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H.E. Mr. Ban Ki-moon Secretary-General United Nations 46th and First Avenue New York, NY 10017

Dear Mr. Secretary-General:

I am writing on behalf of the Association of the Bar of the City of New York (the "Association") to recommend that you create a plan to implement the "responsibility to protect" principle and expand the role of the Special Adviser on the Prevention of Genocide.

The Association is an independent non-governmental organization with more than 23,000 members in over 50 countries. Founded in 1870, the Association has a long history of dedication to human rights, notably through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world, including within the United States. The Association also supports and follows the actions of the United Nations through its Committee on the United Nations.

The responsibility to protect ("R2P"), as first elaborated by the International Commission on Intervention and State Sovereignty in 2001, acknowledges that individual states have the primary responsibility to protect their own populations from atrocity crimes, including genocide, war crimes, ethnic cleansing and crimes against humanity. The international community should also encourage and help the government in its obligations to protect its civilians from these mass atrocities. When a state is unwilling or unable to do so, then this responsibility falls on the international community. It can act by implementing peaceful means such as diplomatic, political, economic and/or humanitarian means as well as more forceful measures such as sanctions or the threat thereof. If all else fails and only as a last resort, the international community can take collective action under Chapter VII of the United Nations (UN) Charter to use military force.

As you know, The General Assembly (the "GA") accepted the recommendations of the responsibility to protect in the 2005 World Summit Outcome Document (A/Res/60/1, 2005, paragraphs 138. and 139.) and the Security Council adopted it in an operative paragraph in its resolution on the Protection of Civilians in Armed Conflict (S/Res 1674, paragraph 4.).

The Association urges you to put the General Assembly's words into action by taking the necessary steps to effectuate the R2P principles. A first step is to establish an early warning system. To do so, the Association supports changing the nature of the Special Adviser on the Prevention of Genocide by redefining the post as the Special Adviser on the Prevention of Genocide and Other Mass Atrocities (Special Adviser) which would expand the Adviser's duties to cover war crimes, ethnic cleansing and crimes against humanity, not just genocide. The Special Adviser can then not only collect information but also provide an early warning of atrocity crimes. In order to act effectively the Special Adviser should have an enlarged staff. We strongly recommend that you appoint a Special Adviser in the near future with strong human rights expertise and a knowledge of the UN structure and require that he/she submit an annual report on any country situation that raises concern.

When the Special Adviser identifies a risk of atrocity crimes, the UN should have a coordinated approach to address the situation. One first step the UN could take is working with the government in question by offering assistance such as economic aid, human rights trainings, establishing or strengthening justice systems, demobilizing combatants and/or dispatching diplomats to resolve disputes. The Secretary-General can rely on the recommendations of the Special Adviser in consultation with the UN Advisory Committee on Genocide Prevention (Advisory Committee) to identify the types of cooperative assistance that may be given to a country where a risk has arisen.

If the state is unwilling or unable to cooperate, then, in accordance with the Charter and the principles articulated by the GA, it is the responsibility of the international community to react. The Secretary-General should outline the types of reactive measures that are available to the UN. The choice of which measure to take will depend on the circumstances in each country. The Secretary-General and the Special Adviser in conjunction with the Advisory Committee should provide the Security Council with their expert advice and suggestions on which steps would be most effective.

Diplomatic and political measures can include limiting representation by other countries to the State whose populations are threatened or restricting travel by certain individuals and/or leaders or threatening legal action against them. Economic sanctions can be directed against the assets of such individuals and/or leaders or against exporting a targeted State's assets or property. Trade embargos can be mandated such as the UN's restriction on Member States from supplying the Democratic People's Republic of Korea with particular military equipment and luxury goods (S/RES/1718 (2006, paragraph 8. (a) (i), (ii) and (iii)). Pacific military means can also include ending military training, cooperating with regional organizations and the demarcation of no-fly zones.

Absent the effectiveness of any of the above measures and as a last resort, the Security Council can authorize the use of armed force to stop atrocities "in accordance with the Charter, including Chapter VII,....and in cooperation with relevant regional organizations" (A/Res/60/1, paragraph 139). "Such action may include...operations by air, sea, or land forces of Members of the United Nations" (Chapter VII, Article 42). This type of military action could be used to destroy Khartoum's air force on the ground the next time Sudan uses air strikes against its Darfur citizens. Preventive deployments can be used such as the 1995 operation in the Balkans to stop the ongoing ethnic cleansing there and the 2004 intervention in Cote d'Ivoire to patrol the buffer zone dividing government and rebel forces. The Security Council can also countenance peacekeeping missions under Chapter VII such as establishing UNMIS in Sudan (SC Resolution 1590, 2005).

The Secretary-General should encourage the Security Council to consider the criteria recommended by the International Commission on Intervention and State Sovereignty before taking military action. These criteria, as incorporated in the report of the High-Level Panel on Threats, Challenges, and Changes and recommended in the Secretary-General's Note in 2004 (A/59/565, paragraph 10.), are as follows: 1) the seriousness of the harm being threatened; 2) the motivation of the proposed military action (i.e. whether the purpose was to stop or avert a threat or some other objective); 3) whether there were other available peaceful alternatives; 4) the proportionality of the response; and 5) whether more good than harm would be done by a military invasion.

By taking these steps and outlining the types of appropriate measures to prevent and react to mass atrocities, you can build an effective way for the UN to protect populations against genocide, war crimes, ethnic cleansing and crimes against humanity. As the President of Rwanda said in commemorating the 13th anniversary of the Rwandan genocide, "Never again should the international community's response to these crimes be found wanting...Let us ...put in place early warning mechanisms and ensure that preventive interventions are the rule rather than the exception."

The international community looks to your leadership to increase the capabilities of the now-Special Adviser for the Prevention of Genocide and guide the UN by outlining effective steps that can be taken to prevent and react to genocide, war crimes, ethnic cleansing and crimes against humanity.

Thank you for your time and attention to this important matter.

Sincerely,

Barry M. Kamins

Barry Kaminis

APPENDIX

Excerpts from the 2005 World Summit Outcome Document adopted by the General Assembly (A/RES/60/1):

"Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity

138. Each and individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional authorities as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out."

Excerpt from Resolution 1674 (2006)
Adopted by the Security Council at its 5430th meeting on 28 April 2006

"The Security Council.....

4. Reaffirms the provisions of paragraphs138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity;"