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May 23, 2016

**VIA OVERNIGHT DELIVERY SERVICE**

The Honorable John F. Kerry  
Secretary of State  
U.S. Department of State  
[REDACTED]

*RE: Islamic State Genocide Against Christians and Other Religious Minorities*

Dear Mr. Secretary:

By way of introduction, the American Center for Law and Justice (ACLJ) is an organization dedicated to the defense of religious freedom at home and abroad. ACLJ attorneys have argued before the Supreme Court of the United States in a number of significant cases involving the freedoms of speech and religion.<sup>1</sup> Our affiliate, the European Centre for Law and Justice (ECLJ), is an international not-for-profit law firm located in Strasbourg, France, dedicated to protecting human rights and religious freedom in Europe and around the world. The ECLJ holds Special Consultative Status as an NGO before the United Nations. The ECLJ has submitted both written (A/HRC/31/NGO/X) and oral statements to the United Nations Human Rights Council on the subject of the Islamic State (commonly referred to as ISIS, ISIL, and Daesh) genocide. The ACLJ submits this correspondence on behalf of its members and nearly 350,000 individuals, including individuals residing in 160 nations and territories.

The purpose of this correspondence is twofold. First, as a follow up to our correspondence to your office dated February 5, 2016, we wish express our immense gratitude for your statements on March 17, 2016, recognizing as genocide the Islamic State atrocities against Christians, Yazidis and other religious and ethnic minorities. We were also pleased that you again identified the atrocities as genocide during your recent remarks at Rice University. Further, we appreciate your comments regarding the critical importance of religious freedom and the relationship between religious freedom and the world at large.

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<sup>1</sup>See, e.g., *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009) (unanimously holding that a monument erected and maintained by the government on its own property constitutes government speech and does not create a right for private individuals to demand that the government erect other monuments); *McConnell v. FEC*, 540 U.S. 93 (2003) (unanimously holding that minors enjoy the protection of the First Amendment); *Lamb's Chapel v. Ctr. Moriches Sch. Dist.*, 508 U.S. 384 (1993) (holding that denying a church access to public school premises to show a film series on parenting violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding by an 8-1 vote that allowing a student Bible club to meet on a public school's campus did not violate the Establishment Clause); *Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569 (1987) (unanimously striking down a public airport's ban on First Amendment activities).

Second, recognizing your commitment to international religious freedom, we respectfully urge you to continue your pursuit of any and all available means to mobilize the international community to stop the genocide and protect the victims.

The United Nations must follow the example set by the United States and numerous other international bodies and formally recognize that the ongoing atrocities committed by the Islamic State against Christians, Yazidis, and other religious and ethnic minorities in Iraq, Syria, and elsewhere in the region constitute genocide for purposes of triggering the obligations of the international community pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide and the well established responsibility to protect.<sup>2</sup>

While we call for swift and decisive action by the international community to stop the genocide and protect the victims, we also recognize that the first step is for the United Nations to formally *recognize* that the atrocities constitute genocide as such. In your capacity as Secretary of State, a request by your office to the United Nations General Assembly (and other appropriate organs of the United Nations) to follow suit would carry significant weight.

As you know, the United Nations Human Rights Council will hold its 32nd Session in June 2016. This Session provides an excellent opportunity for this critical organ of the United Nations to squarely address the ongoing humanitarian crisis posed by the Islamic State. We respectfully urge you to communicate with the United Nations High Commissioner for Human Rights in advance of the Session to coordinate with that office to encourage the Human Rights Council to identify the subject atrocities as genocide at the Session.

We know that the High Commissioner is familiar with the ongoing crisis. In September 2015, during his opening statement at the 30th session, the High Commissioner declared that, “despite the horrific human rights violations in Syria that have been investigated, enumerated, [and] discussed, we must continue to deplore the international community’s failure to act.”<sup>3</sup> At that time, the High Commissioner did not specifically ask for recognition of the Islamic State’s acts as acts of genocide. Calling for the United Nations to recognize the ongoing atrocities in Iraq and Syria as genocide would ensure that the United Nations could then begin to take the steps necessary to halt the genocide and fulfill its responsibility to protect those victimized.

We also urge you to communicate with the Special Adviser on the Prevention of Genocide, H.E. Adama Dieng. The role of the Special Adviser is to serve “as a catalyst to raise awareness of the causes and dynamics of genocide, to alert relevant actors where there is a risk of genocide, and to advocate and mobilize for appropriate action”<sup>4</sup>. Thus, we urge you to discuss these matters with the Special Adviser, as the Special Adviser’s office would be a particularly influential and appropriate office to advance this cause. It is absolutely critical that the United Nations declare

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<sup>2</sup>*The Responsibility to Protect*, OFF. OF THE SPECIAL ADVISER ON THE PREVENTION OF GENOCIDE, <http://www.un.org/en/preventgenocide/adviser/responsibility.shtml> (last visited Apr. 21, 2016).

<sup>3</sup>Opening Statement by UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein at the 30th Session of the Human Rights Council, OHCHR.ORG, <http://www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=16414&> (last visited Apr. 21, 2016).

<sup>4</sup>*Mission Statement*, UN.ORG, <http://www.un.org/en/preventgenocide/adviser/> (last visited Apr. 21, 2016).

that the Islamic State and its followers are committing acts of genocide against Christians and other religious minorities and to then act accordingly.

## **I. URGE THE UNITED NATIONS TO *RECOGNIZE* THE GENOCIDE AGAINST CHRISTIANS AND OTHER RELIGIOUS AND ETHNIC MINORITIES**

The first step the United Nations must take in order to fulfill its responsibility to protect is to recognize the ongoing atrocities as genocide. We strongly and respectfully urge you to communicate the importance of such a declaration with the appropriate United Nations organs.

The United Nations must recognize that making such a determination will place the UN in good company. In declaring these acts to be genocide, the United Nations will join the Parliamentary Assembly of the Council of Europe, the European Parliament, the Holy See's representative at the United Nations in Geneva as well as Pope Francis, the British House of Commons, the United States Department of State, the United States House of Representatives, the United States Commission on International Religious Freedom, and numerous NGOs—all of whom have condemned the Islamic State's acts and recognized such acts as genocide.

As recognized in the Convention,

genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.<sup>5</sup>

Article III of the Convention identifies the following as punishable acts: "(a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide."<sup>6</sup> Article IV makes clear that "Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals."<sup>7</sup> Such provisions mean little if the United Nations fails to recognize particular acts as acts of genocide.

You summarized the grim reality of the ongoing genocide perfectly in your remarks at Rice University in April, when you said:

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<sup>5</sup>Convention on the Prevention and Punishment of the Crime of Genocide, art. II, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention]. We recognize that the United States has reserved its own definition of genocide for purposes of the Convention. See 18 U.S.C. § 1091(a) (2012). However, both the Convention and the United States' definitions have been satisfied.

<sup>6</sup>*Id.* at art. III.

<sup>7</sup>*Id.* at art. IV.

In the time since, Daesh has continued to target religious minorities. They continue to kill Yezidis because they are Yezidis, Christians because they are Christians, Shia because they are Shia. In my judgment – and I registered this last month – Daesh is responsible for committing genocide against these groups in areas under its control.<sup>8</sup>

The United Nations can no longer turn a blind eye to the growing body of evidence, which demonstrates that the inhuman violence at issue is, in fact, genocide as defined by the Convention.

Many of the following facts were addressed in our previous correspondence to your office, but for purposes of providing a more comprehensive account, we will summarize them again here. In the summer of 2014, Islamic State leader, Abu Bakr Al-Baghdadi, self-proclaimed to be Caliph Ibrahim, declared the creation of an Islamic caliphate under his leadership. Since Al-Baghdadi declared the creation of his caliphate, the Islamic State has systematically killed Christians, Yazidis, and other non-Muslim as well as Muslim minorities who do not adhere to the Islamic State's ideology. The savagery has been punctuated by recent evidence that the Islamic State is burning Christians alive in locked caskets.<sup>9</sup>

In Iraq and Syria, Christians represent a small minority of the population, making up roughly 8% of the Syrian population<sup>10</sup> and less than 3% of the Iraqi population.<sup>11</sup> The Christian population in both countries is rapidly declining. For example, tens of thousands of Christians have fled Syria since the beginning of the civil war in fear for their lives.<sup>12</sup> The Islamic State's religion-targeted abuses include "killings, rape, kidnapping, enslavement, theft . . . destruction of religious sites . . . sexual slavery, forced conversion, ransom demands, property seizures, and forced business closures."<sup>13</sup> In Syria, the Islamic State has beheaded and stoned men, women, and children for blasphemy, heresy, and apostasy.<sup>14</sup>

The Islamic State's notorious abuses are targeted primarily against religious minorities, including an estimated 200,000 Iraqi Christians in 2014.<sup>15</sup> In June 2014, after the Islamic State seized the city of Mosul, Iraq, it demanded that Christian residents either convert to Islam, pay a tax for protection, or be executed; further, the Islamic State gave the Christians less than a week (July 14

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<sup>8</sup>John Kerry, *Remarks at Rice University's Baker Institute for Public Safety*, U.S. DEP'T OF STATE (Apr. 26, 2016), <http://www.state.gov/secretary/remarks/2016/04/256618.htm>.

<sup>9</sup>Anuragh Kumar, *ISIS Burns Christians Alive in Locked Caskets, Escaped Prisoner Reveals*, CHRISTIAN POST (Jan. 6, 2016), <http://www.christianpost.com/news/isis-burns-christians-alive-locked-caskets-escaped-iraqi-soldier-islamic-state-prisoner-reveals-154281/>

<sup>10</sup>BUREAU OF DEMOCRACY, H.R. AND LAB., U.S. DEP'T OF STATE, SYRIA 2014 INTERNATIONAL RELIGIOUS FREEDOM REPORT 2 (2014) [hereinafter Syria Report].

<sup>11</sup>BUREAU OF DEMOCRACY, H.R. AND LAB., U.S. DEP'T OF STATE, IRAQ 2014 INTERNATIONAL RELIGIOUS FREEDOM REPORT 3 (2014) [hereinafter Iraq Report].

<sup>12</sup>Syria Report, *supra* note 10, at 2, 14.

<sup>13</sup>Iraq Report, *supra* note 11, at 1–2.

<sup>14</sup>Syria Report, *supra* note 10, at 1.

<sup>15</sup>Iraq Report, *supra* note 11, at 4.

to 19) to make their decision.<sup>16</sup> Several important religious sites and Christian institutions in Mosul were destroyed.<sup>17</sup>

The Islamic State had issued a similar ultimatum to Christians living in Raqqa City, Syria, in February 2014, resulting in nearly all of the Christians fleeing their homes.<sup>18</sup> The property of the Christians who fled was confiscated, and all churches in the city were transformed into mosques.<sup>19</sup> Remaining residents were forbidden from worshipping according to any religion other than Islam.<sup>20</sup> According to eye-witnesses who were present in the city, very few Christians remained in the city after the Islamic State issued its ultimatum, and those who chose to remain and pay jizya were forced to pay the Islamic State a tax totaling \$335 per family per year.<sup>21</sup>

In August 2015, twelve Syrian Christians (including men, women, and children) were brutally and publicly tortured and executed in a village near Aleppo, Syria, because they refused to convert to Islam.<sup>22</sup> Islamic State members cut off a young boy's fingertips and beat him as they demanded that his father and two other men renounce Christianity, before executing all four by crucifixion.<sup>23</sup> Eight women were also publically raped and beheaded after they refused to renounce Christianity.<sup>24</sup> Recently, Islamic State fighters destroyed Iraq's oldest Christian monastery, St. Elijah's.<sup>25</sup> Father Paul Thabit Habib, a Catholic priest "who now lives in Kurdish-administered Irbil" said that Iraq's "Christian history was 'being barbarically leveled.'"<sup>26</sup> He added, "[W]e see it as an attempt to expel us from Iraq, eliminating and finishing our existence in this land."<sup>27</sup>

As you have recognized, Islamic State treatment of Christians is directly comparable to its treatment of another religious minority, the Yazidis. Much like the Islamic State treatment of Christians in Mosul and Raqqa City, in August 2014, the Islamic State captured a Yazidi village and demanded that its residents convert to Islam. After the villagers refused to convert over a period of several days, Islamic State members executed at least 100 Yazidi men and took the women and children hostage as sex slaves.<sup>28</sup> Similarly, in Syria, the Islamic State beat and tortured twenty-five Yazidi men in an attempt to force them to convert.<sup>29</sup> A small number were reportedly released after their families paid a ransom, but the rest were killed.<sup>30</sup>

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<sup>16</sup>*Id.* at 13.

<sup>17</sup>*Id.*

<sup>18</sup>Syria Report, *supra* note 10, at 11.

<sup>19</sup>*Id.*

<sup>20</sup>*Id.*

<sup>21</sup>*Id.*

<sup>22</sup>*Christian Workers in Syria Crucified, Beheaded*, CHRISTIAN AID MISSION (Oct. 1, 2015), <http://www.christianaid.org/News/2015/mir20151001.aspx>.

<sup>23</sup>*Id.*

<sup>24</sup>*Id.*

<sup>25</sup>*Iraq's Oldest Christian Monastery Destroyed by Islamic State*, BBC NEWS (Jan. 20, 2016), <http://www.bbc.com/news/world-middle-east-35360415>.

<sup>26</sup>*Id.*

<sup>27</sup>*Id.*

<sup>28</sup>Iraq Report, *supra* note 11, at 11.

<sup>29</sup>Syria Report, *supra* note 10, at 10.

<sup>30</sup>*Id.*

Virtually every day brings new reports and first-hand accounts of the inhuman barbarism experienced by the Islamic State's victims.

We urge you to remind the United Nations that such reports are consistent with the United Nations' own fact-finding. For instance, according to a recent report issued by the Office of the United Nations High Commissioner for Human Rights and the United Nations Assistance Mission for Iraq, in Iraq alone:

At least 18,802 civilians have been killed from January 2014 to October 2015.

At least 36,245 civilians have been wounded during that same time period.

An estimated 3,500 are being held as slaves by the Islamic State, most of them women and children.

3.2 million have been displaced.<sup>31</sup>

The Report concluded: "The violence suffered by civilians in Iraq remains staggering. The so-called 'Islamic State of Iraq and the Levant' (ISIL) continues to commit systematic and widespread violence and abuses of international human rights law and humanitarian law. These acts may, in some instances, amount to war crimes, crimes against humanity, *and possibly genocide*."<sup>32</sup> Since the issuance of that report, however, any question as to the genocidal nature of the atrocities committed against Christians and other religious and ethnic minorities in the region has been answered in the affirmative.

As found by the Parliamentary Assembly of the Council of Europe, there are countless

individuals who act in the name of the terrorist entity which calls itself "Islamic State" (Daesh) and who have perpetrated acts of genocide and other serious crimes punishable under international law. States should act on the presumption that Daesh commits genocide and should be aware that this entails action under the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide.<sup>33</sup>

The European Parliament went even further, specifically recognizing the genocide of *Christians and other religious and ethnic minorities*. In a nearly unanimous resolution, it declared:

[W]hereas religious and ethnic minorities, such as Christian (Chaldean/Syriac/Assyrian, Melkite and Armenian), Yazidi, Turkmen, Shabak, Kaka'i, Sabae-Mandean, Kurdish and Shi'a communities, as well as many Arabs and

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<sup>31</sup>High Commissioner for Human Rights, *Report on the Protection of Civilians in the Armed Conflict in Iraq: 1 May – 31 October 2015*, (Jan. 5, 2016), available at [http://www.uniraq.org/images/humanrights/UNAMI-OHCHR\\_%20POC%20Report\\_FINAL\\_01%20May-31%20October%202015\\_FINAL\\_11Jan2016.pdf](http://www.uniraq.org/images/humanrights/UNAMI-OHCHR_%20POC%20Report_FINAL_01%20May-31%20October%202015_FINAL_11Jan2016.pdf).

<sup>32</sup>*Id.* (emphasis added).

<sup>33</sup>Eur. Consult. Ass., *Foreign Fighters in Syria and Iraq*, 6th sitting, Res. 2091 (2016), <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=22482&lang=en>.

Sunni Muslims, have been targeted by the so-called 'ISIS/Daesh': whereas many have been killed, slaughtered, beaten, subjected to extortion, abducted and tortured; whereas they have been enslaved (in particular women and girls, who have also been subjected to other forms of sexual violence) and forcibly converted, and have been victims of forced marriage and trafficking in human beings; whereas children have also been forcibly recruited; whereas mosques, monuments, shrines, churches and other places of worship, tombs and cemeteries have been vandalized.<sup>34</sup>

The resolution details several specific incidents in which the Islamic State committed numerous international crimes against Christians and other religious minorities in the Middle East, including the kidnapping of more than 220 Assyrian Christians in February 2015.

Importantly, the European Parliament

stresses that the so-called 'ISIS/Daesh' is committing genocide against Christians and Yazidis, and other religious and ethnic minorities, who do not agree with the so-called 'ISIS/Daesh' interpretation of Islam, and that this therefore entails action under the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide.<sup>35</sup>

In its resolution, the European Parliament "urges the members of the UN Security Council to support a referral to the International Criminal Court" and invites the Security Council to take measures for these acts "to be recognized as genocide" by the International Criminal Court.<sup>36</sup>

Finally, the European Parliament stresses the responsibility on the international community to take collective action in order to "provid[e] protection and aid, including military protection and aid, in accordance with international law, to all those targeted by the so-called 'ISIS/Daesh' and other terrorist organizations in the Middle East."<sup>37</sup> The European Parliament submitted the resolution to United Nations bodies, to the Organization of Islamic Cooperation, and to the Cooperation Council for the Arab States of the Gulf.

And, as you recognized on March 17, 2016,

Daesh is responsible for genocide against groups in areas under its control, including Yazidis, Christians, and Shia Muslims. Daesh is genocidal by self-proclamation, by ideology, and by actions – in what it says, what it believes, and what it does. Daesh is also responsible for crimes against humanity and ethnic cleansing directed at these same groups and in some cases also against Sunni Muslims, Kurds, and other minorities.<sup>38</sup>

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<sup>34</sup>Eur. Parl. Ass., *Joint Motion for a Resolution*, 2016/2529(RSP) (Feb. 2, 2016), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT/MOTION/P8-RC-2016-0149+0+DOC+XML+V0//EN>.

<sup>35</sup>*Id.*

<sup>36</sup>*Id.*

<sup>37</sup>*Id.*

<sup>38</sup>John Kerry, *Remarks on Daesh and Genocide*, U.S. DEP'T OF STATE (Mar. 17, 2016) <http://www.state.gov/secretary/remarks/2016/03/254782.htm>.

Further,

[w]e know that in Mosul, Qaraqosh, and elsewhere, Daesh has executed Christians solely because of their faith: that it executed 49 Coptic and Ethiopian Christians in Libya; and that it has also forced Christian women and girls into sexual slavery. . . .

We know that in areas under its control, Daesh has made a systematic effort to destroy the cultural heritage of ancient communities – destroying Armenian, Syrian Orthodox, and Roman Catholic churches; blowing up monasteries and the tombs of prophets; desecrating cemeteries; and in Palmyra, even beheading the 83-year-old scholar who had spent a lifetime preserving antiquities there.

We know that Daesh's actions are animated by an extreme and intolerant ideology that castigates Yazidis as, quote, "pagans" and "devil-worshippers," and we know that Daesh has threatened Christians by saying that it will, quote, "conquer your Rome, break your crosses, and enslave your women."<sup>39</sup>

And, most recently, the British House of Commons unanimously passed a motion condemning the Islamic State atrocities as genocide and calling for specific action by the United Nations:

That this House believes that Christians, Yazidis, and other ethnic and religious minorities in Iraq and Syria are suffering Genocide at the hands of Daesh; and calls on the Government to make an immediate Referral to the UN Security Council with a view to conferring jurisdiction upon the International Criminal Court so that perpetrators can be brought to justice.<sup>40</sup>

As indicated above, a growing number of international bodies have recognized that the ongoing atrocities committed by members of the Islamic State constitute genocide against Christians and other religious and ethnic minorities. On this point, there can now be no meaningful dispute. Mr. Secretary, it is time for the United Nations not just to join, but also to lead the international community in confronting the ongoing genocide. To do so, however, it must first formally recognize the genocide. That is the cause we urge you to advance.

## **II. URGE THE UNITED NATIONS TO FULFILL ITS SOLEMN AND WELL-ESTABLISHED "RESPONSIBILITY TO PROTECT"**

Once the United Nations recognizes the genocide as such, *then* it may properly mobilize the international community to honor the terms of the Genocide Convention and fulfill its responsibility to protect.

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<sup>39</sup> *Id.*

<sup>40</sup> *Debate on a Motion on Recognition of Genocide by Daesh*, PARLIAMENT.UK, <http://www.parliament.uk/business/committees/committees-a-z/commons-select/backbench-business-committee/news-parliament-2015/chamber-debate-on-recognition-of-genocide-daesh/> (last visited May 18, 2016).



According to the Genocide Convention, “[t]he Contracting Parties confirm that genocide . . . is a crime under international law which they undertake to prevent and punish.”<sup>41</sup> The Convention recognizes the responsibility of the United Nations “to take such action under the Charter of the United Nations” necessary “for the prevention and suppression of acts of genocide.”<sup>42</sup> According to the Office of the Special Adviser on the Prevention of Genocide, “[t]he duty to prevent and halt genocide and mass atrocities lies first and foremost with the State, but the international community has a role.”<sup>43</sup>

Indeed, this role—the “responsibility to protect”—was stipulated “in the Outcome Document of the 2005 United Nations World Summit (A/RES/60/1, para. 138-140), and formulated in the Secretary-General’s 2009 Report (A/63/677) on Implementing the Responsibility to Protect.” As the Secretary-General has recognized and as has been adopted by the General Assembly,

*[t]he 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 organizations 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. We stress the need for the General Assembly to continue consideration of the responsibility to protect 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.*<sup>44</sup>

According to the Report of the Secretary-General,

[b]ased on existing international law, agreed at the highest level and endorsed by both the General Assembly and the Security Council, the provisions of paragraphs 138 and 139 of the Summit Outcome define the authoritative framework within which Member States, regional arrangements and the United Nations system and its partners can seek to give a doctrinal, policy and institutional life to the responsibility to protect (widely referred to as “RtoP” or “R2P” in English).<sup>45</sup>

<sup>41</sup>Genocide Convention, *supra* note 5 at art. I.

<sup>42</sup>*Id.* at art. VIII.

<sup>43</sup>*The Responsibility to Protect*, OFF. OF THE SPECIAL ADVISER ON THE PREVENTION OF GENOCIDE, <http://www.un.org/en/preventgenocide/adviser/responsibility.shtml> (last visited May 18, 2016).

<sup>44</sup>Report of the Secretary-General, *Implementing the Responsibility to Protect* (Jan. 12, 2009), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/63/677](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/63/677) (emphasis added).

<sup>45</sup>*Id.*

And as the Secretary-General has recognized,

[i]t should be underscored that the provisions of paragraphs 138 and 139 of the Summit Outcome are firmly anchored in well-established principles of international law. Under conventional and customary international law, States have obligations to prevent and punish genocide, war crimes and crimes against humanity.<sup>46</sup>

It is *this* responsibility and obligation that we urge you to advance forthwith at the United Nations by requesting the United Nations to first recognize the ongoing atrocities as genocide and then mobilize the appropriate organs of the United Nations to take action. There can be no serious doubt that the relevant States, Iraq and Syria, are “manifestly failing to protect [their] populations” of Christians, Yazidis, and other religious minorities. The estimated number of genocide victims demonstrates the manifest failure, and the contributing causes are not difficult to ascertain: the current status of the Syrian government and the Islamic State’s control over significant portions of Iraq’s territory. In fact, in recent remarks, Ambassador Samantha Power acknowledged the Syrian government’s *own* role in committing atrocities in Syria. Specifically, she acknowledged the

creativity in the savagery that has been introduced to the Syrian theater. Illegal detentions, often involving torture, rape, murder; chemical weapon attacks against civilians; bombs landing on schools, hospitals, and civilian neighborhoods; sieges of entire cities; starving people to death willfully when you have the power with a pen – a pen stroke – to allow food to people you know are going to die if they don’t get food, and you just simply don’t sign the form. The Assad regime is the leading perpetrator of these crimes by a long shot, but ISIL and other armed groups, of course, are responsible for their share of atrocities.<sup>47</sup>

Surely a government that itself is committing crimes against humanity has proven incapable of protecting its people from such crimes. Even while military efforts against the Islamic State continue in both Syria and Iraq, the Islamic State continues its genocide with virtual impunity.

We know that the United Nations is officially aware of the crisis. In a briefing submitted to the United Nations Security Council at a meeting held May 6, 2016, the United Nations Secretary-General’s Special Representative and Head of the United Nations Assistance Mission for Iraq “condemn[ed] in the strongest possible terms the continued killings, kidnapping, rape and torture of Iraqis by ISIL, which may constitute crimes against humanity, war crimes and even genocide.”<sup>48</sup> Critically, he “call[ed] on the international community to take steps to ensure the accountability of members of ISIL for the atrocious crimes they have perpetrated.”<sup>49</sup>

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<sup>46</sup>*Id.*

<sup>47</sup>Ambassador Samantha Power, *Remarks at an Informal Meeting on “Syria: War Crimes and the Pursuit of Justice”* U.S. MISSION TO THE U.N. (Apr. 14, 2016), <http://usun.state.gov/remarks/7226>.

<sup>48</sup>Special Representative of the United Nations Secretary General for Iraq, *Briefing by SRSG for Iraq Jan Kubiš to the Security Council*, RELIEFWEB.INT (6 May 2016), [http://reliefweb.int/sites/reliefweb.int/files/resources/160506SR\\_SGUNSCBriefing-ASPREPARED.doc.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/160506SR_SGUNSCBriefing-ASPREPARED.doc.pdf).

<sup>49</sup>*Id.*

At the meeting, Iraq's Representative to the United Nations, Mohamed Ali Alhakim, also made the case for United Nations action. Importantly, he stated that he "[w]elcome[d] the fact that United States Secretary of State John Kerry has said that he considers ISIL's actions in Iraq to be acts of genocide and crimes against humanity, particularly those against minorities such as Yazidis, Christians and Shiite Muslims."<sup>50</sup>

Alhakim then "urge[d] the Security Council to set up a specific international legal mechanism for investigating and bringing to justice the criminals of ISIL," and called upon the Security Council to implement a number of specific resolutions.<sup>51</sup>

Just as Ambassador Power declared, "if we fulfill our responsibilities – as we must – justice will be done."<sup>52</sup> It is time for the United Nations to fulfill its responsibility. And, Mr. Secretary, you, the State Department, and the United States Mission to the United Nations are uniquely situated to demand that those responsibilities be fulfilled.

### **III. URGE THE UNITED NATIONS TO IMPLEMENT ALL AVAILABLE MEANS TO STOP THE GENOCIDE AND PROTECT THE VICTIMS**

That the ongoing atrocities against Christians and other religious and ethnic minorities constitute genocide and that the United Nations and its organs possess the responsibility to protect as concerns that genocide is clear. We now turn to specific means uniquely available to the United Nations to implement its responsibility and give meaning to the Convention. We urge you to advance these measures to the appropriate United Nations organ(s).

Pursuant to the Charter of the United Nations, the very purpose of the United Nations is to "maintain international peace and security, and to that end: to *take effective collective measures for the prevention and removal of threats to the peace*."<sup>53</sup> The Charter also vests the United Nations Security Council with the authority to take non-military action in an effort to restore peace and security.<sup>54</sup>

The Charter of the United Nations gives the Secretary-General the power to "bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."<sup>55</sup> The ongoing genocide of Christians and other religious and ethnic minorities, without doubt, constitutes a clear and pressing threat to international peace and security. And, again, we were pleased that the Secretary-General's Special Representative, along with Iraq's Representative, raised the issue before the Security Council in May.

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<sup>50</sup>S.C. 7689th Meeting, 71st Year, U.N. Doc S/PV.7689 (May 6, 2016), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/PV.7689](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.7689).

<sup>51</sup>*Id.*

<sup>52</sup>*Remarks at an Informal Meeting on "Syria: War Crimes and the Pursuit of Justice," supra note 47.*

<sup>53</sup>U.N. Charter art. 1, para. 1 (emphasis added).

<sup>54</sup>U.N. Charter art. 41. Moreover, should non-military means be deemed inadequate, the Security Council "may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security."*Id.*

<sup>55</sup>U.N. Charter art. 99.

As recognized by the Genocide Convention, prosecution plays a critical role in halting genocide. In addition to state tribunals that can try persons who commit acts of genocide in a specific state, the Convention provides that persons can be tried in any “*international penal tribunal* as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.”<sup>56</sup> Syria and Iraq are both contracting parties to the Genocide Convention, and neither has made any reservations or declarations.<sup>57</sup>

As you are aware, there are two actions the United Nations Security Council may take to bring the perpetrators of genocide to justice: (1) refer Islamic State members’ crimes of genocide to the International Criminal Court (ICC); or (2) create an *ad hoc* tribunal for prosecuting such crimes (as was done for the Former Yugoslavia and Rwanda). Importantly, *either* avenue requires Security Council *action*.

First, the ICC would only have jurisdiction if the United Nations Security Council specifically makes the referral.<sup>58</sup> The ICC does not automatically possess jurisdiction to try Islamic State members and the genocide committed in Iraq and Syria because Iraq and Syria are not signatories to the Rome statute and Islamic State members are not state actors.<sup>59</sup> Accordingly, the United Nations Security Council must specifically refer such a situation to the ICC in order to vest the ICC with the requisite jurisdiction and the ability to prosecute.<sup>60</sup>

Second, the United Nations Security Council could create an “*ad hoc* tribunal” to prosecute Islamic State members committing genocide. This mechanism was utilized by the Security Council “to prosecute international criminal violations during the 1994 genocide in Rwanda and [again to prosecute] the international criminal violations that occurred during the struggles in the former Yugoslavia in the early 1990s.”<sup>61</sup> Unfortunately, the need for such a tribunal is present once again.

Whichever avenue is chosen, it is clear that the United Nations Security Council is vested with the authority to set the stage for bringing such persons to justice. Mr. Secretary, please raise the issue to the Security Council. We urge you to do so without delay.

\* \* \* \* \*

We stand with you in the cause of religious freedom and human dignity you work so diligently to advance, and we agree with remarks you recently made to that end:

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<sup>56</sup>Genocide Convention, *supra* note 5 at art. VI.

<sup>57</sup>Convention on the Prevention and Punishment of the Crime of Genocide, U.N. Treaty Collection, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtsg\\_no=IV-1&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtsg_no=IV-1&chapter=4&lang=en) (last visited May 23, 2016).

<sup>58</sup>Joshua Keating, *Isis May be Guilty of Genocide, but Prosecuting it Will be Tricky*, SLATE.COM (Apr. 8, 2015), [http://www.slate.com/blogs/the\\_slates/2015/04/08/isis\\_and\\_the\\_icc\\_why\\_it\\_s\\_will\\_be\\_tough\\_to\\_prosecute\\_the\\_islamic\\_state\\_for.html](http://www.slate.com/blogs/the_slates/2015/04/08/isis_and_the_icc_why_it_s_will_be_tough_to_prosecute_the_islamic_state_for.html).

<sup>59</sup>*Id.*

<sup>60</sup>ICC Has No Jurisdiction to Prosecute ISIS Despite ‘Crimes of Unspeakable Cruelty’, THE GUARDIAN (Apr. 8, 2015), <http://www.theguardian.com/law/2015/apr/08/icc-no-jurisdiction-prosecute-isis-despite-crimes-unspeakable-cruelty>.

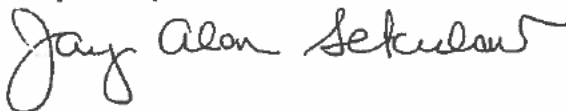
<sup>61</sup>Erin Banco, *U.S. Says ISIS Crimes Amount to Genocide but Prosecution is Difficult*, IBTIMES.COM (Mar. 17, 2016, 2:08 PM), <http://www.ibtimes.com/us-says-isis-crimes-amount-genocide-prosecution-difficult-2338504>.

We have worked hard to maintain our support for targeted communities, because we believe that the protection of religious and ethnic minorities is a fundamental test not just of our leadership, but of civilization itself. And make no mistake, this is not a war of civilizations against each other. This is a war of uncivilized, of barbarians against civilization. We think that people ought to be free to choose, to change, to practice, to speak and teach their religion anywhere without fear or intimidation. And this freedom of religious and ethnic identity is not contingent on numbers. Religious minorities should have the same rights as majorities; that's our belief, that's who we are in the United States, and that is the norm that we seek to uphold in country after country.<sup>62</sup>

Mr. Secretary, the United Nations must take a strong and courageous stand against the evils of the ongoing genocide and use all available options to stop the genocide and protect the victims—by implementing appropriate penal tribunals, coordinating a more effective use of coalition military force, administering a more efficient delivery of aid, and providing meaningful in-region protection for victims such as the establishment of safe-zones. The Charter of the United Nations demands no less, and through the organs of the United Nations, empowered by the terms of the Genocide Convention, the United Nations has the unique capability to take measures to end the genocide and protect the Christians and other religious and ethnic minorities victimized thereby.

We, therefore, respectfully and solemnly urge you to advance this cause at the United Nations by (1) pressing the United Nations to declare that the ongoing atrocities committed by the Islamic State and associated groups constitute genocide; (2) communicating with all appropriate offices of the United Nations to that end; and (3) doing everything in your power to mobilize the international community to take swift and decisive action. Again, we thank you for the leadership you have already displayed on these demanding issues.

Respectfully submitted,



Jay Alan Sekulow  
Chief Counsel



Robert W. Ash  
Senior Counsel

cc: Ambassador Samantha Power  
Ambassador David N. Saperstein

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<sup>62</sup>Remarks at Rice University's Baker Institute for Public Safety, *supra* note 8.