

The truth about the Geneva Human Rights Council Resolution by Mangala Samaraweera

During the past few weeks, I have been watching the many headlines, debates, misinformation, misrepresentation of facts as well as self-congratulatory statements by some members of the delegation that went to Geneva to participate in the 40th session of the Human Rights Council where the High Commissioner for Human Rights Michelle Bachelet presented the Report on Sri Lanka as requested by the Human Rights Council.

As the person who held the portfolio of Foreign Affairs when resolution 30/1 of 01 October 2015 was adopted, I feel that it is my duty to respond to some of the malicious arguments being made and misrepresentation of facts.

I saw some statements claim that the initial delegation to the Human Rights Council's 40th session in March 2019 was changed. This, like most reports attempting to mislead the public, is false. There is also an abundance of gossip about the delegation and undignified attacks against devoted public servants. Contrary to what is being said, there were no plans to send anyone to Geneva originally for the 40th session as we have a competent, experienced, respected diplomat as our Ambassador to the UN in Geneva who is well-versed in procedure and substance and who has always managed things in a professional and dignified manner, based on instructions, with no attempts to blow his own trumpet like some do. And unlike some others who held this post earlier, the present Ambassador is completely apolitical with no hidden agenda to embarrass the Government of the day or our country.

Initially I thought that the diplomatic event at the 40th session of the Human Rights Council would be a show of Sri Lanka's diplomatic maturity, skill, finesse and grace in handling matters rationally on the international stage. After all, Sri Lanka's position in the world, its global recognition as a trusted partner and sovereign nation is an issue of critical importance to us all. And what could be more important today, ten years after the end of a brutal fratricidal conflict? What could be a better opportunity to showcase our democracy especially after a tilt towards autocracy was defeated by the people, by Parliament and by the Judiciary? Indeed, the 40th session was an opportunity to tell the world of our difficult yet committed journey towards strengthening democracy, reconciliation, sustainable peace and achieving equitable economic development and prosperity for all. What I had hoped to see therefore was a serious, compassionate, and well-informed discussion on true reconciliation.

However, I note with deep concern that such an enlightened and rational approach is confined to our hopes and wishes and not what we have in reality. In Geneva, rather than demonstrating diplomatic skill, finesse, grace and maturity, we made a spectacle of ourselves.

Let's call a spade a spade: much of what is presented today as debate on the recent Human Rights Council session amounts to little more than a display of egocentric one-upmanship, emotional manipulation and nationalistic propaganda calculated to stir frenzy, deceive the public and create fear to gather possible votes in the emerging electoral scenario.

What we see from many in our political spectrum – from those holding the highest positions to those in obscure positions – is a plethora of contradictory, improvised and

exaggerated accounts. So much so that it is difficult to discern which is the most notorious of these utterances, or the most embarrassing, as each appears to want to outdo the other. Some managed to reduce their participation in the most important human rights forum in the world to self-important, gossipy, exaggerated tales about their supposed heroic roles in correcting the UN High Commissioner for Human Rights, the former President of Chile Michelle Bachelet who has been a Minister of Defence in her country, and the chief of UN Women, the foremost global institution on women's rights.

On behalf of all sane, rational, decent, sincere, compassionate, serious-minded and honest Sri Lankans who fervently wish to consolidate peace and reconciliation in our country, heal the wounds of our fellow citizens, and ensure non-recurrence of conflict, to lead us towards economic prosperity, I offer an apology to High Commissioner Michelle Bachelet, a true friend of Sri Lanka's people, a champion of the Global South, and herself a survivor of the horrors of torture. High Commissioner Bachelet, you did not deserve the misrepresentation of your statements.

But let's focus on the biggest misrepresentation of them all: the version that Sri Lanka has somehow managed to produce an accusation against itself. A tale disseminated by members of the delegation that went to Geneva to participate in the Human Rights Council session. This is a tale of self-incrimination or incompetence because if these gentlemen talk today of their heroic exploits stopping the impetus of the world, how did they manage then to ensure that the resolution passed without a vote, by consensus, and with our co-sponsorship? And why did they, at substantial cost to our coffers, celebrate by hosting a reception after the adoption of the resolution?

But enough with the fake news. What exactly and truly transpired in the 40th Session of the Human Rights Council in Geneva? What is resolution 40/1 "Promoting reconciliation, accountability and human rights in Sri Lanka"?

Quite simply, it is a resolution passed unanimously by the 47 members in the Council with co-sponsorship of 46 countries including Sri Lanka and our neighbour Maldives, ensuring the roll over or extension of two previous resolutions: resolution 30/1 of 2015 and resolution 34/1 of 2017 (itself a rollover/extension of resolution 30/1).

A similar rollover was co-sponsored in 2017 and signed by the then Permanent Representative of Sri Lanka to the UN in Geneva, the present Secretary to the Ministry of Foreign Affairs, who was himself a member of the delegation this time. When he signed to co-sponsor resolutions in 2015 and in 2017, he was not made to bear the indignity of accusations being levelled at the present Ambassador of betraying our nation and its defence forces.

The decision to request for a technical/procedural rollover this year was taken after consulting both H.E. the President and the Hon. Prime Minister in February 2019 ahead of the organisational meeting of the 40th session of the Human Rights Council on 16 February 2019. Instructions pertaining to co-sponsorship were merely conveyed to Sri Lanka's Permanent Representative to the UN in Geneva, Ambassador A.L.A. Azeez by Mr. Mano Tittawella, Secretary-General of the Secretariat for Coordinating Reconciliation Mechanisms (SCRM) which comes under the Prime Minister's Office. The SCRM was formed by the Cabinet of Ministers in 2016 for the overall coordination of reconciliation activities including implementation of resolution 30/1. The Minister of Foreign Affairs Hon. Tilak Marapana was also fully aware of these instructions which were conveyed by him

to Ambassador Azeez as well. Minister Marapana had also asked Ambassador Azeez to coordinate matters with respect to the resolution with Mr. Tittawella, and had kept the Secretary to his Ministry Ravinatha Aryasinha informed.

So, what does a rollover/procedural extension mean exactly? It means that instead of the world castigating Sri Lanka, as so often happened before January 2015, for human rights violations and impunity, the world reiterated its confidence that Sri Lanka is a nation which is firmly on the road towards reconciliation. The world reaffirmed that Sri Lankans are a responsible, mature, dignified people determined to work on tackling difficult issues to provide truth, justice, and reparation to the nation aimed at healing, upholding the rights of all and establishing the rule of law to ensure the non-recurrence of conflict, ushering in stability required for economic growth, development and prosperity for all in the long-term.

In the words contained in resolution 40/1,

*“...it is the **responsibility of each State to ensure the full enjoyment of human rights and fundamental freedoms of its entire population**”.* Yes! This is our responsibility and no one else in the world has appropriated that responsibility, as certain people have said recently!

A rollover of a resolution is **not a sanction** in any way. I challenge any member of the delegation that went to Geneva and participated in the rollover of the resolution without a vote, to show what sanction is contained in resolution 40/1, or in resolution 30/1 which is the original one adopted on 01 October 2015.

Resolution 30/1 which Sri Lanka co-sponsored in 2015, in pursuance of the mandate that President Sirisena received from the voters to implement the 100 Day Programme and take charge of Sri Lanka's sovereign right to solve its own problems locally, is no more and no less than a historic agenda to ensure durable peace and reconciliation in our country.

Contrary to what is often being said, the content of resolution 30/1 was based on Sri Lanka's own proposals for truth-seeking, justice, reparation, and guarantees of non-recurrence presented to the Human Rights Council by me on behalf of the Government of Sri Lanka on 14 September 2015. The content of this Statement was both discussed and approved by His Excellency the President as well as the Hon. Prime Minister at meetings that were held following the swearing-in of several ministers including me by the President after the Parliamentary Election held on 17 August 2015. It is as a result of this resolution (30/1) that prospects for international action initiated through resolution 25/1 of March 2014 and the OISL (OHCHR Investigation on Sri Lanka) that was adopted during President Rajapaksa's regime was effectively halted. It is important to remind everyone that it is if we as a responsible and sovereign nation fails to act that we place our citizens in grave peril because the message we then send out to the world is that we are unable or unwilling to do our job. If we fail to deal with our issues ourselves, then others will step in, and international action as well as universal jurisdiction will apply.

I must recall here that following the adoption of resolution 30/1, the President convened at least two rounds of an All-Party Conference regarding implementation of the resolution for reconciliation while even at that time, expressing reservations regarding the involvement of foreign judges. In order to broaden the scope of implementation of the

resolution, the President sought the views of all political parties that participated in the All-Party Conference. However, some of the political parties including the members of the so-called Joint Opposition that go around the country making unfounded accusations didn't even bother to give written observations or suggestions at the time.

If you **look at the content of Resolution 30/1** carefully, you will understand the objective of the reconciliation agenda which contains a series of measures covering reconciliation, rule of law, security and confidence-building. All these are measures that were derived directly from our promises to the Sri Lankan people at the election of January 2015: *that we would overcome hate, that we would overcome arbitrariness, that we would overcome fear – all conditions that are necessary for long-term development of our nation. Nothing more and nothing less.*

Many of these measures have been implemented, and in some others the progress has been partial but is ongoing. Every citizen that has not been living under a rock, or under the rock of prejudice, will recognize those measures that include: *creating institutions to ensure the rights of victims as well as the future safety, security and wellbeing of all citizens; constitutional reform, so that we can all live, work, and prosper together in dignity; addressing shortcomings so that everyone can enjoy peace in their own lands and houses.*

The **measures of resolution 30/1**, that was rolled over without the need of a vote, recently, include:

- The establishment of an **Office on Missing Persons**, to undertake the humanitarian and compassionate task of determining the fate and whereabouts of the missing along the history of all our past conflicts and crises. The OMP, quite simply, restores the right of every Sri Lankan family, of any background, language or religion, to know what happened to their missing loved ones and to take measures to impress upon our nation's soul, the non-recurrence of disappearances in future. As it has been noted, the missing in our country includes hundreds if not thousands of families of our soldiers as well as police personnel, missing in action. *Who in their right mind with a beating heart could deny such a basic right to their grieving fellow citizens – mothers, fathers, sisters, brothers and children? Isn't this the compassion that Gautama Buddha has spoken of?*
- The creation of an **Office for Reparations**, which has been approved in Parliament and which has passed constitutional muster, to ensure that all the persons affected by conflict have a fair opportunity to rebuild their lives, to receive adequate reparation, to be recognized in their dignity as human beings and citizens to receive appropriate satisfaction. The Office will be a permanent mechanism that will formulate policy which can help all citizens even in unfortunate events in future. *What is threatening about helping those who suffer to rebuild their lives? Is it not a state's sovereign responsibility to help all citizens in need rebuild and restore their lives and livelihoods?*
- The establishment of a **Truth and Reconciliation Commission** (for which a Concept Paper is before the Cabinet of Ministers) that will clarify the events of the conflict, including those most disputed and controversial, in order to lift the veil of secrecy and speculation, and to listen to all the victims and survivors, in a

compassionate and dignified way. Everyone can tell their story. This includes the military. *Who is afraid of letting our brothers and sisters from all walks of life, from all parts of our nation, speak, to enable truth-seeking, and thus facilitate measures for healing and non-recurrence of such grievous hurt in our land? Who is afraid of truth-seeking to such an extent as to oppose such a local exercise by calling it some conspiracy or international intervention? Is truth a foreign concept for Sri Lankans who are blessed by the teachings of Gautama Buddha, the Vedas, Prophet Mohammed and Jesus Christ?*

- The establishment, within our national legal system, of “a *judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law*”, a mechanism that the Resolution explicitly calls “**a Sri Lankan judicial mechanism**” not an international one, in which there would be the participation of foreign jurists.

This, of course, is the measure that has motivated the most terror and indignation among the spoilers of reconciliation and healing. Therefore, let me review it carefully for the benefit of all those with a sincere desire and willingness to try to understand it.

-This proposal is not to establish a foreign mechanism in some foreign land outside Sri Lanka. Literally, it is a proposal to establish a **Sri Lankan local** mechanism. And the participation of foreign jurists is in no way a strange or unheard-of practice in Sri Lanka. After all, it was the government led by former President Mahinda Rajapaksa which established the International Independent Group of Eminent Persons (IIGEP) in 2005, led by no less than the 17th Chief Justice of India, the illustrious justice Bhagwati. This is not the only instance either. Moreover, several Sri Lankan jurists have participated as judges and investigators in international courts. Some of our former judges and officials of the Attorney General’s Department have been appointed to judicial bodies in Fiji as well.

-No provision in our Constitution requires judges serving in our system to have Sri Lankan nationality. Of course, some could argue that the Constitution should clarify that point explicitly, but is this something we should get caught up arguing about and toss reconciliation out of the window just out of a newly discovered antipathy for the word “foreign”?

-The resolution says that the **Sri Lankan** justice system must investigate and adjudicate on allegations of the most serious human rights violations. *Now who could oppose that? Even the gentlemen who went to Geneva this time in March 2019 say precisely that.* Let’s assume that it is because of this fundamental agreement that they did nothing to prevent the adoption by consensus of the resolution! Should we not acknowledge the need to investigate allegations? **Are we not bound by our own Constitution to provide for the equal protection of the law?** Shouldn’t we do justice to all our citizens including our security forces personnel by investigating allegations so that those who may not be guilty of a crime do not have to carry the weight of an allegation with them to the grave? Should we let allegations remain without investigations and make our security forces

personnel vulnerable to be subjected to universal jurisdiction? Do we not owe our institutions of the army, the navy, the air-force and the police the right to justice just as much as we owe all our citizens who have been wronged? ***This is called abiding by our own Constitution. Nothing more, nothing less.***

The Human Rights Council is not a court of law. That is not the place to argue and debate over the number of dead or missing. All these including the information obtained by Lord Naseby are matters for **Sri Lankan** processes including the Sri Lankan justice system.

-The participation of foreign experts, **in the capacity that we decide, within our national system** is nothing new or controversial. We have already done it in the past. Instead of making this a Manichean discussion of “yes” and “no”, let’s have a practical discussion of how, and in what way do we ensure that justice tackles the most serious allegations, in an independent manner, and with the support of the best jurists of the world. As I have asked recently in my response to the Hon. Mahinda Rajapaksa, why would we, a country of the Global South deprive ourselves of the expertise of our brothers and sisters in other countries of the Global South? Why not reach out to the Argentine experts who have identified the fate of the missing in their native country and around the world? Why ignore the contribution of our Tunisian friends who have examined the corruption and human rights violations of their past dictatorship? Why slam the door on South African lawyers who are even now uncovering the horrors of Apartheid and contributing to the construction of a diverse, proud Rainbow Nation, as they call their beautiful country? Why ignore the know-how of Colombian experts striking the delicate balance between peace and justice after a long conflict? Why shy away from even asking the High Commissioner for Human Rights Michelle Bachelet who has been a torture victim and later a Minister of Defence and President of her country to share her own experience in these matters with us?

-We have the expertise of numerous Sri Lankan experts who have participated in courts around the world. We have the recommendations of thousands of Sri Lankan citizens who appeared before the Lessons Learnt and Reconciliation Commission as well as the Consultation Task Force to give recommendations about justice. We have the willingness of the best legal minds around the world to share their opinion and expertise.

- What else is in the resolution? Our commitment to pass new, modern laws to prevent the repetition of the past; a better legal framework to fight terrorism; legislation to prevent forced disappearances. This, as any legislation is not retroactive. *Who could be against preventing future crime? Who could be against preventing disappearances in the future? Only those who may want a free hand to commit crime! Only those who would not hesitate in unleashing again the horror of the White Van phenomenon!*
- The resolution also encourages the return of land to its rightful civilian owners. This is quite a self-evident task: once the defence imperatives are addressed there

is no necessity to use the land of civilian owners. We are a nation of laws, and every Sri Lankan, no matter their background and state in life has the right to own property and make a living, however modest. And, as the High Commissioner has noted, we are making significant progress in this regard. *Who could be against ensuring that someone recovers a house, a plot of land, a fishing ground, so that everyone can enjoy the simple happiness of building a family, working hard, dreaming of a better future?*

- The resolution also encourages the Government of Sri Lanka to introduce effective security sector reforms as part of its transitional justice process, which will help to enhance the reputation and professionalism of the military. *Who in his or her right mind would want to deny the military of the opportunity to enhance its reputation and professionalism? Can those who call themselves patriotic really deny the military the opportunity to serve the noble cause of Peacekeeping around the world?*

When I read the resolution to try to explain what every task in the resolution is, I cannot help but wonder, who in their right mind could oppose such a common sense, compassionate, and reasonable measure? It should be a rhetorical question. It should be evident that rational persons couldn't oppose any of these measures.

Regrettably, it is not self-evident.

Ten years after the end of the conflict in the North and the East, thirty years after the end of the second insurrection in the South, we seem to continue those fratricidal conflicts in our hearts, with the anger of the fighter, instead of the compassion of the peacemaker and peacebuilder. Instead of using the capacities of the state to rebuild, reform and reconcile, we try to stop rebuilding, reform, reconciliation and healing. Instead of recognizing the inherent human dignity of all persons, we ask first for their language, their religion, their identity!

And it is sad to note that those who do so, proclaim themselves good Buddhists. No philosophical system and no religious revelation, in particular the sublime teachings of Gautama Buddha, should be used to justify heartlessness and lies.

The sad reality is, then, that there are those who oppose any measure to achieve accountability and reconciliation, because they don't want justice. They want victor's justice. They don't want the peace of the living, they want the peace of the cemeteries. They calculate that by appealing to our worst instincts: by mobilizing the base emotions of fear and hate, they will grasp power.

I trust that they are wrong. I trust that, at the end of the day, every Sri Lankan of goodwill is capable to feel in their heart the suffering of any living being and any other Sri Lankan. I am convinced that, even if we humans are imperfect and are capable of great evil, we are also capable of magnanimity, of goodness, of beauty, kindness, compassion, justice and dignity.

I trust that our citizens are capable to see beyond the lies, and I invite all professors in our universities, all community leaders, all leaders of our security forces, all religious leaders to discuss, to inquire, to inform themselves better than we politicians have

informed them or the media has informed them through sound bites and news clips. I invite every responsible citizen to **read the resolution** that I have plainly explained here, and whose validity we have extended. Also read and observe and understand how actual UN and Human Rights Council processes work instead of being misled by fear mongers and liars.

In 2015, we ceased to be the pariah nation we were in the period immediately before that where we were fighting everyone and cornering ourselves. We took control of the accountability and reconciliation agenda, and we put the world as our witness. Nothing less, as I have said, and nothing more. We regained our place as a responsible sovereign nation alongside the rest of the world, because we had regained our heart, and our identity as a compassionate, proud, diverse nation, full of hope and inspiration to march forward, holding our heads up high, to be the best that we could be.

That, and not the lies and exaggerations, is what will win in the end: our love for our Mother Lanka, our freedom, our wonderful diversity, our faith, our capacity to reconcile, and our capacity to live and work together with unity of purpose – to make our country the developed country it deserves to be with no space for recurrence of conflict.
