskaralingam replied witness Amarasekera stating

that he had no authority to cause an inspection and examination of the hotel building.

Answering the commission witness stated that government directors were nominated by Secretary to the Treasury and approved by the President and or Minister of Finance.

Witness said that as he was not satisfied with the reply of Mr. Paskaralingam, he went to District Court where it was held that his application was premature.

Counsel Abeysuriya said further that on the initiatives of the Ministry of Finance, the Japanese agreed to set off 30% of the capital and accrued interest and also to reduce the interest on the balance loan from 6 to 5.9%. They also agreed to recover the balance in 12 years. He said the agreement on these terms was ready to be signed in June 93.

Witness said signing of the agreement was suspended because he filed action but that he did not know whether it was at the request of the Japanese or not.

Witness said he opposed to making any payments with-

out the necessary documentation and went before court.

Counsel: Was your decision to go to court a mature and well considered decision?

Witness: I was advised.

Counsel: If you honestly believed and confidently hoped that you would succeed in your court case, why did you take part in a discussion to arrive at a out-of-court settlement?

Witness: Government wanted it.

Counsel then stated that a new agreement was drawn up after the new government came and it was signed on 28 June 1996.

Witness admitted he received Rs. 6.9m as costs incurred by him and that he deposited his cheque.

Counsel stated he got his cheque even before the agreement was signed and post haste he cashed the cheque.

Witness said he deposited the cheque to his account. He also admitted he received other benefits by way of settling another three cases where the People's Bank was seeing him as a guarantor.

Witness said the operation of the agreement has been suspended by the Deputy Minister of Finance.

Counsel asked witness whether he refunded his money.

Counsel maintained that suspension was on the orders of the government.

Witness said he had not received any payment for his own exertion.

Mr. Abeysuriya was assisted by Miss Priyadharshanee Dias and Neil Dias.

DSG, A. R. C. Perera and Senior State Counsel Vijith Malalgoda assisted the commission.

Commission will resume sittings on September 16.

Hilton project probe**Recalled witness Amarasekera did not suspect any fraud in 1987****By V. K. Wijeratna**

Mr. Nihal Sri Amarasekera, a recalled witness in the Hilton Project inquiry yesterday (17) told the Special Presidential Commission of Inquiry probing alleged malpractices referring to the shortage in rooms that in 1987, he did not suspect any fraud.

Witness Amarasekera was under cross examination by S. C. Crossette Thambiah counsel for Cornel Perera Chairman and Managing Director of Hotel Developers (Lanka) Ltd. (HDL).

He had been asked to show cause why he should not be found guilty of misuse or abuse of power and/or corruption and/or commission of fraudulent acts in terms of section 9 of the SPC Inquiry Law No. 7 of 1978.

The Commission chaired by Justice P.R.P.

Perera resumed sittings at the BMICH in Colombo. Justices H. S. Yapa and F. N. D. Jayasuriya are the other two members of the commission.

Counsel told witness that the forecast of Mitsui dated 26.1.87 was based on 452 rooms. He explained that thereafter Hilton's monthly reports for July, August and September referred to 387 rooms.

Counsel further explained that forecasts of Mitsui dated 21.12.87 and 1.2.88 were also based on 387 rooms.

Counsel Thambiah said that when the witness pointed out the discrepancy, the Board decided to write to Mitsui. This letter, he said, was drafted by the witness and approved by the other.

Witness admitted that the letter was subst-

antially on the lines of his draft.

Counsel observed that one of the topics for discussion at the board meeting of 9.2.88, was the second issue of shares to the public.

Counsel: You tabled a revised profitability and cash flow projection based on the figures given by Mitsui — based on 387 rooms.

Witness: I reassembled the figures given by Mitsui for the Board to understand. The Board wanted it.

Chairman: Did you query the figures?

Witness: I queried it in December.

Counsel then went on to explain how Mitsui formally demanded the money, in terms of the Loan Agreement. "This presented a sense of urgency in the company", counsel observed.

The first demand for

102 m Japanese Yen was made to the Chairman and Managing Director to be complied with by March 11, 1988.

The Board explained the difficulties faced by them and suggested to lay by the payment for two years and asked for the co-operation of the Japanese Company, counsel stated.

Counsel said that a second demand was made on 5.1.88 for 279m Japanese Yen to be paid on or before March 11, 1988. This was also replied as earlier, the counsel pointed out.

Counsel added that a third and a fourth demand were also made. He said that the fourth demand for 98m Japanese Yen came from Taisee.

Chairman: You wanted an inspection. For what purpose?

Witness: I expressed concern in 1987. Mr.

MTL Fernando asked for an inspection.

At this stage DSG ARC Perera objected to counsel marking certain documents through witness, as he was unaware of their contents.

Commission disallowing the objection said that the witness could say that he was unaware of those documents, if it was so. **Chairman:** We have tons of papers!

Justice Jayasuriya: Many do not appreciate the problem we have to face. There is criticism.

Mr. D. S. Wijesinghe PC. with Messrs S. C. Crossette Thambiah and Chula Bandara instructed by Sivanathan Associates appeared for Mr Cornel Perera.

DSG ARC Perera and SSP. Godfrey Gunasekera assisted the commission.



Justice H.S. Yapa

Justice P.R.P. Perera

Justice F.N.D. Jayasuriya