

STATEMENT OF KAREN PARKER, J.D.
BEFORE THE SUBCOMMITTEE ON NEAR EAST
AND SOUTH AND CENTRAL ASIAN AFFAIRS
COMMITTEE OF FOREIGN AFFAIRS
UNITED STATE SENATE
FEBRUARY 24, 2009

Chairman Casey and members of the Subcommittee:

I am pleased that you are concerned about the situation in Sri Lanka and have given me this opportunity to provide the Subcommittee with information regarding this situation and my views on what United States might usefully do. By way of introduction I am an attorney specializing in international humanitarian (armed conflict) law and human rights. I have participated in United Nations human rights forums since 1982, and have addressed the situation in Sri Lanka since 1983 on behalf of a number of non-governmental organizations, most recently with the Association of Humanitarian Lawyers (AHL) and International Educational Development (IED). In 1987 I presented a statement to the House of Representatives on the situation in Sri Lanka.¹ The views expressed in this statement are my own and do not necessarily reflect the views of IED or AHL.

BRIEF OVERVIEW OF CURRENT CRISIS

The twenty-six year old armed conflict between the armed forces of the government of Sri Lanka and the Liberation Tigers of Tamil Eelam has reached a phase that can only be called genocide-like and catastrophic for the Tamil people in the north and east of the island.² As there are many incidents on a daily basis and the situation is extremely volatile, it is not possible to be either timely or even accurate as far as facts and figures. Accordingly, this overview should be accepted as snapshots indicating the urgency of the situation. Even so, they clearly indicate genocidal acts.³

A. Civilian casualties.

While numbers vary substantially about the number of Tamil civilians killed, the most reliable estimates indicate at least more than two thousand in the past several weeks alone. There

¹ Application of Human Rights and Humanitarian Law to the Situation in Sri Lanka: Hearings on Sri Lanka before the Subcomm. on Asian and Pacific Affairs of the House Comm. on Foreign Affairs, 100th Cong., 1st Sess. (1987).

² This is not to say that there are not serious abuses of Tamils in other areas, which, as they are taking place in the context of the armed conflict, also indicate serious violations of humanitarian law.

³ Former United Nations Secretary-General Kofi Annan stated many times that whenever there is an ethnic conflict, the question of genocide arises. In this situation there are elements such as direct killings; imposing impossible conditions of life by severe restrictions of food, water, medicines; killing humanitarian aid workers or driving them out; and continuous anti-Tamil rhetoric at home and abroad.

are many thousands with life-threatening injuries and the casualty figures can be expected to rise dramatically in the next few weeks due to lack of medical care. Casualty figures released in June, 2008 for the war indicated more than 100,000 persons had died, the vast majority of them Tamil civilians.⁴ Recently, the health officer for Mullaitivu district indicated at least 40 Tamil civilians killed and 100 injured per day.⁵

B. Illegal military operations.

It is clear that hospitals, safety zones and civilian locales have been targeted and the number of casualties indicate blatant disregard for humanitarian law standards.⁶ In defending military actions against hospitals, Defense Secretary Gotabaya Rajapakse was filmed stating: “No hospitals should operate outside the safety zone . . . everything beyond the safety zone is a legitimate target.”⁷ This is an egregious misstatement of the humanitarian law rules. In addition to targeting hospitals outside the safety zone, there is also reliable evidence that the government’s forces continue to targeting hospitals, schools and civilian dwellings inside the safety zones and in other undefended civilian areas that under humanitarian law rules may not be attacked.

C. Status of relief providers.

Because of fears of attacks as well as because of express orders to leave, most relief agencies have left the LTTE-controlled areas and much of the area newly under government control as well. It appears that Tamils Rehabilitation Organization is the sole-remaining international NGO in the LTTE-controlled area. The International Committee of the Red Cross (ICRC) was ordered out of the LTTE-controlled areas by the government and its capacity to attend to the needs of Tamil civilians not in the LTTE-controlled areas has been dramatically reduced. Its last act was to transport several hundred severely wounded out of the area by ship.

D. Shortages of food, water and medical supplies.

Tamil civilians both inside and outside of the LTTE-controlled areas suffer severe shortages of food, water, and basic medical care. The primary supplier of food has been the World Food Programme. WFP’s access to the Tamil-controlled was curtailed some weeks ago, but after much international pressure on the government, a food caravan was allowed into the LTTE-controlled area (the Vanni) on

⁴ See *British Medical Journal*, vol. 336, p1482 – 1486 (19 June 2008) (Zaid Obermeyer, et al.).

⁵ Randeep Ramesh, “Sri Lanka casualty toll rises,” *The Guardian*, Feb.14,2009.

⁶ The protection of hospitals and medical care in general is the foundation issue of the Geneva Conventions, beginning with the Geneva Convention of 1864. Hospitals and other health facilities of both combatants and civilians “may in no circumstances be the object of attack.” Geneva Convention I, Art. 1; Geneva Convention IV, Art. 18. Under current rules, parties to conflicts may establish safety zones, which then become off-limits for military actions.

⁷ Interview on Skynet, Feb. 3, 2009.

February 19 containing 30 tons or an estimated 100 grams per person/ per day, which is grossly inadequate. At the same time, the available food and water at the government's IDP camps is also grossly inadequate. UNICEF has had emergency feeding centers for children who are grossly underweight and facing death by starvation, but it is uncertain if they also have been cut back by government edict. Tamils in the whole of the north and east have had their subsistence farming and fishing severely curtailed for some time due to the government's establishment of high security zones (HSZ) which effectively remove prime farming and fishing areas from use. In this manner, the Tamils in the North especially have already faced serious food shortages – many Tamil children are developmentally delayed due to lack of food. In any case, all evidence shows that the government is denying food, water and medicine to the Tamil civilian population, prohibited by humanitarian law norms and an element of the crime of extermination under the Statute and Elements of the International Criminal Court.⁸

E. Status of Tamil civilians.

There has been considerable controversy about the status of Tamil civilians both in the LTTE-controlled areas and in the government controlled areas. Estimates about the numbers of Tamils in the LTTE area vary from 150,000 to over 300,000. At this point, with no monitoring of the situation, it is impossible to tell, but given the fact that fewer than 60,000 or so have crossed to the government side according to the government's figures, the higher number is the more likely one. Another controversy is that there are accusations that the LTTE is not letting civilians flee and that the government is preventing people from entering into its area. Again, with no witnesses, it is not possible to verify this accusation. However, is highly likely that many of Tamil civilians in the LTTE- controlled areas would be hesitant to turn themselves over to what they consider an enemy government.⁹ Many of those in the Vanni had come there the past few years after abuses in the government-controlled areas such as Jaffna and Trincomalee. Prior to the recent upheaval, monitors who surveyed check points both ways found that many entering the Vanni had lost relatives to the "white vans, " the vehicles that roam the street and seize people who are rarely seen again.¹⁰ Others had been arrested and tortured at government police stations. The war began, of course, after the Tamil people lost faith in the national government to protect their rights, and has been fueled by continued human rights and humanitarian law violations against them. Indeed, more than one-third of the Tamil civilian population on the island now forms the more than 1.3 million persons in the burgeoning Tamil Diaspora.¹¹ Those in the LTTE-controlled area also are aware of the IDP camps, and

⁸ See ICC, Rome Statute, Articles 7 (1)(b) and 7(2)(b); ICC Elements, Article 7(1)(b).

⁹ See, i.e., Robert Evans, MEP, "Who can protect Tamil civilians," *The Independent*, Feb. 14 2009: "Whilst the Sri Lankans claim that they are merely trying to eliminate terrorism, the real victims are, as ever, the civilians trapped by the fighting. All the evidence suggests that unless the international community acts very soon, about a quarter of a million people could be caught in a ghastly bloodbath. The Sri Lankan government has urged Tamil civilians to come over to their side for protection, but there is a strong reticence and fear of such a move. The Tamil people have seen so much death and destruction. They are terrified of Sri Lankan troops and their "holding camps", with all the stories of assaults and rape, not to mention the different language and religion which divides the Hindu Tamils from the Buddhist Sinhalese troops."

¹⁰ According to United Nations figures, Sri Lanka has one the highest numbers of disappeared persons, the vast majority of which are Tamils.

¹¹ These Tamils are what are called "Eelam" Tamils – Tamils who have lived and governed themselves in the north and east of Sri Lanka for nearly two thousand years. There are also Tamils in Sri Lanka who were brought by the British from India's Tamil Nadu. Usually referred to as the plantation Tamils, they are not part of the conflict, although they may sympathize with the Eelam Tamils, as do the Tamil people in India's Tamil Nadu.

know that when they cross the line, that they will be sent to a camp. What is apparent is that those crossing into the government-controlled area are in severe need of both food and water.

There is also controversy over the government's plans for Tamils leaving the Tamil-controlled areas. The government originally announced that they would be kept in detention camps for 3 years, but after a rather strong reaction from the international community, especially from certain UN officials and the UK, the government is now claiming that Tamil civilians would be in camps for a shorter, unspecified time. Obviously, those crossing the line would be very nervous to express their opinion freely while in camps, and are likely to say whatever will keep them the safest under the circumstances, as commonly occurs in this type of situation.

F. Weaponry.

There is strong evidence that the government forces may be using either illegal weapons or legal weapons in an illegal manner. A recent charge was made that thirty families in a safety zone were killed by "bunker buster" bombs. Without proper investigation, it is not possible to verify this or to know, if used, the bunker busters are B61-11s or the older B61-7s from the United States arsenals, or whether they are of different origin. The photographic evidence of cluster bomb casings against civilians is inconclusive – it is obvious that the markings on the cases is in Russian, but less clear whether the photographed casings were from cluster bombs or some other munitions. It is unknown if the Russian Federation supplied these munitions or if another country did. There appears to be reliable evidence of the use of white phosphorus as weapons rather than tracers, or that white phosphorus was used with disregard for possible civilian casualties. There is also photographic evidence of the use of fire bombs against Tamils in camps for internally displaced persons (IDPs). The government of Sri Lanka has received Dvora patrol/attack boats from Israel, MIG-27s from Ukraine, military assistance and arms from Pakistan and military assistance (and possibly weaponry) from Iran and possibly the Russian Federation.

G. Monitoring.

The government has refused any monitoring of the conflict by international actors and organizations and has prevented the media from going to the war area. Note that former President Clinton and former UN Secretary-General Annan were not allowed to the Tamil-controlled areas following the Tsunami, and, except for the ICRC, now forced out, and one or two UN officials, no other UN mandate holders have been allowed to that area. Former UN High Commissioner for Human Rights Louise Arbour was allowed to travel to the North in 2007, but not to Tamil-controlled areas. Her visit to Jaffna was heavily controlled by Sri Lanka authorities, and she apparently was not able to meet with Tamil civilians in private. There is a clear intent to prevent anyone in a position to act from meeting with the LTTE leaders or the people who live in the LTTE areas. The head of the UN Office for the Coordination of Humanitarian Affairs (OCHA) John Holes was allowed to visit several of the IDP camps in Vavuniya during his just-finished trip, but he was not allowed to circulate freely and was accompanied by the President's brother. In the best of circumstances, this would not be conducive to a fair evaluation of the situation. Further, he was called a "terrorist" by Sinhala politicians following his previous visit in

(August 2007) when he commented on the high number of killings of humanitarian workers aiding the Tamil population, so he is apt to be cautious. A significant concern is that the interpreter from Tamil to English during Mr. Holmes visit to persons in IDP camps was a senior minister in the Rajapakse Administration, and there is no way to verify what interviewees actually said.¹²

H. Attacks on media.

In the past few years there have been assassinations of many of the major Tamil journalists, or journalists that are considered “friendly” to Tamils by the government. The most recent victim of this was Lasantha Wickrematunge, killed on January 8, 2009. Mr. Wickrematunge, a *Time Magazine* freelancer and the editor of *The Sunday Leader*, was an outspoken critic of the government of Sri Lanka. In an interview with the BBC’s Chris Morris about Mr. Wickrematunge’s death, Defense Secretary Gotabaya Rajapakse stated that dissent or criticism in time of war is treason. Chris Morris fled Sri Lanka on February 2, 2009 after being called an LTTE supporter by the Defense Secretary. Dozens more have fled since then, many receiving aid from international media NGOs. In 2008, 12 journalists were killed in Sri Lanka. Sri Lanka was identified by *Time Magazine* as number 3 on the list of underreported stories in 2008 and claimed the war was deadlier than Afghanistan.

INTERNATIONAL RESPONSES TO THE CRISIS

There have been a number of actions by both governments and international officials since the crisis began in January, although since the Rajapakse Administration began, there has been increased scrutiny of the long war, especially since January 2008 when President Rajapakse announced that he was suspending the then 5 year old cease fire agreement. For example, there was a special debate on the Tamil genocide in the House of Commons UK in October, followed by an adjournment debate in the House of Commons on Dec. 18, 2008.¹³ On January 23, 2009 Germany called for a cease fire. Australia has indicated that it will provide an additional 4 million Australian dollars. The EU issued a call for a cease fire on February 23, 2009.

A number of international personages have also called for a cease fire and a settlement of the conflict through negotiations. Recently Nobel Laureate Jose Ramos Horta offered to mediate. Nobel Laureates Desmond Tutu and Martti Ahtisaari have recently spoken out about the need for a negotiated political settlement.

¹² At the time of that visit, more than 60 aid workers had been killed in about one and a half years., the highest in any current conflict.

¹³ A brief summary of some recent actions undertaken by the UK was transmitted by Andrew Dinsmore MP (Hendon) to one of his constituents, including UK actions urging a cease fire, and pressing the Sri Lankan authorities on access for organizations delivering humanitarian relief to be both improved and more predictable. There has been direct communication by Prime Minister Brown, with follow up by David Milliband, to President Rajapakse encouraging cooperation with the ICRC and UN. The UK government is doubling its recent humanitarian aid, and cooperating with the UN in the Emergency Response Fund.

Within the UN system, Walter Kalin, the UN Independent Expert on Internally Displaced Persons issued a statement of concern on December 23, 2008. Radhika Coomaraswamy, the Special Advisor to the Secretary-General on Children and Armed Conflict issued a statement on January 21, 2009 and another on February 20, 2009. Navi Pillay, the High Commissioner for Human Rights issued a statement on January 29, 2009. On February 9, 2009, ten mandate holders under the UN Human Rights Council issued a statement.¹⁴ OCHA posted a special report on February 10, 2009, in which it indicated that the Office of the UN High Commissioner for Human Rights was preparing to address the needs of up to 100,000 IDP and others. UNICEF and the World Food Programme are actively involved with providing relief in Sri Lanka, although the two specialized agencies cannot operate freely in the Tamil areas and the Tamil-controlled areas.

A recent request by Mexico to address Sri Lanka in the Security Council was rebuffed by the Russian Federation. Secretary-General Ban Ki-moon claimed that he could not ask the Security Council to address the issue because it was not on the agenda, although Article 99 of the UN Charter clearly gives him the authority to do so and he has acted under Article 99 authority in the past.

The Tamil Diaspora has responded to the crisis with many demonstrations. For example, there have been recent demonstrations in South Africa, Australia, New Zealand, Washington, DC, New York, San Francisco, London, Paris and Geneva. In Canada there have been several massive demonstrations, including a “human chain” that surrounded a large part of downtown Toronto.

UNITED STATES POLICIES

United States had little interest and involvement in post-colonial Sri Lanka until the Reagan Administration, even though there were many disturbances between Sinhalese and Tamils from the beginning of that period, including four or five widespread massacres of Tamils by Sinhala mobs. Regretfully, United States policies that began under the Reagan Administration have been unhelpful in resolving this situation. In 1987 India found out about President Reagan's interest in developing Trincomalee Harbor to accommodate the United States Navy: a deal had been nearly worked out with President Jayewardene. Wanting to prevent this, India entered into the Indo-Sri Lanka Accord (1987) and attached a letter of annexure indicating that nothing would transpire with Trincomalee that was against the wishes of India. There was perhaps a tactical pause under the Clinton Administration. After the events of September 11, the Bush Administration looked again at Trincomalee and there are suggestions that Palaly airfield was also under consideration. Both of these are in the Tamil areas, so in order for possible bases to be secure, the Tamil question would have to be resolved.¹⁵ However, instead of taking a leadership

¹⁴ The statement was issued by experts Sehaggya (human rights defenders), La Rue (freedom of expression on opinion, Corcuera Cabezul (involuntary disappearances), Castrillo (arbitrary detention), Grover (the right to health), Despouy (the independence of justice), deSchutter (the right to food), Alston (the right to life), Nowak (torture), and Rolnik (housing).

¹⁵ The importance of Trincomalee was one of the topics under discussion in the Adjournment debate of December 18, 2008. The debate is on the UK Parliament's webcam. That the Bush Administration was seeking these military

role in resolving the conflict with cooperation of the Co-Chairs and the Sri Lankan Monitoring Mission, the Bush administration converted the armed conflict in “terrorism/counter-terrorism.” Thus the conflict was no longer reviewed under prevailing humanitarian law, the result of which has substantially prolonged the conflict and has done considerable damage to humanitarian law itself. Of course, false labeling of armed conflicts as “terrorism/counter-terrorism” does not make the world any safer from actual terrorists and, with the demise of humanitarian law protections usually results in many more victims of armed conflicts than there would otherwise be. Sadly, this is the case in Sri Lanka.

It is clear that since 1982 the LTTE has met all criteria for combatant status according to humanitarian law norms: they have an identifiable chain of command; they are in uniform and use the weapons and the *matériel* of war; they have ground, sea and air forces; they have exercised sufficient control over territory to be able to engage in sustained and concerted military operations; and in all ways meet combatant status criteria. This does not mean that to recognize the existence of the armed conflict necessarily means a political approval of their aims, which, as the LTTE states, is to ensure sufficient autonomy if not separation from Sinhala control so as to enable the Tamil people to live in peace and security.¹⁶ Recognizing a war as a war also does not extinguish the terrorism question: there is a rule in the Geneva Conventions that prohibits “measures of intimidation or terrorism” against the civilian population.¹⁷ However, if such measures occur, this does not convert combatant forces to terrorists: combatants remain under the protection and obligations of humanitarian law as long as the conflict is occurring, and in certain cases, for some time after the conclusion of hostilities. Both the LTTE and the government forces may carry out any military operation that is not prohibited in humanitarian law. Many of the military operations in this war are legal, but those occurring now that target the Tamil civilian population are not.

The conversion of the war into “terrorism/counter-terrorism” has had a number of other serious consequences, one of which is the distressful erosion in basic human rights and far too many “shades of gray” in situations that are actually quite black and white.¹⁸ But an even more serious consequence is that the Tamil people worldwide have been so demonized by the constant inferences that “Tamil = Tiger = terrorist,” mostly by the constant references to this by Sri Lanka’s President and other authorities, that Tamils have been intimidated and have lost the key support of institutions and groups who ordinarily would be sympathetic.¹⁹ Any public show of

bases may be a reason the Russian Federation has made overtures to the Rajapakse Administration of late and blocked Security Council attention to the matter. There apparently is an MOU between the Bush Administration and President Rajapakse regarding Trincomalee..

¹⁶ Their aims are identical to those of the Kosovans, who have obtained the blessing of the United States to secede from Serbia. One wonders, why the Kosovans and not the Tamils?

¹⁷ Geneva Convention IV, Art. 33. This is slightly augmented by Protocol Additional I to the Geneva Conventions, Art. 36: “Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.”

¹⁸ Treating persons suspected of being terrorists as being Prisoners of War (Guantanamo comes to mind) and held under Geneva Convention standards when they are clearly not captured combatants, for example, is absurd: the “war on terrorism” is a rhetorical phrase, not a factual one.

¹⁹ Note that even M.I.A., the Tamil rap star nominated for a Golden Globe and an Oscar, was attacked by some for being pro-terrorism. A college student in Canada told me that after the Harper government came to power and “listed” the LTTE, a professor announced in one of her classes that there was a terrorist in the room.

sympathy for Tamils is fiercely and publicly countered by the government, targeting, *inter alia*, more than a few members of Congress in the US and members of Parliaments in numerous other countries. Sri Lanka representatives try to intimidate NGOs at United Nations human rights sessions.²⁰ They also pursue Tamils in the Diaspora, and even try to prevent local authorities from issuing permits for Tamil demonstrations. In the United States there is a mood that somehow the Tamil people as a whole are an enemy of the United States. In my 27 years working on humanitarian law issues, I have never encountered a situation where an ethnic group that has been the victim of the most serious of human rights and humanitarian law violations becomes the culprit – and in ways that are overtly racist. Indeed, it is not possible for people to discuss any other group in this fashion without receiving instant disapproval.

There are some hopeful signs that the new United States Administration will play an affirmative role in the situation rather than a grossly negative one. Both President Obama and Secretary of State Clinton have made statements that indicate more careful reflection on this and similar situations.

RECOMMENDATIONS

1. The first thing that the United States should do is call for an immediate cease fire, and then should most forcefully present this to the Rajapakse Administration. While the Rajapakse Administration has stated as recently as a few days ago it would not do so, it is difficult to imagine that with the combined force of the US, the rest of the co-chairs and the rest of the “Western and Other” bloc at the UN, Sri Lanka’s main “donor” States, that Sri Lanka would be defiant. While Sri Lanka may have received assurances from Iran and the Russian Federation, for example, that they would cover Sri Lanka’s needs, it does not seem likely that they can substitute for the level of aid from the Western bloc and Japan.

2. The United States should ensure that no State that receives United States military assistance provides arms to the government forces. The United States should also seek to stop arms delivery to the government of Sri Lanka by any other countries.

3. The United States should take a leadership role in ensuring that the humanitarian needs of the Tamil civilians are met, that Tamil civilians are not relocated to detention camps but are allowed freely to resettle in their own locales, and that the human rights abuses against them cease immediately. In particular, the United States should ensure that its contribution to the rehabilitation of the Tamil areas reflect a genuine desire to assist. The United States should ensure that any funds donated by Tamil people to assist Sri Lanka Tamils that have been “frozen” be made available for the purpose of assisting these Tamils.

4. The United States should most forcefully insist that on-site visits to any and all areas of Sri Lanka by UN officials or other impartial persons take place, and that interpreters for such

²⁰ Note that some also raise the “child soldier” issue, which further demonizes of the Tamil people although the charge is leveled at the LTTE and others. However, the international minimum age for soldiers as set out in the Geneva Conventions is 15, and those who raise the issue are using age 18 as the minimum.

visits are trained and impartial. The United States should also insist that Sri Lanka allow the United Nations High Commissioner for Human Rights to expand her office in Sri Lanka.

5. The United States should ask the government of Sri Lanka what proposals they have for the resolution of the Tamil issue. The United States should consult regularly with the leadership of the Tamil Diaspora, both in the United States and in other countries, to invite comments and suggestions on proposals. The United States should encourage the government of Sri Lanka to accept the good offices of mediators such as those mentioned above.

6. The United States should ensure that the government of Sri Lanka ceases all anti-Tamil rhetoric at home and abroad and that it finds a way to prevent Sinhala political parties (such as the JHU) from also engaging in anti-Tamil rhetoric that has so often incited Sinhala mob attacks on Tamils and those perceived as “pro-Tamil.” The United States should ensure that the government of Sri Lanka ceases all acts against Tamil American citizens or residents or anyone else perceived as being “pro-Tamil.”

7. The United States should reexamine its foreign policy objectives in Sri Lanka and the area, and take steps to ensure that United States policies do not contribute to human rights and humanitarian law violations of any kind, and especially not of the scale and scope of those against the Tamil people in Sri Lanka.