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February 25, 2009

Honorable Robert Casey  
Chairman, Senate Foreign Relations Subcommittee on Near Eastern and South and  
Central Asian Affairs  
United States Senate  
383 Russell Senate Office Building  
Washington, D.C., 20510

RE: Hearing on Recent Developments in Sri Lanka-Leverage of the United States -  
Prospects for a Political Settlement

Dear Mr. Chairman:

I submitted a written statement for yesterday's hearing addressing "Recent Developments in Sri Lanka." I also attended the hearing and listened to the panel's live witnesses and questions from the Subcommittee. I would respectfully request that my supplemental observations in this letter, which responds to the oral testimony and Subcommittee's questions, be added to the record with the consent of the Subcommittee's Members.

The Subcommittee repeatedly inquired as to what leverage the United States had to influence the behavior of the Government of Sri Lanka (GOSL) to cease its war crimes or other atrocities against Tamil civilians and to respect fundamental democratic freedom such as freedom of speech or press and freedom of movement. I would submit that the answers neglected several muscular responses that the United States has regularly employed against other governments guilty of comparable human rights abuses or despotism.

Under the International Emergency Economic Powers Act, the United States has frozen the assets and prohibited visas to the top leadership of Belarus (including President Alyaksandr Lukashenka), Myanmar, Zimbabwe (including President Robert Mugabe), and Sudan, among other countries, for grisly violations

of international humanitarian law. (The testimony of Bob Dietz, noted below, was that the GOSL may soon become another Myanmar or Zimbabwe pariah state). These precedents clearly justify freezing the assets and prohibiting visas to the top Sri Lankan leadership, including President Mahinda Rajapaksa, Defense Secretary Gotabhaya Rajapaksa, and Army Commander Lt. General Sarath Fonseka, for complicity in war crimes or worse. (There is strong evidence that Gotabhaya Rajapaksa and Sarath Fonseka enjoy substantial property holdings in the United States).

The uncontradicted testimony of Dr. Anna Neistat, Human Rights Watch, concluded that the Sri Lankan Armed Forces are guilty of war crimes, including the indiscriminate shelling of areas packed with displaced Tamil civilians and of hospitals; the use of imprecise multi-barrel rocket launchers; acute or complete restrictions on humanitarian aid; the operation of militarily controlled “concentration camps” (euphemistically styled “welfare villages”) for Tamil civilians without freedom of movement, without an ability to communicate outside the camps, and, without adequate medical or other assistance; detentions at the camps without a proper accounting of persons held there, which raises the suspicion of enforced disappearances and extrajudicial killings (no independent observers are allowed to monitor the screening process for camp detainees); and, the denial to displaced persons of access to humanitarian agencies.

The uncontradicted testimonies of former U.S. Ambassador Jeffrey J. Lunstead and Mr. Bob Dietz of the Committee to Protect Journalists established a recurring pattern of GOSL’s violence against media critics or others who disappear in white vans or are otherwise slain or injured; and, unvarying impunity for anyone who perpetrates the crimes. Ambassador Lunstead testified that President Mahinda Rajapaksa could stop the criminality if he wished. The culprits are not rogue elements.

Ambassador Lunstead also testified that Tamil detainees in the concentration camps were selected solely because they are Tamils, not because of complicity with the LTTE or criminality. In other words, they are victims of ethnic-religious persecution by the Sinhalese Buddhist government. A natural inference to be drawn from Ambassador Lunstead’s observation is that the 2,000 Tamil civilians who have perished and thousands more who have been severely injured in the GOSL’s bogus “safe zones” in the past months were targeted because of their ethnicity or religion. That makes out a prima facie case of genocide under the United States Genocide Accountability Act of 2007 (GAA), i.e., an attempt to destroy a Tamil group in whole or in substantial part specifically because of ethnicity or



religion through extrajudicial killings, serious bodily injury, or the creation of conditions of life intended to result in the physical destruction of the target group. The parallel between Sri Lanka's "safe zones" for Tamils and Serbia's "safe zone" for Bosnian Muslim males at Srebrenica that culminated in genocide is irresistible.

In addition to asset freezes and visa prohibitions, the United States holds further leverage over the GOSL leadership through application of its criminal laws. Indicting the head of state for serious criminal violations is no novelty. In 1988, the United States indicted Panamanian President Manuel Noriega for complicity in international drug trafficking. Noriega was captured in 1989, tried, and convicted in a federal criminal prosecution in Florida. As I suggested in my written testimony, the United States could assert leverage over the GOSL by opening a grand jury investigation into whether President Mahinda Rajapaksa, Defense Secretary Gotabhaya Rajapaksa, or Army Commander Lt. General Sarath Fonseka have violated the GAA or United States prohibition of torture (both of which apply irrespective of where the violation occurred or the identity of the violator), or whether Defense Secretary Rajapaksa has violated the War Crimes Act, which applies only to United States nationals. (He is a United States citizen; Fonseka is a permanent resident alien; and, Mahinda Rajapaksa is neither a United States citizen nor permanent resident).

The testimonies of the witnesses and questions or statements of the Subcommittee cast substantial blame on both the LTTE and the GOSL for more than twenty-five years of grim conflict in Sri Lanka. The LTTE has been listed as a foreign terrorist organization under United States laws, which triggers a long menu of financial, visa, and criminal sanctions on members or supporters. In contrast, the GOSL leadership confronts no corresponding sanctions for its atrocities and persecution of Tamils — even though, as Ambassador Lunstead testified, a government should be held to a higher standard of behavior than non-government organizations. This discrepant treatment gives little incentive to the GOSL to alter or lighten its repression of civilian Tamils. To be evenhanded in Sri Lanka and to create a climate favorable to a political, as opposed to a military or genocidal, solution to the longstanding conflict between the Sinhalese and Tamils, the United States should take measures against the GOSL leadership comparable in scope and bite as the listing of the LTTE as a foreign terrorist organization.

Finally, negotiating a peaceful political solution in Sri Lanka is handicapped by the Sixth Amendment to the Sri Lankan Constitution. It makes illegal the peaceful advocacy of a separate Tamil state within the territory of Sri Lanka by constitutional amendment, negotiation, or otherwise. In other words, the idea

cannot even be a subject of discussion. That restriction should be lifted to provide the maximum space for a political resolution of Sri Lanka's tragic strife.

Thank you for considering these additional views.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bruce Fein". The signature is written in a cursive style with a prominent loop at the end of the last name.

Bruce Fein  
Attorney, Tamils Against Genocide