
UN Special Rapporteur Alston acted in breach of diplomatic norms & procedures - Minister Bogollagama

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Responding to the statement made by UN Special Rapporteur on extrajudicial, summary or arbitrary executions Prof. Philip Alston, Foreign Minister Rohitha Bogollagama said that the conduct of Mr. Alston was a breach of diplomatic procedures and also in violation of all UN procedures. The Minister charged that the Special Rapporteur had ignored the very findings of his experts. The Sri Lanka Government will firmly resist any endeavour negative to her interests posed from any quarter. Also the GOSL remains committed to continued engagement and dialogue with the UN, including on matters relating to the further protection and preservation of human rights.

The matter of the Statement is the content of the Technical Note comprising the opinions of three "independent experts", who had been "retained" by the Special Rapporteur on the so called Channel 4 video tape that purportedly shows an incident of extrajudicial killings in Sri Lanka. Prof. Philip Alston had by his letter of 5th January 2010 to Sri Lanka's Permanent Representative of Sri Lanka to the United Nations in Geneva informed that he intends to make a Public Statement in New York on 7th January 2010. The said communication was received by the Permanent Representative after office hours on 5th January and in turn sent to Colombo on 6th January 2010 when it came to their attention. The justification by the Special Rapporteur of the Public Statement in this regard was on the grounds that there had been a very public exchange of comments on this matter. During a telephone discussion, it was pointed out by Secretary of the Ministry of Foreign Affairs to Prof. Alston on 6th January that this was not an acceptable rationale since once the UK based Channel 4 telecast the footage the Government of Sri Lanka was compelled to refute the issue in the same manner. In fact it may be recalled that when Channel 4 aired this footage there was a public pronouncement by the Special Rapporteur on its authenticity. This rationale of the Special Rapporteur used to justify his Public Statement in New York therefore is questionable. Moreover, the space between the receipt of the Technical Note in Colombo in the evening hours of 6th January and the scheduling of the Public Statement in New York in the morning hours of 7th January hardly afforded a reasonable amount of time for a considered response from the Government of Sri Lanka. It should be emphasized that the least that could have been done would have been to first share with the Government of Sri Lanka the opinions of the independent experts. Thereafter the Government should have been afforded adequate time to examine the same. The views of the Government should then have been among the factors determining what further action is to be taken. This did not happen and instead what took place is violative of all accepted procedures of the United Nations and the norms of justice and fair play. This position was also conveyed by Secretary of the Ministry of Foreign Affairs to Prof. Alston during his discussion. Special Rapporteur Alston without resorting to fair practice went ahead and made a Public Statement as scheduled on 7th January. While his statement concludes that "most of the arguments relied upon by the GOSL to impugn the video have been shown to be flawed", he has done so ignoring that his own position as articulated is contradicted in the context of the opinions expressed by the experts. The following are noteworthy:

- Prof. Alston's very opening line of his statement states that the "reports by three independent experts strongly point to the authenticity of a video tape released by Channel 4 in Britain which appears to show the summary execution of bound, blindfolded and naked Tamils by Sri Lankan soldiers". However one of the experts J. Spivack, Forensic Multi-media Analyst categorically states that "the multi-media file submitted for analysis, video DJ. 3 gp, cannot be authenticated to an absolute certainty without access to the device purportedly used". Further Spivack also states "that there is no way to confirm solely from this recording the identity of the potential victims or the shooters. Neither whether the shooters were actually Sri Lanka military members as opposed to Tamils dressed in Sri Lanka military uniforms, nor whether the potential victims were Tamils or instead innocent victims of another ethnic group can be determined from this recording". Further there are according to Spivack "unexplained characteristics of this file, the most troubling of which from a file integrity stand point is the text which appears in the final 17 frames of video."
- Further, another expert, Dr. Daniel Spitz, a Forensic Pathologist and Toxicologist, has stated that questions remain following his review of the material relating to, what accounts for the movement of the leg of the first victim at the time the second is shot. Further, Dr. Spitz states that "I would not expect his leg to remain in this position (upright position with knee flexed approximately 90 percent) if he were deceased". Such are some of the ambiguities in the opinions expressed by the experts. It is therefore extremely regrettable that Rapporteur Alston's statement amounts to the misrepresentation of the said opinions and brings into question his judgement.
- Despite these qualifications, the Special Rapporteur has proclaimed in his overview to the Technical Note that "in light of these conclusions, and of the persistent flow of other allegations concerning extrajudicial executions / called for an independent inquiry to be established to carry out an impartial investigation into war crimes and other grave violations of international humanitarian and human rights law..." It may be noted that this position has been reiterated by Prof. Alston in his Public Statement and is the crux of the issue.
- Prof. Alston's position of a "persistent flow of other allegations concerning extrajudicial executions" seem to emanate on the basis of a mere newspaper report quoting one of the candidates for the current Presidential Election.
- Prof. Alston's rush and determination to go public, ignoring accepted procedure and the very opinions of the experts lead for apprehensions to arise that he is pursuing a targeted campaign against the Sri Lankan authorities with the deliberate timing of his action to coincide with the current sensitive phase of national elections.